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UNITED STATES OF AMERICA

Federal Power Commission Reports

U.S.

Opinions, Decisions, and Orders

Volume 32

JULY 1, 1964–DECEMBER 31, 1964

Reported by the Commission

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1967

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402
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[1] Commissioner Woodward died, August 4, 1964.

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FOREWORD

The Federal Power Act was originally enacted as the Federal Water Power Act, approved June 10, 1920 (41 Stat. 1063, 16 U.S.C. 791–823). The Federal Power Commission was reorganized January 1, 1931, as an independent Commission under the act approved June 23, 1930 (46 Stat. 797). By Title II of the Public Utility Act of 1935, approved August 26, 1935 (49 Stat. 838), the original Federal Water Power Act was made part I of the "Federal Power Act" and parts II and III were added. The Federal Power Act was amended May 28, 1948 (62 Stat. 275), August 7, 1953 (67 Stat. 461), August 15, 1953 (67 Stat. 587), June 4, 1956 (70 Stat. 226), and August 28, 1958 (72 Stat. 941 at 947). The Commission also administers the Natural Gas Act, approved June 21, 1938 (52 Stat. 821, 15 U.S.C. 717–717w), as amended February 7, 1942 (56 Stat. 83, 15 U.S.C. 717f), July 25, 1947 (61 Stat. 459, 15 U.S.C. 717f), March 27, 1954 (68 Stat. 36, 15 U.S.C. 717(c)), and August 28, 1958 (72 Stat. 941 at 947, 15 U.S.C. 717r), and has certain duties under the Tennessee Valley Authority Act, approved May 18, 1933 (48 Stat. 1075), and amendments thereto; the Bonneville Act, approved August 20, 1937 (50 Stat. 731); the Fort Peck Act, approved May 18, 1938 (52 Stat. 403); and under various Flood Control and River and Harbor Acts (notably the Flood Control Act of 1944, approved December 22, 1944 (58 Stat. 887)), and other statutes, as well as Executive Orders.

This volume, the thirty-second of a series, contains all the formal opinions and accompanying orders of the Federal Power Commission rendered, July 1, 1964 to December 31, 1964, inclusive. In addition to the formal opinions, there have been included intermediate decisions which have become final and selected orders of the Commission issued during such period.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP63-230 (PHASE II);* WISCONSIN PUBLIC SERVICE CORPORATION, DOCKET NO. CP63-244

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS AND, AFTER STATUTORY HEARING, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 1, 1964)

On February 18, 1963, as supplemented and amended on March 21 and April 29, 1963, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) filed in Docket No. CP63-230 (Phase II) an application pursuant to Section 7(c) of the Natural Gas Act authorizing the construction and operation of certain facilities and the sale and delivery, by means of said facilities, of natural gas to Wisconsin Public Service Corporation (Public Service) for resale and distribution by the latter in the communities of Denmark, Kewaunee, Algoma, Sturgeon Bay and Wrightstown, Wisconsin, all as more fully set forth in the application, as supplemented and amended.

Specifically, Michigan Wisconsin proposes the following in Phase II:

> The construction and operation of approximately 19.3 miles of 6-inch pipe extending from a point on its Green Bay, Wisconsin, pipeline easterly to Denmark, Wisconsin, in order to sell and deliver natural gas to Public Service for resale and distribution in the communities of Denmark, Kewaunee, Algoma and Sturgeon Bay and to provide Public Service with a delivery point on said proposed line for service to Wrightstown.

The application indicates the total third year peak day and annual requirements of these communities are 7,109 Mcf and 1,221,250 Mcf, respectively.

The estimated cost of the proposed Phase II facilities is shown to be $545,000, which cost will be financed out of treasury funds.

On February 28, 1963, as supplemented on April 22 and May 24, 1963, and May 1, 1964, Public Service filed in Docket No. CP63-244 an application pursuant to Section 7(a) of the Natural Gas Act for an order directing Michigan Wisconsin to construct a lateral line and to sell natural gas to Public Service for resale and distribution in the Village of Mishicot, Wisconsin, all as more fully set forth in the application, as supplemented.

The application indicates the estimated third year maximum day and annual natural gas requirements of Mishicot are 799 Mcf and 184,190 Mcf, respectively.

Public Service will construct and operate distribution facilities at an estimated cost of $175,705.

On April 3, 1963, Michigan Wisconsin filed an answer to the subject application stating that it has no objection to an order requiring it to construct 4.8 miles of

*By Commission order issued November 12, 1963, 30 FPC 1239, the Phase I portion of the proceeding in Docket No. CP63-230 was disposed of. This order pertains exclusively to the proposals in Phase II of Docket No. CP63-230 and to the proposals in Docket No. CP63-244.

service lateral and to provide natural gas for service to Mishicot. Said lateral is estimated to cost $101,200.

On July 5, 1963, the Coal Interests[1] filed a petition to intervene in Docket Nos. CP63-230 and CP63-244; however, on January 24, 1964, said petition was withdrawn.

Due notice of the filing of the application in Docket No. CP63-244 and opportunity for hearing thereon has been given by publication in the Federal Register on May 26, 1964 (29 F.R. 6901). No protest, further petition to intervene or request for hearing has been filed in said docket.

After due notice (published in the Federal Register on May 26, 1964 (29 F.R. 6901), no further petition to intervene, notice of intervention or protest to the granting of the application, as supplemented and amended, in Docket No. CP63-230 (Phase II) has been filed.

At a hearing held on June 26, 1964, the Commission on its own motion received and made a part of the record in Docket No. CP63-230 (Phase II) all evidence, including the application, supplement, amendment and exhibits, submitted in support of the authorization sought therein, and upon consideration of the record in said Docket No. CP63-230 (Phase II) and in Docket No. CP63-244,

The Commission finds:

(1) Applicant, Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 14, 1950, in Docket No. G-1302 (9 FPC 167).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented and amended, in Docket No. CP63-230 (Phase II), are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Michigan Wisconsin is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by Michigan Wisconsin as proposed in Docket No. CP63-230 (Phase II) are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Michigan Wisconsin's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) Applicant, Wisconsin Public Service Corporation, is a corporation organized and existing under the laws of the State of Wisconsin and is duly author-

[1] Fuels Research Council, Inc., National Coal Association, United Mine Workers of America, Mid-West Coal Producers Institute, Inc., and Upper Lake Docks Coal Bureau, Inc.

ized to engage in the business of selling and distributing natural gas within said State.

(7) It is necessary and desirable in the public interest that Michigan Wisconsin Pipe Line Company be directed to establish physical connection of its natural gas transportation system with the proposed facilities of Public Service and to sell and deliver up to 799 Mcf of natural gas per day to Public Service, as set forth in the application, as supplemented, in Docket No. CP63–244 and as hereinafter ordered and conditioned.

(8) The authorization in Docket No. CP63–244 should be conditioned upon Public Service being prepared to receive gas from Michigan Wisconsin, as proposed, within one year from the date on which this order issues and upon Public Service obtaining and submitting a firm commitment from Western Condensing Company to purchase the annual third-year volumes shown for this industrial customer in the application, as supplemented, in said Docket No. CP63–244.

(9) The requirement that Michigan Wisconsin serve Public Service, as proposed in Docket No. CP63–244, will not place any undue burden upon Michigan Wisconsin nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Michigan Wisconsin Pipe Line Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application, as supplemented and amended, in Docket No. CP63–230 (Phase II), upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Michigan Wisconsin's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sale and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within 6 months from the date on which this order issues.

(D) Michigan Wisconsin Pipe Line Company be and it is hereby directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant, Wisconsin Public Service Corporation, and to sell and deliver up to 799 Mcf of natural gas per day to Public Service, all as hereinbefore described and as set forth in the application, as supplemented, in Docket No. CP63–244.

(E) Michigan Wisconsin shall report to the Commission in writing the date of commencement of service to Public Service.

(F) The order in Docket No. CP63–244 is hereby conditioned upon Public Service being prepared to receive natural gas from Michigan Wisconsin, as proposed, within one year from the date on which this order issues and upon Public Service obtaining and submitting a firm commitment from Western Condensing Company to purchase the annual third-year volumes shown for this industrial customer in the application, as supplemented, in Docket No. CP63–244.

Before Commissioners: Joseph C. Swidler, Chairman, L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

SOUTHERN NATURAL GAS COMPANY, DOCKET NOS. G–9201 AND G–14587

ORDER AMENDING ORDERS ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 1, 1964)

On April 16, 1964, Southern Natural Gas Company (Petitioner) filed in Docket Nos. G–9201 and G–14587 a petition to amend the Commission's orders issued November 2, 1955, 14 FPC 1063, (Docket No. G–9201), August 7, 1959, 22 FPC 211, (Docket No. G–14587), as amended by order issued January 25, 1962, 27 FPC 176, (affecting both of said orders) by increasing by 2,250 Mcf per day the volume of natural gas to be sold by Petitioner on an interruptible basis to Southern Nitrogen Company. No change in volume is proposed in the firm allotment as is not provided in the Commission's order of January 25, 1962, above-mentioned which authorized the delivery of up to 10,100 Mcf per day on a firm basis.

No additional facilities will be required to deliver the increased volume of gas to the Southern Nitrogen Company for processing into nitrogenous chemical products and fuel in its Savannah, Georgia plant.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publication in the Federal Register on June 3, 1964. (29 F.R. 7257) No protest, petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's orders issued on the dates and in the respective dockets herein before designated be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's orders of November 2, 1955 and August 7, 1959, as amended by the order of January 25, 1962, in Docket Nos. G–9201 and G–14587, respectively, be and the same are hereby amended by authorizing Southern Natural Gas Company to increase by 2,250 Mcf per day the volume of which Southern Natural Gas Company may deliver on an interruptible basis to Southern Nitrogen Company.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

U.S. DEPARTMENT OF THE INTERIOR, SOUTHEASTERN POWER ADMINISTRATION, ALLATOONA, BUFORD, CLARK HILL, HARTWELL, AND WALTER F. GEORGE PROJECTS, DOCKET NO. E–7100

ORDER CONFIRMING AND APPROVING RATES AND CHARGES

(Issued July 7, 1964)

The Secretary of the Interior (Interior), acting on behalf of Southeastern Power Administration (SEPA) on March 25, 1964, filed with the Federal Power

Commission for confirmation and approval, pursuant to the provisions of the Flood Control Act of 1944 (58 Stat. 887) Wholesale Power Rate Schedules GA–1, GA–2, ALA–1, SC–1, CAR–1 and CAR–2. The proposed rate schedules are applicable to the sale of power generated in the federally owned projects of Allatoona, Buford, Clark Hill, Hartwell, and Walter F. George. Approval of the rate schedules is requested for a five-year period, beginning July 1, 1964, and ending June 30, 1969.

The rate schedules named above are designed to supersede current rate schedules heretofore approved by the Commission for various periods, all terminating June 30, 1964.

The five projects were constructed by the U.S. Army Corps of Engineers and are presently in operation. The location and present generating capacity of these projects are as follows:

Project	State	River	Capacity (kw.)
Allatoona	Georgia	Etowah	74,000
Buford	do	Chattahoochee	86,000
Clark Hill	South Carolina, Georgia	Savannah	280,000
Walter F. George	Georgia, Alabama	Chattahoochee	130,000
Hartwell	South Carolina, Georgia	Savannah	264,000

SEPA has no transmission system of its own. In order to carry out the provisions of Section 5 of the Flood Control Act of 1944, which require that preference be given to public bodies and cooperatives and that power and energy be disposed of in such a manner as to encourage the most widespread use thereof, SEPA has contracted with both the Georgia Power Company and Duke Power Company for the wheeling of power to preference customers in the service areas of those companies. Some power is also sold to these companies. As a matter of policy, SEPA markets all of the power from Allatoona and Buford in the State of Georgia, since those projects are located wholly within that State. Power from Walter F. George, located on the Alabama-Georgia line, is marketed equally in each State. Similarly, power from Hartwell and Clark Hill, located on the Georgia-South Carolina line, is marketed equally in those States.

The half of Walter F. George power and energy not sold in Georgia is sold in Alabama to the Alabama Electric Cooperative, Inc., in accordance with provisions of a contract between the Government and the Cooperative, which takes the power at the project site.

Contracts entered into in 1959 between the Government and South Carolina Public Service Authority and the Government and Greenwood County Electric Power Commission provide for the sale to these two South Carolina preference customers of the half of Clark Hill power not sold in Georgia. Power is taken at the Clark Hill bus.

Wheeling charges are presently being paid by the Government to Georgia Power Company and Duke Power Company for power and energy delivered by the Companies to preference customers of the Government in Georgia and in North and South Carolina. Contracts with the Companies show rates for wheeling services to vary with distance from point of delivery, being 1.00 mill per kilowatt-hour delivered within the first 100 miles, 1.75 mills per kilowatt-hour between 100 and 150 miles, and 2.50 mills per kilowatt-hour for distances greater

than 150 miles. The annual charges to be paid to Georgia Power Company for wheeling energy from the five operating projects to preference customers in Georgia have been estimated to be $1,044,000, or an average of 1.21 mills per kilowatt-hour. Similar payments to Duke Power Company for wheeling energy from the Hartwell project have been estimated to average $279,000 annually, or 1.5 mills per kilowatt-hour.

Rate schedule GA–1—available to public bodies and cooperatives in Georgia to whom power may be wheeled by the Georgia Power Company and applicable to power and accompanying energy generated at Allatoona, Buford, Clark Hill, Walter F. George, and Hartwell projects—supersedes rate schedule GA–I–1. Rate schedule GA–2, which supersedes rate schedule GA–I–2, is available to the Georgia Power Company and applicable to capacity and energy generated at the same five plants. Rate schedule ALA–1 supersedes schedule ALA–I–1. It is available to the Alabama Electric Cooperative, Incorporated, and applicable to power and accompanying energy delivered at the Walter F. George project. Rate schedule SC–1 replaces schedules CH–1 and CH–2. It is available to South Carolina Public Service Authority and Greenwood County Electric Power Commission and applies to power and accompanying energy generated at the Clark Hill project. Rate schedule CAR–1 supersedes schedule H–I–1. It is available to public bodies and cooperatives in North Carolina and South Carolina to whom power may be wheeled by the Duke Power Company. This schedule applies to power and accompanying energy generated at the Hartwell project. Rate schedule CAR–2, which supersedes schedule H–I–2, is likewise applicable to capacity and energy generated at Hartwell and is available to the Duke Power Company.

In all schedules the proposed monthly demand charge for capacity is $0.90 per kilowatt. Proposed rate schedule SC–1, in addition, includes a demand charge of $0.21 per kilowatt per week, cumulative for the billing month, for capacity made available and accepted on a weekly basis by the South Carolina Public Service Authority and Greenwood County Electric Power Commission in addition to the capacity the Government makes available for scheduling energy.

The proposed rate for on-peak energy is 3.25 mills per kilowatt-hour to all preference customers but the three named hereafter, and 2.65 mills per kilowatt-hour to Georgia Power Company, Duke Power Company, and to the following preference customers: Alabama Electric Cooperative, Inc., South Carolina Public Service Authority, and Greenwood County Electric Power Commission. The 3.25 mill rate applies to preferred customers who have no generating facilities or transmission facilities that would enable them to purchase power at site of generation, and who must, therefore, have the available power firmed up and wheeled to them over transmission facilities of others. The 2.65 mill rate, on the other hand, applies to customers who have generation and transmission facilities of their own and who can take the variable peaking power output at site of the Government's projects and firm up the power themselves. In addition to rates for capacity and on-peak energy, rate schedules GA–2, ALA–1, SC–1 and CAR–2 provide for the sale of off-peak and/or dump energy at a rate of 2.00 mills per kilowatt-hour. Thus, such energy is available only to customers which purchase energy at site of generation.

Proposed rates for capacity are 1.5 cents less per kilowatt-month than in the rate schedules they supersede with the exception of expiring rate schedules CH–

1 and CH–2. In rate schedule CH–1 the capacity charge is $0.75 per kilowatt per month and $0.175 per kilowatt per week; in schedule CH–2 the capacity charge is $0.175 per kilowatt per week.

Except for rate schedules CH–1 and CH–2, the proposed rates for on-peak energy are 0.31 mill less than the rates now in force, the proposed rates being 3.25 and 2.65 mills per kilowatt-hour and comparable present rates being 3.56 and 2.96 mills per kilowatt-hour. Current rate schedules CH–1 and CH–2 contain several energy rates ranging from 4.00 mills to 2.00 mills per kilowatt-hour. The proposed rate of 2.00 mills per kilowatt-hour for off-peak and dump energy is the same as the present rates for such energy.

A comparison of costs to SEPA's customers under existing and proposed rates for power produced at the five presently operating projects, made by Interior, indicates a total annual savings to all customers of about 4.6 percent, roughly $680,000.

Adoption of the rates proposed would provide generally uniform rates for all of SEPA's customers, with a rate differential of 0.60 mill per kilowatt-hour between energy sold at market and at site of generation.

In support of the rates proposed SEPA has submitted a repayment study based on costs and revenues associated with the generation and sale of electric power and energy expected to be produced at the five projects presently in operation mentioned above and in addition has included for projects either under construction or authorized for construction by the Corps of Engineers. These projects are Carters, located in Georgia on the Coosawatee River; Millers Ferry and Jones Bluff, both in Alabama, and both on the Alabama River and West Point on the Georgia-Alabama state boundary on the Chattahoochee River. The first two of these projects are expected to be in operation in 1969 and the last two in 1971.

SEPA's repayment study begins with fiscal year 1950, the first year of power operations at the Allatoona project, and extends through fiscal year 2020, the 50th year following the in-service date of the last of the nine projects. This study indicates that, with revenues produced by application of the proposed rates, the initial capital costs of all nine projects will be repaid before the end of fiscal year 2018, with some surplus accruing in each of the last three years of the study. Repayment is shown to be made so that the initial capital costs of each project will be repaid 50 years after the project begins full commercial generation of electric energy. In this study, SEPA has assumed that net revenues from the sale of power and energy developed at each project after the initial capital costs of the project have been repaid would continue to be available to help repay the capital costs of projects whose 50-year repayment period ends at some later date.

Under this payout method, the total annual cost upon completion of the nine-project system in fiscal year 1971 is estimated to be $21,875,000. The sum covers operation, maintenance, replacement, wheeling, and marketing expenses, interest on the remaining investment each year, and an amount which would repay the system capital costs within 48 years from that date. Investments and annual charges for the multiple-purpose projects as used in the study are those allocated to power. An allowance was made by SEPA for anticipated investment cost increases for the four new projects in the system over the amounts estimated currently by the Corps of Engineers. Interest rates are those applicable at the time construction funds are first made available for each project, that is 2½

percent for the five operating projects, 2⅝ percent for Carters and Millers Ferry, and 3 percent for Jones Bluff and West Point.

Estimates of anticipated revenues are based upon sale of the power at rates in the proposed rate schedules and repetition of historical stream flows, and appear reasonable. The estimated revenues to be received from the sale of power and energy at the proposed rates during the five-year period 1964–1969 would be sufficient to pay all annual costs including scheduled amortization of the initial Federal investment under a schedule which would repay the total investment in the nine-project system in the forty-eighth year after the last project is placed in commercial operation. The repayment of the initial investment cost during the five-year period would total $20,896,156.

Notice of the request for approval of the proposed rates and charges was sent to State officials and other interested parties and published in the Federal Register on April 14, 1964 (29 F.R. 5103) stating that any person desiring to make comments or suggestions for the Commission's consideration should submit same on or before April 24, 1964. No comments or suggestions were received.

The Commission finds:

The proposed rates and charges of SEPA for the sale of electric power and energy from the Allatoona, Buford, Clark Hill, Hartwell, and Walter F. George Projects as set forth in Wholesale Power Rate Schedules GA–1, GA–2, ALA–1, SC–1, CAR–1, and CAR–2, all as described above, for a period beginning with the date of the issuance of this order, and ending June 30, 1969, will not be inconsistent with the provisions of the Flood Control Act of 1944.

The Commission orders:

The proposed rates and charges of SEPA, for the sale of electric power and energy from the Allatoona, Buford, Clark Hill, Hartwell, and Walter F. George Projects, as set forth in Wholesale Power Rate Schedules GA–1, GA–2, ALA–1, SC–1, CAR–1, and CAR–2 all described above, hereby are confirmed and approved for a period beginning with the date of issuance of this order and ending June 30, 1969.

OPINION NO. 426–A

CONTINENTAL OIL COMPANY, DOCKET NO. CI63–979

OPINION AND ORDER DENYING APPLICATIONS FOR REHEARING AND STAY

(Issued July 2, 1964)

Syllabus

1. Distinguishing *Mobile*, Commission *rejects* United's claim of "prospective customer" status and thus one to which unilaterally increased rates may be offered but not imposed. Pp. 9, 10.
2. Order directing pipeline to comply with its obligations under expired contract until it receives abandonment authority, is not subject to attack on grounds of vagueness. P. 10.

3. Opinion No. 426 did not seek to enforce contract obligations; it sought to enforce statutory obligations—it is irrelevant that producer rather than pipeline exercised specified option to cancel contract, or in fact, that contract had been cancelled. P. 10.
4. There is no inconsistency in ordering pipeline to operate pursuant to underlying contract, while at same time allowing rate to be charged not contemplated by contract. P. 10.
5. A producer has the right to file change in certificate terms at expiration of underlying contract. P. 10.
6. It is a *non sequitur* to contend that Commission must exercise nonexistent authority over local distribution companies in order to administer effectively its delegated authority. P. 11.
7. If distribution companies are to be required to secure approval before abandoning service from pipeline, such approval must be sought from state agency. P. 11.
8. Procedurally, unilaterally-filed rate increases are no less lawful than mutually-agreeable filings made during course of contract. P. 11.
9. Contract termination alone does not obviate need to comply with Section 7(b)—for producers that need remains as long as certificate is outstanding; for purchasers, so long as jurisdictional facilities are in existence. P. 11.
10. Commission *denies* United's request for stay as failing to meet standards of *Virgina Petroleum Jobbers*. P. 12.
11. Commission *denies* applications for rehearing and for stay. Commissioner Woodward *dissenting*.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

O'Connor, *Commissioner:*

In Opinion No. 426, issued May 5, 1964, 31 FPC 1079, we held that United Gas Pipe Line's (United) act of January 31, 1963, resulting in the complete non-use of jurisdictional facilities and indefinite cessation of purchases from reserves from which gas previously flowed in interstate commerce, constituted an abandonment of facilities and service within Section 7(b) of the Natural Gas Act. An application for stay, limited to the date of this order, was filed by United on May 5, and granted by the Commission on May 7. On June 3, 1964, United filed an application for rehearing and, in the alternative, a stay pending final judicial determination of the opinion and accompanying order. On June 4, an application for rehearing was filed by Texas Eastern Transmission Corporation (Texas Eastern) which had intervened in the proceedings before the Presiding Examiner. On June 8, Continental Oil Company (Continental), from which United had ceased to purchase, filed an answer in opposition to the application for a stay pending final judicial determination.

United urges error in not holding it to be a "prospective customer" of Continental and thus one to which unilaterally-increased rates may be offered but not imposed. In asserted support, United cites the following Supreme Court statement from *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*:

> The obvious implication is that, except as specifically limited by the Act, the rate-making powers of natural gas companies were to be no different from those they would possess in the absence of the Act: to establish *ex parte*, and to change at will, the rates offered to prospective customers; or

to fix by contract, and change only by mutual agreement, the rate agreed upon with a particular customer.[1]

The Court, speaking in the context of the pipeline-distributor relationship, was referencing "prospective customers" as those with whom contracts had not been entered. The Court was not referring to previous purchasers, with whom contracts had been made; by whom certificated or certificable facilities had been constructed and placed into operation; to whom producers were obligated to continue to sell; and, upon whom, producers, ofttimes by possessing residual reserves too marginal to interest other purchasers, had become solely dependent. The statement clearly will not support the proposition that pipeline purchasers, operating jurisdictional facilities and rendering services thereby, are free to reject at their discretion, lawful rate increases.

United also urges error in that the opinion did not prescribe the precise terms under which United was to continue to purchase Continental's gas; that the Commission was seeking to enforce contracts, an activity contended to be outside its statutory authority; and that, at any rate, the contract had been cancelled by Continental.

United's first point is without merit. Prior to its abandonment, United never felt compelled to ask the myriad of questions it now raises, as to how it should comply with its obligations under the certificate inasmuch as the contract itself provided the answers. United obviously was capable, in the ten years during which the contract was in effect, to conduct its purchasing in a manner consistent with the contract. We feel certain it could do so now, and that the order, which merely directed it to comply with its obligations under the expired contract (except to the extent we have approved filed rate changes) until it receives abandonment authority, is not subject to attack on the grounds of vagueness. Moreover, to specify conditions, as United suggests, would be inconsistent with our aim of merely continuing the purchase pattern existing at the time of Continental's filing. We will specify conditions, if at all, only in the event United fails to show that the public convenience and necessity permits the abandonment already effected. As yet, United has not chosen to avail itself of its statutory right to make such a showing.

United's second and third points are likewise without merit. Opinion No. 426 did not seek to enforce contract obligations; it sought to enforce statutory obligations. Consequently, it is irrelevant that Continental rather than United exercised the specified option to cancel the contract, or in fact, that the contract had been cancelled. Further, we find no inconsistency in our ordering United to operate pursuant to the underlying contract, while at the same time allowing a rate to be charged not contemplated by that contract. As the *Sunray* case reveals a producer has the right to file a change in the terms of its certificate at the expiration of the underlying contract, and such a change may become effective either on thirty days notice if the Commission does not suspend, or subject to refund after a potential five month suspension period. For purposes of Section 7(b), however, those terms that are not specifically altered in this manner are to remain in effect until one party justifies an abandonment.

Texas Eastern takes exception to our statement that ". . . if the power to compel the continuation of sales is not to be reduced to mere illusion, the power to compel the continuation of purchases must be its correlative."[2] It argues ". . . if logic requires that the Commission must have the power to compel pipe-

[1] 350 U.S. 332, 343 (1956).
[2] 31 FPC 1079, at 1085.

lines to continue purchases from independent producers at supply end of the line, then it necessarily follows that the Commission must have the same power to compel municipalities and distributing companies to continue purchases from the pipelines at the market end of their lines."[3] We feel that the contention of Texas Eastern is fallacious. Here we are dealing with two natural-gas companies, both of which are subject to our jurisdiction under the Natural Gas Act. This Act provides that all companies subject thereto must obtain our permission and approval prior to abandoning facilities or service. On the other hand the Commission has no jurisdiction over local distribution companies. It is a *non sequitur* to contend that we must exercise non-existent authority over local distribution companies in order to administer effectively authority which has been delegated to the Commission. If distribution companies are to be required to secure approval before abandoning a service they are taking from a particular pipeline, this approval, of necessity, must be sought from a state agency. The fact that we do not exercise this power over local distribution companies or the possibility that some states may not choose to do so does not detract from the validity of our statement that the power to compel the continuation of producer sales, where the public interest so dictates, would be largely illusory if we could not compel the continuation of pipeline purchases.

United and Texas Eastern assail our conclusion that ". . . absent satisfaction of (Section 7(b)), which cannot be met by mere showing of contractual termination, the *status quo* is to continue."[4] They contend that we have violated our own rationale by allowing Continental to file for a rate higher than that allowed by contract, thus premising the *status* as that period prior to December 28, 1962, the date Continental filed its increase.

Their error lies in the point-in-time they chose. There is no doubt but that producers are free to file rate increases upon contract termination.[5] Procedurally, these unilaterally-filed rate increases are no less lawful than mutually-agreeable filings, filed during the course of the contract. The only distinction is that, in the former instance, the purchaser in addition to his right to oppose the rate increase filing is afforded the opportunity, under Section 7(b), to prove that the public convenience and necessity does not require it to purchase at the filed rate. Contract termination, alone, does not obviate the need to comply with this Section. For producers, that need remains so long as there is an outstanding certificate. For purchasers, it remains so long as jurisdictional facilities are in existence.

On May 11, 1964, Continental filed a motion to correct footnote 14 wherein we state that it was the only producer of record in the Johnson Bayou Field. An examination of the record, as well as our own public files, indicates that the statement was erroneous. Not only are other producers operating in the Johnson Bayou Field, but several are also producing from the same reservoirs as Continental. Presumably, Continental is currently suffering drainage, and footnote 14 will be appropriately amended.

On June 8, 1964, Continental filed an answer in opposition to United's request for a stay. It contends that granting such a request would irreparably injure Continental by causing drainage and possible lease forfeiture. We are satisfied that such injury is likely to accrue; that the dollar-impact on United of an order compelling continued takes until it justifies its abandonment would be *de mini-*

[3] Application by Texas Eastern Transmission Corporation for Rehearing of Opinion No. 426, pp. 5–6.
[4] *Id.*, at 1084.
[5] *Sunray Mid-Continent Oil Co.* v. *F.P.C.*, 364 U.S. 137 (1960).

mis; and that, at any rate, if Opinion 426 is finally reversed in the courts, United will possess legal remedies to recover excess payments. United's request, failing to meet the standards of *Virginia Petroleum Jobbers* v. *F.P.C.*,[6] must be denied.

The Commission finds:

No new facts or principles of law have been presented in the applications for rehearing which were not fully considered by the Commission prior to the rendition of the aforesaid opinion and order, or, having now been so considered, warrant further hearing, modification or revocation of said opinion and order, except as specified below.

The Commission orders:

(A) The applications for rehearing filed herein by United Gas Pipe Line Company and Texas Eastern Transmission Corporation are hereby denied.

(B) The stay requested by United Gas Pipe Line Company is hereby denied.

(C) Footnote 14 on page 1083 of the opinion shall be modified to read as follows:

[14] Testimony adduced in this proceeding, corroborated by Commission files, indicates that other producers are operating in the Johnson Bayou Field (Record, volume 1, pp. 171–72, 174), and, in fact, producing from the same reservoirs as Continental. *Id.* at 90. Even in the absence of drainage, producers abandoned under circumstances as now before us could present a strong justification under Section 7(b) for allowing severance from their previous purchaser, thus freeing their gas from its interstate dedication.

Commissioner Woodward *dissenting* stated that the applications for rehearing and stay should be granted.

Before Commissioners: Harold C. Woodward, Acting Chairman; Charles R. Ross and David S. Black.

HIGHLAND OIL COMPANY, DOCKET NOS. G–19866 AND RI60–283

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, AND TERMINATING PROCEEDINGS

(Issued July 2, 1964)

On May 15, 1964, Highland Oil Company (Highland) submitted an offer of settlement in these proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves proposed increased rates for sales of natural gas made to Tennessee Gas Transmission Company (TGT) by Highland. The offer relates to a sale made under Highland's FPC Gas Rate Schedule No. 2 in Duval County, Texas (Texas R.R. Com. District #4). The proposed increased rates of 15.0952¢ and 17.24347¢ per Mcf were suspended by order of the Commission for the statutory period, and were made effective by Highland on April 1, and October 6, 1960, respectively.

Under the terms of the offer, Highland proposes to eliminate the favored-nation, price redetermination and their periodic escalation provisions from its rate schedule and to establish a 15¢ per Mcf rate for the subject sale. Highland's annual revenues will be decreased about $5,200 from the presently effective rates. No protests or objections have been filed to the offer.

Highland, in its offer, proposes to refund all amounts collected, subject to refund, for sales of natural gas to TGT under the subject rate schedule in

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[6] 259 F. 2d 921 (D.C. Cir. 1958).

excess of the settlement rate.[1] The estimated total dollars to be refunded approximates $18,800, exclusive of interest.

The proposed settlement is consistent with the provisions of the *Second Amendment to the Commission's Statement of General Policy No. 61–1*, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Highland's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservation of the right to file increases to cover future tax increases. Nor, may our action herein be construed as constituting approval of any future rate increase that may be filed under the subject rate schedule, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Highland's rate and rate schedule.

The Commission finds:

The proposed settlement of each of the above-designated proceedings, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Highland on May 15, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Highland on May 15, 1964, is hereby approved in accordance with the provisions of this order.

(B) Highland shall file, within 30 days from the date of issuance of this order, a notice of change in rate providing for the 15¢ per Mcf rate specified in its offer of settlement, and an executed contractual amendment to its FPC Gas Rate Schedule No. 2, eliminating the favored-nation, price redetermination, and the periodic escalation provisions therefrom. The notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Highland shall refund to TGT to the date of issuance of this order the difference between the rates collected subject to refund under the rate schedule herein and the settlement rate, making account for proper charges, with simple interest at 7 percent, and shall report to the Commission, in writing, within 30 days from the date of issuance of this order, the amount of such refund, showing separately the amount of principal, and interest, and the bases for determination, together with a copy of a release from TGT with respect to such refunds.

(D) Upon notification by the Secretary of the Commission that Highland has complied with the terms and conditions of the order, the rate and charge of 15¢ per Mcf at 14.65 psia, specified in its offer of settlement, subject to any applicable contract deductions, shall be effective as of the date of issuance of this order, the above designated proceedings shall be deemed terminated insofar as they relate to Highland's FPC Gas Rate Schedule No. 2, and severed from the consolidated area rate proceeding (Texas Gulf Coast Area) in Docket No. AR64–2 without further order of the Commission.

(E) The acceptance by the Commission of Highland's offer of settlement, is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Highland, including area rate or other similar proceedings.

[1] Highland's FPC Gas Rate Schedule No. 2 is subject to a dehydration charge by TGT, for which allowance must be made in computing the refund.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

HUMBLE OIL & REFINING COMPANY, ET AL., DOCKET NO. RI60-186, ET AL.

ORDER REDESIGNATING PROCEEDING IN PART

(Issued July 14, 1964)

By the Commission's order issued May 29, 1963, in Docket No. G-9765, Humble Oil & Refining Company (Humble) was permitted to amend its certificate of public convenience and necessity covering sales of natural gas to Natural Gas Pipeline Company of America from the O. O. Sutton No. 2 well, among others, located in the Camrick Southeast Pool, Texas County, Oklahoma, to include the interests of 21 additional co-owners under its FPC Gas Rate Schedule No. 191.

The proceedings in Docket Nos. RI60-186 and RI61-392 relate to proposed rate increases suspended by the Commission's orders issued on March 16, 1960 and March 16, 1961, respectively. Included among the suspended rate schedules in said dockets[1] is Humble's FPC Gas Rate Schedule No. 191. The suspended supplements have been made effective subject to refund pursuant to Section 4(e) of the Natural Gas Act. Humble warrants in a letter agreement dated December 14, 1960, that it has the right to sell each non-operator's share of gas from the unit involved and that it will indemnify Natural Gas Pipeline Company of America as to any adverse claims asserted with respect to such gas, among other things. Humble also states that its filings will cover each non-operator's share of gas produced from the unit.

By letter dated May 23, 1961, Humble was advised that its FPC Gas Rate Schedule No. 191 had been redesignated as Humble Oil & Refining Company (Operator), *et al.*

The Commission finds:

Good cause exists for redesignating the proceedings in Docket Nos. RI60-186 and RI61-392 as Humble Oil & Refining Company and Humble Oil & Refining Company (Operator), *et al.*, insofar as they pertain to Humble Oil & Refining Company's (Operator), *et al.*, FPC Gas Rate Schedule No. 191.

The Commission orders:

The proceedings in Docket Nos. RI60-186 and RI61-392 are hereby redesignated as Humble Oil & Refining Company and Humble Oil & Refining Company (Operator), *et al.*, insofar as they pertain to Humble's FPC Gas Rate Schedule No. 191.

Before Commissioners: Harold C. Woodward, Acting Chairman; Charles R. Ross and David S. Black.

WILLIAM HERBERT HUNT TRUST ESTATE; LAMAR HUNT TRUST ESTATE; HUNT OIL COMPANY; PLACID OIL COMPANY (OPERATOR), ET AL.

ORDER DENYING APPLICATIONS FOR REHEARING

(Issued July 2, 1964)

The above-named parties (hereinafter referred to collectively as "petitioners" on June 1, 1964, filed applications for rehearing of similar letter orders issued

[1] Humble's FPC Gas Rate Schedules Nos. 202, 213, 215, 220, 227, 229, 242 and 253 were also suspended in said dockets.

May 6, 1964,* by the Commission rejecting their respective tenders of notices of change purporting to change the presently effective rates to 18.0¢.[1] We there held that the tendered notices did not constitute changes in rate within the meaning of section 4(d) of the Natural Gas Act because they did not propose to change the 18.0¢ rates then in effect.

Petitioners claim that the tendered notices propose to change the present rates upon judicial review "in the event" the Commission's determination in Opinion No. 412[2] concerning the proper initial price for the subject sales is upheld. In that case we held the proper initial price to be 15¢ for sales in Texas District Nos. 2 and 4, but stayed the effect of our order pending judicial review at the request of the parties involved here. Because of the stay, petitioners are now collecting 18¢ for these sales subject to refund as provided in our stay order.

As the Court said in *Amerada Petroleum Corp.* v. *F.P.C.*, 293 F. 2d 572 at 575 (10 Cir., 1961):

> * * * Section 4(d) of the Act concerns itself with the making of changes in rates. It forbids the making of changes without notice thereof being given to the Commission for at least thirty days before such changed rates are to go into effect. And it provides that the notice shall state the change or changes to be made in the schedule or schedules "then in force" and the time at which the changed rates shall go into effect. Considered as a whole, the section bears a clear token of Congressional implication that *the power of a natural gas company to make a changes or changes in rates is limited to the rate or rates in force and effect at the time of the change or changes.* [Emphasis supplied.]

Since petitioners are presently charging and collecting 18¢, it is clear that the proposed changes to 18¢ would not in fact change the rates being charged and collected. Since the tendered notices do not constitute changes in rates within the meaning of Section 4(d) of the Natural Gas Act, we must deny petitioners applications for rehearing.

The Commission orders:

For the reason set forth above, the applications for rehearing filed by petitioners on June 1, 1964, are hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

NEW YORK STATE NATURAL GAS CORPORATION, DOCKET NO. CP64-187

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 2, 1964)

On February 24, 1964, as supplemented on March 23, 1964, New York State Natural Gas Corporation (Applicant) filed in Docket No. CP64-187 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public

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*Printed at 31 FPC 1123-1124.

[1] The notices, relating to sales in Texas District Nos. 2 and 4, were tendered as proposed supplements to William Herbert Hunt Trust Estate's FPC Gas Rate Schedule No. 11, Lamar Hunt Trust Estate's FPC Gas Rate Schedule No. 9, Hunt Oil Company's FPC Gas Rate Schedule No. 55, and Placid Oil Company (Operator), *et al.* FPC Gas Rate Schedule No. 22.

[2] Opinion No. 412 involving *Hassie Hunt Trust (Operator), et al.* Docket No. G-19115 *et al.* was issued December 9, 1963, 30 FPC 1438.

convenience and necessity authorizing the construction and operation of natural gas pipelines, compressor facilities, and delivery points to meet the increased requirements of existing customers beginning with the 1964–65 winter, all as more fully set forth in the application as supplemented.

To increase the capacity downstream from the Borger Compressor Station, Tompkins County, New York, Applicant proposes to construct and operate one 1100 hp compressor unit at the Borger Compressor Station and 14 miles of 30-inch pipeline loop extending Line No. 550 northeast from the Borger Compressor Station. The proposed facilities will increase the capacity north from the Borger Compressor Station to the Syracuse area by 38,700 Mcf per day, and northeast from the Borger Compressor Station to the Schenectady-Albany area by 39,500 Mcf per day. The additional capacity is required to meet increased requirements of this service area commencing with the 1964–65 winter.

To make deliveries at new points to an existing customer, Niagara Mohawk Power Corporation, Applicant proposes to construct and operate 7.4 miles of 12-inch lateral pipeline extending north from Applicant's 20-inch mainline to the vicinity of Cazenovia, Madison County, New York, a measuring and regulating station at the terminus of said lateral, and a tap and metering facilities on Applicant's 16-inch mainline near Rotterdam, Schenectady County, New York. These two new delivery points will make gas available to Niagara Mohawk Power Corporation for distribution in growth areas which cannot be served adequately from existing delivery points.

To provide increased capacity between the Leidy Storage Field and the Sabinsville Compressor Station, Applicant proposes to construct and operate 14.05 miles of 26-inch pipeline extending from Sabinsville Station, Tioga County, Pennsylvania, south to a connection with Line No. 280. These facilities are needed for the storage injection season beginning April 1965 and will increase the capacity between the Leidy Storage Field and the Sabinsville Compressor Station by 59,000 Mcf per day. The present pipeline capacity north of Leidy in Line No. 280 is approximately 176,000 Mcf per day, and based upon estimates for the next three years, approximately 95% of this capacity will be required to meet normal customer requirements (including storage service) and to replace the storage inventories following normal winters. In the event of a colder than normal winter season, as experienced during the 1962–63 winter, it would not be possible to replace the depleted storage volumes within the following input season due to existing Line No. 280 limitations.

The proposed facilities are estimated to cost approximately $3,840,432, to be financed from funds on hand and funds to be obtained from Applicant's parent corporation, Consolidated Natural Gas Corporation.

After due notice no petition to intervene, notice of intervention, or protest to the granting of the application has been received.

At a hearing held on June 26, 1964, the Commission on its own motion received and made part of the record in this proceeding all evidence, including the application and supplement and exhibits thereto submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, New York State Natural Gas Corporation, a New York corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 27, 1942, in Docket No. G–312 (3 FPC 844).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce for resale subject to the jurisdic-

tion of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same hereby issued authorizing Applicant, New York State Natural Gas Corporation, to construct and operate the proposed facilities as hereinbefore described, and as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within six months from the date on which this order issues.

THE ATLANTIC REFINING COMPANY, DOCKET NO. CI62-1562

ORDER ON REHEARING MODIFYING INITIAL DECISION AND REJECTING PROPOSED RATE SCHEDULE AND APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 6, 1964)*

Syllabus

1. Since applicable contract rate at any specified time is either expressly stated or can be readily ascertained, Article XIII, Section 1 of contract complies with substantive requirements of Section 154.93 of Regulations under the Natural Gas Act and such provision does not make Producer's application and proposed rate schedule subject to rejection. Pp. 18, 19.
2. Terms of pricing provisions of Article XIII, Section 3 of contract creates an indefinite escalation not permissible under Section 154.93 of the Regulations and therefore inoperative and of no effect at law. P. 19.
3. Upon rehearing, Commission *affirms* prior letter-order rejecting proposed rate schedule and application for certificate of public convenience and necessity.

Sherman S. Poland for the Atlantic Refining Company
William E. Hynan for the Staff of the Federal Power Commission

*Initial Decision appears on P. 19.

Before Commissioners: Joseph C. Swidler, Chairman, L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

By letter order dated July 19, 1962, *infra*, p. 19, the Commission, acting pursuant to Section 154.93 (as amended by Commission Orders No. 232, 232–A and 242) and Section 154.100 of the Regulations Under the Natural Gas Act, rejected the proposed rate schedule and related certificate application submitted by The Atlantic Refining Company in the captioned docket on the ground that the gas purchase contract contained pricing provisions other than those permitted by Section 154.93.

Upon application for rehearing, the Commission concluded that the language of the pricing provisions in the subject contract was equivocal. Rehearing thereupon was granted to determine the meaning of the provisions and whether such provisions are in fact proscribed by Section 154.93. A hearing was held on October 19, 1962, the only participants being applicant and counsel for staff. The proceeding is now before the Commission for decision on exceptions by Atlantic to the initial decision issued by the presiding examiner on May 6, 1964.

Applicant, both throughout the hearing and in its briefs, took issue with Section 154.93, contending that the provision exceeds the Commission's delegated authority under the Natural Gas Act. However, as the examiner points out, these arguments have now decisively been answered by the recent decision of the Supreme Court in *F.P.C.* v. *Texaco Inc., et al.*, decided April 20, 1964,[1] which upholds the validity of Section 154.93.

In excepting to the examiner's decision applicant no longer contends that Section 154.93 of the Regulations is improper; it takes exception only to that portion of the examiner's decision which holds that certain provisions in the fixed escalation clause in Article XIII, Section 1 of the contract violate the terms of Section 154.93. No exception is taken to the further finding that Section 3 of Article XIII contains a provision not permissable under Section 154.93 and which in itself is sufficient to require rejection of the contract and certificate application.

The pertinent pricing provisions of the contract are set out in full in the examiner's decision, as are the permissable provisions specified in subsections (a), (b) and (c) of Section 154.93 for a change in price. The examiner found that while paragraphs *a* and *b* of Article XIII, Section 1, comply with subsection 154.93(b), *i.e.* "Provisions that change a price to a specific amount at a definite date;" paragraphs *c* and *d* do not. We disagree. Paragraph *b* provides that "For the five (5) year period commencing on January 1, 1964, thirteen cents (13¢) per thousand (1,000) cubic feet." The following sections then go on to provide a price of 14 cents per Mcf "for the next five (5) year period" (paragraph *c*) and an increase of 1-cent per Mcf for the next 5 year period and for each succeeding 5 year period over the price "in effect at the beginning of the previous five (5) year period" (paragraph *d*).

Paragraph *c* is indistinguishable in substance from paragraphs *a* and *b* and which concededly are acceptable pricing provisions. The only difference is that the beginning date is not precisely stated. That this date is intended to be January 1, 1969, cannot seriously be disputed. Further, the fact that paragraph *d* does not state the total price to be effective in the indicated time periods, but merely states that the price shall be 1-cent per Mcf higher than the price pertaining in the previous 5 year period, does not make the pricing provision indefinite in character. Since the applicable contract rate at any specified time is either expressly stated or can readily be ascertained, it is our opinion that Article XIII, Section 1 of applicant's contract complies with the substantive requirements of

[1] No. 386, Oct. Term 1963, 377 U.S. 33, 84 S. Ct. 1105 (1964).

Section 154.93 of the Regulations and that such provisions do not make Atlantic's application and proposed rate schedule subject to rejection.

Article XIII, Section 3, affords Atlantic an alternative of requesting a redetermination of the price to be paid for the periods set out in paragraphs *b*, *c* and *d* of Section 1. Subsection 154.93(c), however, expressly limits such price redeterminations to periods "during which there is no provision for a change in price to a specific amount * * *." This option to Atlantic, together with the proviso that the redetermined price "shall not be higher than the price allowed pursuant to paragraph (3) of Section 154.93, Part 154, Regulations Under the Natural Gas Act, and shall not be lower than the price provided in section 1 of this article with respect to such period" creates an indefinite escalation pricing provision not within the scope of the permissible pricing provisions in Section 154.93. Accordingly, the previous rejection of the filings will be affirmed.

The Commission finds:

(1) The terms of the pricing provisions contained in Article XIII, Section 3 of the May 14, 1962 contract between Atlantic and El Paso are not permissable under Section 154.93 of the Commission's Regulations Under the Natural Gas Act and are therefore inoperative and of no effect at law.

(2) Section 154.93 of the Regulations Under the Natural Gas Act provides, in part, that any contract executed on or after April 2, 1962, containing price changing provisions other than the permissable provisions therein set forth shall be rejected.

The Commission orders:

(A) The following letter-order to the Atlantic Refining Company in Docket No. CI62-1562 rejecting the filings referred to therein is affirmed.

(B) This rejection is without prejudice to the resubmission of the proposed rate schedule and application for a certificate of public convenience and necessity in accordance with the applicable provisions of the Natural Gas Act and of the Commission's Regulations thereunder.

[LETTER-ORDER REJECTING RATE FILING]

THE ATLANTIC REFINING COMPANY,
P.O. BOX 2819, DALLAS 21, TEXAS.

JULY 19, 1962.

Attention: Mr. Stuart J. Scott

Gentlemen: This is with reference to your letter of June 28, 1962, submitting (1) a gas purchase agreement dated May 14, 1962, for filing as a proposed rate schedule and (2) a related application in Docket No. CI62-1562 for a certificate of public convenience and necessity.

The gas purchase agreement contains pricing provisions other than those permitted by Section 154.93 of the Commission's Regulations. Therefore, in accordance with Commission Order No. 242 (copy enclosed), and Section 154.100 of the Commission's Regulations, the proposed rate schedule and related certificate application are hereby rejected. All available copies are returned herewith.

This rejection is without prejudice to the resubmittal of the subject filings upon deletion of the unacceptable provisions.

Very truly yours,

J. H. GUTRIDE, *Secretary.*

INITIAL DECISION
OF THE PRESIDING EXAMINER UPON PETITION FOR REHEARING
(Issued May 6, 1964)

FRAZEE, *Presiding Examiner:* The Atlantic Refining Company (Atlantic) produces natural gas from certain leases in the Basin Dakota and Blanco Mesa

Verde fields in Rio Arriba County, New Mexico. On May 14, 1962, Atlantic contracted [1] to sell this gas to the El Paso Natural Gas Company (El Paso). On June 29, 1962, Atlantic filed an application [2] with the Federal Power Commission for a certificate of public convenience and necessity [3] authorizing the transportation and sale of this gas in interstate commerce for resale. On this same date, Atlantic filed the El Paso contract with the Commission as its rate schedule.

The Commission sent a letter-order [4] to Atlantic on July 19, 1962, *supra*, rejecting its application for a certificate of public convenience and necessity and the rate schedule, stating "The gas purchase agreement contains pricing provisions other than those permitted by Section 154.93 of the Commission's Regulations. Therefore, in accordance with Commission Order No. 242 (copy enclosed), and Section 154.100 of the Commission's Regulations, the proposed rate schedule and related certificate application are hereby rejected. All available copies are returned herewith." The letter-order continued by saying "This rejection is without prejudice to the resubmittal of the subject filings upon deletion of the unacceptable provisions."

Following the receipt of the letter-order of the Commission rejecting its application for a certificate of public convenience and necessity, and its rate schedule, Atlantic filed a petition for rehearing on August 15, 1962, alleging that Section 154.93 of the Commission's Regulations was invalid for the reason it exceeded the powers granted to the Commission by the Natural Gas Act, as amended, since it attempts to deny Atlantic the right to establish its own rates by contract in the first instance subject only to being modified upon a finding of their unlawfulness under Section 4 or Section 5 of the Natural Gas Act.

Acting upon Atlantic's petition for rehearing, on September 13, 1962, the Commission issued its "Order Providing for Rehearing and Fixing Date for Hearing," in which it said "Full and careful consideration was given similar contentions raised in Docket No. R-203 (27 FPC 339), which concerned the amendment of Section 154.93, wherein we determined that Sections 4, 5, and 7 did give the Commission the power to refuse to approve contractual provisions found adverse to the public interest and we clearly set forth the rationale in Order No. 242 issued therein on February 8, 1962." The Commission went on to say, ". . . the language of the pricing provisions in Atlantic's contract is equivocal." Therefore a rehearing was "granted and a public hearing, limited to the issues set out above" was ordered to be convened on October 11, 1962, and gave notice thereof by a publication in the Federal Register.[5] The hearing was duly convened on the date fixed and recessed to October 14, 1962, when the hearing was reconvened and concluded.

At the hearing Atlantic offered the testimony of one witness, its Manager of Gas Sales, who was responsible for the negotiation of the gas sales contract with El Paso,[6] and who testified showing the manner in which the pricing provisions were negotiated and the considerations which led to the execution of the formal written sales agreement with El Paso.[7] Upon an objection and motion by Staff counsel this testimony was stricken from the record.[8] However, upon motion of Atlantic's counsel the stricken testimony was admitted as Atlantic's offer of proof.[9] Atlantic's application for a certificate and its companion rate schedule

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[1] Exhibit 2.
[2] Exhibit 1.
[3] Under Section 7 of the Natural Gas Act.
[4] Item A.
[5] 27 F.R. 9362, tr. p. 5, ln. 5, *et seq.*
[6] Tr. p. 10.
[7] Tr. pp. 10–26.
[8] Tr. pp. 19, 26.
[9] Tr. p. 26.

were received in evidence as Exhibits 1 and 2. The letter-order of the Commission, dated July 19, 1962, was received as Item A, by reference, and the Commission's Order No. 242 was also received in evidence as Item B, by reference.

No evidence was offered by the Staff of the Commission. There were no other parties to the proceeding.

After hearing the oral arguments of counsel, a briefing schedule was set and briefs were filed by Atlantic and by the Staff of the Commission.

One of the two principal issues in the case concerns the validity of Section 154.93, as amended by Commission Order Nos. 232, 232-A, and 242. Atlantic contends this section of the Commission's Regulations exceeds the authority delegated to the Commission by the Natural Gas Act, as amended.

Following the decision in *Phillips Petroleum Company* v. *Wisconsin, et al.*, (June 7, 1964), 347 U.S. 672, the Commission issued a series of rule-making orders[10] promulgating regulations governing the filing of rate schedules and applications for certificates of public convenience and necessity. The regulations presently provide that only certain pricing provisions in the contracts of independent producers filed with the Commission as rate schedules are permissible,[11] any other provisions for a change of price being inoperative and of no effect at law.[12] By its Order No. 242, 27 FPC 339, 340, the Commission further amended Section 154.93 of its Regulations to provide "that any contract executed on or after April 2, 1962, containing price-changing provisions other than the permissible provisions . . . shall be rejected" so far as the producer rates are concerned [13] that so far as pipeline applications for certificates are concerned, any producer contract executed after the above date which contains non-permissible pricing provisions "will be given no consideration in determining adequacy" of its gas supply,[14] and that a producer's application for a certificate of public convenience and necessity "shall be rejected" if any contract submitted in support thereof contains any of the non-permissible provisions.[15]

The foregoing regulations governing the filing of rate schedules by independent producers were promulgated by the Commission pursuant to the provisions of Section 4 of the Administrative Procedure Act, 5 U.S.C. Sec. 1003. Notice of the proposed rule-making by the Commission in Docket No. R-203, 27 FPC 339, was published in the Federal Register, 27 Fed. Reg. 1356, as required by Section 4 of the Administrative Procedure Act, and by mailing copies of the notice to interested persons, including natural gas companies, and to State and Federal agencies, to afford them the opportunity to submit their views in writing to the Commission.

All interested parties were afforded ". . . an opportunity to participate in the rule-making" of the Commission "through submission of written data, views, or arguments with or without opportunity to present the same orally in any manner . . ." Section 4(b) Administrative Procedure Act. Numerous comments were submitted, a number of parties contending the promulgation of these regulations would be unlawful and beyond the powers granted to the Commission by the Natural Gas Act. The Commission concluded, however, that Sections 4, 5, and 7 of the Natural Gas Act contemplate it will refuse to approve contractual provisions found to be adverse to the public interest. Therefore,

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[10] See Order No. 174-B, issued December 17, 1954, 13 FPC 1576; Order No. 232, issued March 3, 1961, 25 FPC 379, as amended by Order No. 232-A, issued March 31, 1961; Order No. 242, issued February 8, 1962, 27 FPC 339.

[11] Section 154.93 defines the permissible provisions in sub-paragraphs (a), (b), and (c).

[12] *Ibid.* See also the *Pure Oil Company*, 25 FPC 393, affirmed *Pure Oil Company* v. *F.P.C.*, 299 F. 2d 370.

[13] *Ibid.*

[14] See Section 157.14 (a) (10) (v), "provided further, however," *et seq.*

[15] See Section 157.25.

acting under the authorization contained in Section 16 of the Act, the Commission issued its Order No. 242, 27 FPC 339, amending Section 154.93 of its regulations.

Section 7(c) of the Natural Gas Act states "No natural-gas company . . . shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission . . . unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations" and, except for the provisos contained in this Section, "In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission . . ." Atlantic further contends its application and rate schedule were summarily rejected without the hearing alleged to be necessary by the Act.

The Supreme Court considered this same issue in *Federal Power Commission* v. *Texaco Inc. et al.*, decided April 20, 1964, in Case No. 386—October Term, 1963, and said "the statutory requirement for a hearing under Section 7 does not preclude the Commission from particularizing statutory standards through the rule-making process and barring at the threshold those who neither measure up to them nor show reasons why in the public interest the rule should be waived." The Court went on to say "the rule making authority" of the Commission "is ample to provide the conditions for applications under Sections 4 or 7" and that "Section 16 of the Natural Gas Act gives the Commission power to prescribe such regulations as it may find necessary or appropriate to carry out the provisions of this Act." The Court continued "applications for certificates are made under Section 7 of the Act, the Commission under Section 7(e) is required to control the terms and conditions under which natural gas companies . . . may initiate sales at wholesale of natural gas in commerce."

Further considering the validity of the Commission's regulations, the Court said "the present regulations do not pass . . . on the merits of a certificate of public convenience and necessity; they merely prescribe qualifications for applicants." Then the Court said "Natural gas companies that seek to enter the field with prearranged escalator clauses and the like have a built-in device for ready manipulation of rates upward. Protection of the consumer interests against that device may be best achieved if it is done at the very threshold of the enterprise. At least the Commission may so conclude and the legislative history makes clear that its authority reaches that far."

It therefore follows, and is so concluded, that Section 154.93 of the Commission's Regulations was validly issued and is within the authority delegated to the Commission by the Natural Gas Act.

It also follows, and is so concluded, that the only hearing to which Atlantic has so far been entitled was given to it when the regulations in question were promulgated pursuant to Section 4 of the Administrative Procedure Act. Whether Atlantic can qualify for a certificate of public convenience and necessity for the sale to El Paso has never been reached for the reason that its application was not in proper form because of the non-permissible pricing provisions contained in the contract submitted for filing as its rate schedule.

The remaining principal issue is whether the May 14, 1962, contract between Atlantic and El Paso contains pricing provisions which are not permissible under the provisions of Section 154.93 of the Commission's Regulations.

Article XIII, Section 1, of the May 14, 1962, contract between Atlantic and El Paso contains the pricing provisions.[16] In Section 3 of Article XIII, the parties provide for a price redetermination at Atlantic's option.[17] This price redetermination option, the Staff says, contains non-permissible provisions which, in part, caused the rejection of the sales agreement by the Commission in its letter to Atlantic on July 19, 1962.

Section 154.93, Rate Schedule Defined, of the Commission's Regulations clearly defines "the permissible provisions for a change in price" to be:

(a) Provisions that change a price in order to reimburse the seller for all or any part of the changes in production, severance, or gathering taxes levied upon the seller;

(b) Provisions that change a price to a specific amount at a definite date; and

(c) Provisions that, once in five-year contract periods during which there is no provisions for a change in price to a specific amount (paragraph (b) of this section), change a price at a definite date by a price-redetermination based upon and not higher than a producer rate or producer rates which are subject to the jurisdiction of the Commission, are not in issue in suspension or certificate proceedings, and, are in the area of the price in question: *Provided further*, That any contract executed on or after April 2, 1962, containing price-changing provisions other than the permissible provisions set forth in the proviso next above shall be rejected.

The May 14, 1962, contract was executed for a term of twenty (20) years "and thereafter from month to month until sixty (60) days notice in writing of termination is given by either party to the other." See Article XIX, Term, p. 23, Exh. 2. Delivery of the gas to El Paso to commence on or before ninety (90) days from the date Atlantic notifies El Paso it has received and accepted a certificate of public convenience and necessity from the Federal Power Commission. See Article II, p. 4, and Article V, p. 7, Exh. 2.

Paragraphs *a* and *b* of Section 1, Article XIII, of the May 14, 1962, contract between Atlantic and El Paso comply with paragraph (b) of Section 154.93 of the Commission's regulations for they contain specific "provisions that change a

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[16] See Exh. 2, Article XIII, p. 15, Price: "Section 1. Buyer shall pay Seller for all gas delivered hereunder in accordance with the following schedule:"

a. From the period commencing with the initial delivery of gas hereunder until January 1, 1964, twelve cents (12¢) per thousand (1,000) cubic feet.

b. For the five (5) year period commencing on January 1, 1964, thirteen cents (13¢) per thousand (1,000) cubic feet.

c. For the next five (5) year period, fourteen cents (14¢) per thousand (1,000) cubic feet.

d. For the next five (5) year period and for each succeeding five (5) year period thereafter the price to be paid by Buyer to Seller for all gas delivered hereunder shall be increased one cent (1¢) per one thousand (1,000) cubic feet more than the price in effect at the beginning of the previous five (5) year period.

[17] See Exh. 2, Article XIII, p. 15, Price: "Section 3. Seller shall have the right, at its option, to request a redetermination of the price provided in Section 1 of this article to be paid for any one or more, or all (but not for a partial period), of the periods set out in *b*, *c*, and *d* of said Section 1. Any such request made with respect to any of such periods shall be made in writing during the six (6) months immediately preceding the commencement of such period. If Seller shall make any such request, representatives of Buyer and Seller shall promptly meet and attempt to determine the then reasonable market price of the gas deliverable hereunder. In making such determination, consideration shall be given to all pertinent factors. The price so determined by Buyer and Seller, or determined by arbitration as provided in Section 4 of this article, shall be the price applicable during the entire period with respect to which the same was determined; provided that such price shall not be higher than the price allowed pursuant to paragraph (3) of Section 154.93, Part 154, Regulations Under the Natural Gas Act, and shall not be lower than the price provided in Section 1 of this article with respect to such period."

price to a specific amount at a definite date." Paragraphs *c* and *d* of Section 1, Article XIII of the contract provide that "for the next five (5) year period and for each succeeding five (5) year period thereafter the price to be paid by Buyer to Seller for all gas delivered hereunder shall be increased one cent (1¢) per one thousand (1,000) cubic feet more than the price in effect at the beginning of the previous five (5) year period." Thus, paragraphs *c* and *d* do not contain permissible provisions for the reason that they do not provide for "a change in price to a specific amount" nor a change in price "at a definite date by a price-redetermination based upon but not higher than a producer rate or producer rates which are subject to the jurisdiction of the Commission, are not in issue in suspension or certificate proceedings, and, are in the area of the price in question." See Section 154.93 of the Commission's regulations, paragraph (c).

Section 3, Article XIII, of the May 14, 1962, contract contains even more indefinite pricing provisions than those heretofore considered. Section 3 recites that "Seller shall have the right, at its option, to request a redetermination of the price provided in Section 1 of this article to be paid for any one or more, or all (but not for a partial period), of the periods set out in b, c, and d of said Section 1." Section 1, b, provides "for the five (5) year period commencing on January 1, 1964," the price shall be "thirteen cents (13¢) per thousand (1,000) cubic feet." This complied with the permissible provision provided in paragraph (b) of Section 154.93 of the regulations since it provided a change in price to a specific amount at a definite date. However, the parties then provided in Section 3 that Atlantic, at its option, might during the six (6) months immediately preceding the commencement of such period request a redetermination of the specific price of 13¢ per Mcf for the five year period commencing January 1, 1964. This option to Atlantic created an indefinite escalation pricing provision which violates the permissible pricing provisions in Section 154.93, paragraphs (b) and (c).

That it was the intent of the parties to create indefinite escalation pricing provisions is illustrated by the final sentences in Section 3, wherein it was agreed "The price so determined" either by the Buyer and the Seller, or as provided by arbitration "shall not be higher than the price allowed pursuant to paragraph (3) of Section 154.93, Part 154, Regulations Under the Natural Gas Act, and shall not be lower than the price provided in Section 1 of this article with respect to such period." Thus, in effect, the parties attempted to create both a floor and a ceiling price for the gas to be delivered on and after January 1, 1964. Such indefinite escalation pricing provisions are clearly outside the permissible provisions contained in Section 154.93 of the Regulations.

FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, the evidence adduced, and the briefs filed, the Presiding Examiner finds and concludes that:

(1) Section 154.93 of the Commission's Regulations Under the Natural Gas Act having evolved as a result of a series of rule-making proceedings, as hereinabove fully considered, was promulgated under the authority delegated to the Commission by the Natural Gas Act, as amended.

(2) The terms of the pricing provisions contained in Article XIII, Section 1, paragraphs c and d, and Section 3, of the May 14, 1962, sales agreement between Atlantic, the Seller, and El Paso, the Buyer, contain pricing provisions which are not permissible under Section 154.93 of the Commission's Regulations Under the Natural Gas Act and are therefore inoperative and of no effect at law.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission on appeal, or review by the Commission on its own motion, as provided in its Rules of Practice and Procedure, that:

(A) The letter-order of the Commission to the Atlantic Refining Company on July 19, 1962, summarily rejecting the filings referred to therein, thereby giving effect to Section 154.93 of the Regulations Under the Natural Gas Act, as amended, by the Commission's Order No. 242, is affirmed.

(B) This rejection is without prejudice to the resubmission of the rate schedule and application for a certificate in accordance with applicable provisions of the Commission's Regulations Under the Natural Gas Act.

HARRY W. FRAZEE,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

BROWN COMPANY, PROJECT NO. 2326

ORDER ISSUING LICENSE (MAJOR)

(Issued July 6, 1964)

Application was filed on November 16, 1962, by Brown Company (Applicant) of Berlin, New Hampshire, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2326, known as the Cross Project, located on the Androscoggin River, in the City of Berlin, Coos County, New Hampshire.

According to the application, construction of the original dam and powerhouse was commenced in 1902 and completed in 1903 by Berlin Mills Company, which was the former name of Applicant. The powerhouse contained five sets of 1,200 horsepower wheels directly connected to wood pulp grinders. In 1912 all grinding operations were abandoned and three units were removed and replaced by three 950 horsepower turbines, each directly connected to a 600 kilowatt generator. In 1920 the fourth unit was replaced by a 950 horsepower turbine and 700 kilowatt generator, and in 1925 the fifth unit was replaced by a 900 horsepower turbine directly connected to a 720 kilowatt generator. There have been no major project revisions since 1925. The Cross Project has a total installed capacity of 4,700 horsepower connected to generators having a total rated capacity of 3,220 kilowatts. The energy generated by the project is fed into Applicant's steam-electric and hydroelectric system supplying power to Applicant's mills located in Berlin and Gorham, New Hampshire.

By its order issued July 24, 1958,[1] the Commission found that the Androscoggin River throughout its entire length is a "navigable water" as defined in Section 3(8) of the Federal Power Act and a "navigable water of the United States" within the meaning of Section 23(b) of the Act. The basis for this finding was that the Androscoggin is presently, and for more than a century has been used for the transportation of logs and other forest products by water.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, advised that the project structures affecting navigation were considered satisfactory; that any license issued for the project should include the terms and conditions in the interests of navigation usually included in licenses for such project; and that the plans of the project structures had been approved pursuant to Section 4(e) of the Act.

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[1] *New Hampshire Water Resources Board*, Docket No. E-6807, 20 FPC 99-101.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project certain conditions in the interest of fish and wildlife resources.

For the reasons set forth in our Opinion No. 357 (27 FPC 830, 833), the license herein granted shall have a termination date of December 31, 1993. Since there was no project construction after 1935, we will make the effective date of the license July 1, 1958, the first day of the month in which we determined the Androscoggin River to be a navigable water, as set forth above.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Maine and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purpose of a license for the project.

(2) No conflicting application is before the Commission. Public notice of the filing of the application has been given as required by the Act. No protests or petitions to intervene have been received.

(3) The issuance of a license as hereinafter provided will not affect a Government dam or the development of any water resources for public purposes which should be undertaken by the United States.

(4) The project will be best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes, upon compliance with the terms and conditions hereinafter imposed.

(5) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 4,300 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(6) The step-up transformers mentioned in paragraph (B) below, which were included in the application for license, are part of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project.

(7) The exhibits designated and described in paragraph (B) below conform to the Commission's Rules and Regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to Brown Company (Licensee), of Berlin, New Hampshire under Section 4(e) of the Federal Power Act (Act) for a period effective as of July 1, 1958 and terminating December 31, 1993, for the continued operation and maintenance of the Cross Project No. 2326, located on the Androscoggin River, a navigable water of the United States, in Coos County, New Hampshire, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Constructed Project No. 2326 consists of:

(1) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: Sheet 1 of 2 (FPC No. 2326–1) Plan View of Project Area.

(ii) Project works consisting of:

A fixed crest concrete gravity type overflow section about 292 feet long (including a sluice gate about 18 feet wide and 5 feet high, adjacent to the powerhouse) with crest elevation of about 918.1 feet, m.s.l., topped with flashboards (about 3½ feet high); a wing dam, at the right bank, including a rock-filled timber crib section about 65 feet long (crest elevation of part about 923.6 feet, m.s.l., and part about 924.6 feet, m.s.l.,), and a concrete section about 80 feet long (crest elevation about 924.6 feet, m.s.l.) with a waste gate about 7 feet wide and 4 feet high; a powerhouse (integral with the dam) adjacent to the left bank, including a gated intake section with five flumes controlled by 10-manually-operated gates (each approximately 10 feet wide and 12 feet high), one 900 horsepower turbine and four 950 horsepower turbines direct connected to one 700 kilowatt, one 720 kilowatt, and three 600 kilowatt generating units; step-up transformers; and appurtenant facilities; the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L	FPC No.	Title, Cross Dam Hydroelectric Development
Sheet 1 of 4	2326-3	Plan View of Station & Dam.
Sheet 2 of 4	2326-4	Elevations of Station & Gatehouse.
Sheet 3 of 4	2326-5	Section Views of Station.
Sheet 4 of 4	2326-6	Plan View of Operating Floors.

Exhibit M: Fifteen typewritten pages, "General Description of Mechanical, Electrical, and Transmission Equipment", filed in the Commission November 16, 1962.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–3 (Revised November 1, 1963) entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States", (30 FPC 1658) which terms and conditions, designated as Articles 1 through 27, are attached hereto and made a part hereof except for Article 4 thereof; and subject to the following special conditions set forth herein as additional articles:

Article 28. The Licensee shall, from the effective date of this license, pay to the United States the following annual charge:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, one (1) cent per horsepower on the authorized installed capacity, plus two and one-half (2½) cents per 1,000 kilowatt-hours of gross energy generated during the calendar year for which the charge is made; or such other amounts as may hereafter be determined as necessary to reimburse the United States for the costs of administration. The authorized installed capacity for such purpose is 4,300 horsepower.

Article 29. The Commission reserves the right to determine at a later date what additional transmission facilities, if any, shall be included in this license.

Article 30. Whenever the licensee is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States the licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the costs of making the determinations pursuant to the then current Commission Regulations under the Federal Power Act within 60 days from the date of rendition of a bill therefor and, upon the failure to do so, shall thereafter be subject to the payment of the penalties specified in the then current Regulations. The Licensee shall have the right to pay such amounts under protest within the 60-day period and to reconsideration of the amounts billed or a hearing as provided by the then current regulations under the Act.

Article 31. The Licensee shall within one year from the date of issuance of this license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 32. The project, including its operation and maintenance and any work incident to additions or alterations authorized by the Commission whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and of any such alteration thereof, and shall notify him of the date upon which work with respect to any alteration will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

H. N. BURNETT, DOCKET NO. RI64-674

ORDER PERMITTING WITHDRAWAL OF INCREASED RATE FILING, ACCEPTING INCREASED RATE FILING, REQUIRING FILING OF NOTICE OF CHANGE, AND TERMINATING PROCEEDING

(Issued July 6, 1964)

On June 8, 1964, H. N. Burnett (Burnett) filed a motion requesting that she be permitted to file for a proposed increased rate of 11.0¢ per Mcf, in lieu of the 11.099¢ per Mcf rate suspended in the above-designated proceeding. Burnett further requests that Docket No. RI64-674 be terminated.

On March 16, 1964, Burnett tendered for filing a notice of change in its FPC Gas Rate Schedule No. 8, for the jurisdictional sale of natural gas to Cities Service Gas Company, in the West Panhandle Field, Carson County, Texas (Railroad Commission District No. 10). The proposed increased rate of 11.099¢ per Mcf, designated as Supplement No. 13 to Burnett's FPC Gas Rate Schedule No. 8, was suspended by order issued April 2, 1964, in Docket No. RI64-674, until September 16, 1964, and thereafter until made effective in the manner prescribed by the Natural Gas Act.

Burnett offers to substitute a proposed increased rate of 11.0¢ per Mcf at 14.65 psia in lieu of the proposed 11.099¢ per Mcf rate at 14.65 psia and to waive her right to collect the .099¢ per Mcf tax reimbursement amount until such time as she may be entitled to file for a further rate increase under the subject contract. If Burnett had tendered for filing a 11.0¢ per Mcf rate at the outset, together with a waiver of the right to file for a higher rate, instead of the 11.099¢ per Mcf rate, it would not have been suspended because such rate does not exceed the applicable area price level for increased rates as set forth in the Commission's *Statement of General Policy No. 61-1* (18 CFR, Chapter 1, Part 2, Section 2.56).

In view of the fact that the proposed increased rate contained in the above-designated supplement has not become effective subject to refund, it is deemed appropriate to permit Burnett to withdraw the supplement. Further, it is deemed appropriate to accept the 11.0¢ rate proposed herein by Burnett and to terminate the instant suspension proceeding.

The Commission finds:

It is necessary and proper in carrying out the provisions of the Natural Gas Act and the Regulations thereunder to permit Burnett to withdraw Supplement No. 13 to its FPC Gas Rate Schedule No. 8, to permit Burnett to place in effect without refund obligation an increased rate of 11.0¢ per Mcf at 14.65 psia, to require Burnett to file a notice of change as hereinafter ordered, and to terminate the above-designated proceeding.

The Commission orders:

(A) Burnett is hereby permitted to withdraw Supplement No. 13 to its FPC Gas Rate Schedule No. 8, and to substitute therefor an increased rate of 11.0¢ per Mcf at 14.65 psia.

(B) Burnett shall file within 30 days from the date of issuance of this order a notice of change providing for an 11.0¢ per Mcf rate. The notice of change shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Upon compliance by Burnett with the provisions of the order, the rate and charge of 11.0¢ per Mcf at 14.65 psia shall be effective as of the date of issuance of this order, and the proceeding in Docket No. RI64–674 shall be deemed terminated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

LLOYD V. CRUM, JR., DOCKET NO. CP64–167

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued July 6, 1964)

On January 27, 1964, as supplemented on April 29, 1964, Lloyd V. Crum, Jr. (Applicant), filed in Docket No. CP64–167 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Northern Natural Gas Company (Northern Natural) to establish physical connection of its facilities with the proposed facilities of Applicant and to sell and deliver natural gas to him for resale and distribution in the Village of Racine, Mower County, Minnesota, and environs, all as more fully set forth in the application.

Applicant proposes to construct and operate a pipeline distribution system in the Village of Racine and environs and to resell gas purchased from Northern Natural for ultimate public consumption by the inhabitants thereof.

The estimated cost of Applicant's proposed facilities is $58,300, which is to be financed from Applicant's own funds.

The estimated daily and annual requirements of natural gas under the subject application on a firm and interruptible basis in Mcf at 14.73 psia, are as follows:

	First year	Second year	Third year
Firm Peak Day	90	100	100
Annual Firm	16,630	18,058	20,609
Annual Interruptible (No curtailment)	18,417	20,879	23,779
Total Annual	35,047	38,937	44,388

On April 9, 1964, Northern Natural answered the application stating in substance that it has no objection to the granting of the application and if directed by the Commission it will construct 700 feet of 3-inch pipeline extending from an existing line south of Stewartville, Minnesota, to the facilities to be constructed by Applicant, together with a measuring and regulating station.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on June 9, 1964 (29 F.R. 7438). No protest or petition to intervene in opposition to the granting of the application has been filed.

The Commission finds:

(1) Northern Natural Gas Company, having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–280 (3 FPC 967).

(2) Applicant, Lloyd V. Crum, Jr., an individual residing in Racine, Minnesota, is duly authorized by ordinance to construct and operate a gas distribution

system in the Village of Racine and to engage in the business of distributing and selling natural gas within said village.

(3) It is necessary and desirable in the public interest that Northern Natural be directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver to Applicant its daily and annual requirements as set forth in the application and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Northern Natural within one year from the date of issuance of this order.

(5) The requirement that Northern Natural serve Applicant, as proposed, will not place any undue upon Northern Natural nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Northern Natural Gas Company be and it is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant, Lloyd V. Crum, Jr., and to sell and deliver to Applicant his maximum daily and annual requirements of natural gas as hereinbefore described and as more fully described in the application herein.

(B) Applicant shall be prepared to receive natural gas from Northern Natural within one year from the date of issuance of this order.

(C) Northern Natural shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

NARRAGANSETT ELECTRIC COMPANY AND THE NEW ENGLAND POWER COMPANY, DOCKET NO. E-7153

ORDER PERMITTING WITHDRAWAL OF SUSPENDED RATE SCHEDULE ACCEPTING SUBSTITUTED RATE SCHEDULE AND TERMINATING PROCEEDING

(Issued July 6, 1964)

On April 27, 1964, New England Power Service Company (Service Company) on behalf of The Narragansett Electric Company (Narragansett) filed a request for permission to withdraw Supplement No. 3 to Narragansett's Rate Schedule FPC No. 19 and to substitute in lieu thereof a proposed Supplement No. 4 effective as of January 1, 1964, all for purposes of terminating the above-captioned proceeding. Both Supplements provide for wheeling services by Narragansett to New England Power Company (NEPCO), an affiliate of Narragansett.

The proposed supersession of Supplement No. 3 by Supplement No. 4 has the effect of reducing Narragansett's earlier request for a $410,388 annual rate increase to NEPCO by $316,200, a resulting annual rate increase of $94,188. That prior increase proposed by Narragansett on February 3, 1964, would have raised the Company's wheeling charges for services to NEPCO from $301,608 for the twelve month period ending March 4, 1965, to $711,996. Narragansett's February 3, 1964 rates are reflected in that Company's Rate Schedule FPC No. 19, Supplement No. 3, the operation of which was suspended until August 5, 1964, by order of the Commission issued March 4, 1964, initiating this proceeding. To date, no hearings have been convened, Narragansett having elected to study the matter further for purposes of submitting this settlement proposal.

For reasons indicated hereafter, we believe this proceeding should be disposed of on the basis of the rates reflected in Narragansett's Rate Schedule FPC No. 19, Supplement No. 4. No protests or objections thereto have been received.

The following facts should be noted: Narragansett, an affiliated company of NEPCO, operates in the state of Rhode Island. In addition to generation, transmission, and distribution of electric energy for its utility customers, Narragansett serves a wheeling function for NEPCO by providing transmission capacity in the Warren area and across the northwest corner of Rhode Island. NEPCO owns no transmission facilities in that state. The charges for these services are reflected in Narragansett's Rate Schedule FPC No. 19.

In 1963 Narragansett constructed approximately 4.73 miles of new 115 kv, single circuit, transmission line and improved 11.91 miles of two existing 115 kv, single circuit, lines to provide a transmission outlet for NEPCO's new 500,000 kw Brayton Point steam electric generating station. Brayton Point supplies substantial quantities of power and energy to various parts of NEPCO's system. The rate increase embodied in Narragansett's Supplement No. 3 or 4 is designed to compensate that Company in recognition of changes in investments, conditions, and proportions of use of facilities employed in transmission by Narragansett for NEPCO.

Initially, Narragansett submitted cost data to support its higher rates (Supplement No. 3) based on utilization of its entire high voltage transmission system under assumed load flows at Narragansett's estimated system peak hour for 1963. The lower rates (Supplement No. 4) reflect Narragansett's reconsideration of its costs and facility utilization and are based on assignment of specific transmission facilities as used by NEPCO and an analysis of Narragansett's transmission system operations under heavy, medium and light flow conditions during 1963. The resulting costs associated with Narragansett's wheeling services to NEPCO are summarized in the following revised cost of service study circulated among persons interested in the issues here before the Commission, including Commission staff:

NARRAGANSETT COST OF SERVICE

Narragansett Facilities	Gross investment	Allocated to NEPCO	
		Percent	Investment
D-182-115 kv transmission line	$534,400	100	$534,400
U-147-115 kv transmission line	145,600	100	145,600
V-148-115 kv transmission line	291,500	100	291,500
K-11 & L-12-69 kv transmission lines	116,500	100	116,500
Q-143 & R-144 (North) 115 kv transmission lines	188,300	100	188,300
E-183-115 kv transmission line	138,500	100	138,500
115 kv Warren Substation	275,400	100	275,400
69 kv & 115 kv Woonsocket Substation	1,067,000	50	533,500
A&B 69 kv transmission lines & 69 kv Warren Substation	537,100	68.4	367,500
Investment Allocated to NEPCO			$2,691,200

Less: Adjustment for Narragansett's use of NEPCO's Seekonk Junction-Warren A&B lines:	
Gross Investment—$107,600	
Narragansett's Share of Invest.—30/95×$107,600	($34,000)
Net Allocated to NEPCO	$2,557,200
Annual Charges at 15.1%	$386,100
2.5% Rhode Island Gross Earnings Tax	9,700
Total Annual Payment	$395,800

Available data indicate that Narragansett's initial costing method is undesirable in that it unduly emphasizes inadvertant power flows and tends to result in broad and unpredictable fluctuations in NEPCO's annual payments to Narragansett. Narragansett's revised cost study submitted in support of Supplement No. 4 is premised on a more comprehensive analysis of the functions performed by the Company's transmission facilities under representative system operating conditions.

Following various conferences among interested parties to this proceeding and circulation of Narragansett's proposed Supplement No. 4, together with supporting cost data,[1] among the State Regulatory Commissions of the States of Massachusetts, New Hampshire, Rhode Island and Vermont, and wholesale for resale customers of NEPCO,[2] staff recommends that Supplement No. 4 to Narragansett's Rate Schedule FPC No. 19 be accepted for filing superseding Supplement No. 3 to FPC No. 19, effective upon the date of termination of this proceeding. As indicated above, no protests or objections to the withdrawal of Supplement No. 3 and its supersession by Supplement No. 4 have been received by this Commission.

Narragansett requests that Supplement No. 4 be permitted to take effect as of January 1, 1964. However, the Company fails to support that request with the required showing of good cause for the Commission to permit Narragansett's proposed rate schedule submittal, Supplement No. 4 to FPC No. 19, to take effect as of a date prior to the date of its filing.[3] Due to the suspension of Narragansett's higher rates and charges reflected in the Company's Supplement No. 3, no increased charges have been collected to date for wheeling services to NEPCO.

The Commission further finds:

It is necessary and appropriate for the purposes of the Federal Power Act upon good cause shown to permit Narragansett to withdraw Supplement No. 3 to its Rate Schedule FPC No. 19, and to allow Supplement No. 4 to Narragansett's Rate Schedule FPC No. 19 to take effect as of the date of issuance of this order, and to terminate the entitled proceeding, in the manner hereinafter ordered.

The Commission orders:

(A) Narragansett is hereby permitted to withdraw Supplement No. 3 to its Rate Schedule FPC No. 19.

(B) Supplement No. 4 to Narragansett's Rate Schedule No. 19 is hereby accepted as a rate schedule effective pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder, as of the date of issuance of this order.

(C) The above entitled proceeding, Docket No. E-7153 is hereby terminated.

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[1] By letter submitted on behalf of Commission staff.

[2] Fitchburg Gas and Electric Light Company, Granite State Electric Company, Town of Littleton, Massachusetts Electric Company, and Green Mountain Power Corporation.

[3] Section 35.11 of the Commission's Regulations under the Federal Power Act (18 CFR 35.11), provides: *Section 35.11 Waiver of notice requirement.* Upon application and for good cause shown, the Commission may, by order, provide that a rate schedule, or part thereof, shall be effective as of a date prior to the date of filing or prior to the date the rate schedule would become effective in accordance with these rules. Application for waiver of the prior notice requirement shall show (a) how and the extent to which the filing public utility and purchaser(s) under such rate schedule, or part thereof, would be affected if the notice requirement is not waived, and (b) the effects of the waiver, if granted, upon purchasers under other rate schedules. The filing public utility requesting such waiver of notice shall serve copies of its request therefor upon all purchasers.

OPINION NO. 434

SHELL OIL COMPANY, OPERATOR, ET AL.,[1] DOCKET NO. CI62-1037; HUMBLE OIL & REFINING COMPANY, DOCKET NO. CI63-383; THE SUPERIOR OIL COMPANY, DOCKET NO. CI63-409

MEMORANDUM OPINION AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 6, 1964)*

Syllabus

1. Although underlying purpose of Natural Gas Act is to underwrite just and reasonable rates to consumer, *CATCO* makes clear that Section 7 proceeding does not require finding that initial rate be "just and reasonable"—it is necessary only to find that proposed sale, at initial rate is "required by present or future public convenience and necessity." P. 36.
2. Under *CATCO* Commission is required to scrutinize proposed sales to determine whether initial rates are "out of line" and may, at its discretion, attach such conditions as is believed necessary. P. 36.
3. Commissions *finds* in-line price for instant sales is 17.7 cents per Mcf. P. 37.
4. Aneth rate of 17.7 cents per Mcf is neither a "suspect" price as such term has come to be used in past in-line determinations, nor "tainted" by method of its derivation. PP. 37, 38.
5. Far from being suspect, Aneth price has been judicially approved and may, therefore, properly be utilized as guide in setting line applicable to instant sales. P. 39.
6. Certification of sales at 17.7 cents will not set a new price plateau in the general Aneth area nor trigger "favored nation" clauses in contracts. P. 39.
7. While sales here are first jurisdictional sales by Arizona producers to come before the Commission and volumes are small, case has importance beyond present circumstances in its possible effect on development of new and emerging gas supply area. P. 40.
8. Whether same price will be permitted on other applications for sales from Arizona will depend on particular facts presented in such cases. P. 40.
9. Certificates here are rightfully made subject to results of the rule-making proceeding in Docket No. R-199. P. 40.
10. In proceeding arising under Section 7 of the Natural Gas Act, Commission *issues* certificates of public convenience and necessity to producers for sales of gas from Arizona fields.

Commissioner Ross *dissenting*.

Commissioner Black *joins* in Commissioner Ross' dissent.

Thomas G. Johnson for Shell Oil Company

Albert C. McClain and *Jesse H. Foster, Jr.* for Humble Oil & Refining Company

Homer J. Penn, Herbert W. Varner, and *William T. Kilbourne* for Superior Oil Company

Edward D. Najaiko, George D. Horning, Jr., and *C. Frank Reifsnyder* for El Paso Natural Gas Company

John T. Murphy, William M. Bennett, and *J. Calvin Simpson* for the State of California and the California Public Utility Commission

[1] Franco Western Oil Company, San Joaquin Drilling Company and Anna H. Bing.

*Initial Decision appears on P. 483. Opinion No. 434-A denying rehearing issued September 2, 1964, 32 FPC 685. Affirmed, *sub nom. People of the State of California* v. *F.P.C.*, 353 F. 2d 16 (CA9-1965).

John E. Holtzinger, Jr., J. David Mann, Jr., Frederick Morning, Milford Springer, Harry B. Letton, Jr., and *John P. Egan* for Southern California Gas Company and Southern Counties Gas Company of California

David B. Ward for the Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

O'CONNOR, *Commissioner:*

This proceeding arises under Section 7 of the Natural Gas Act. The applicants are independent producers of natural gas. They seek certificates of public convenience and necessity for sales of natural gas to El Paso Natural Gas Company from certain acreage most of which lies in northeast Apache County, Arizona, and a small nonproductive portion in San Juan County, Utah. The acreage dedicated by Shell Oil Company, Operator, *et al.* (Shell) and Humble Oil & Refining Company (Humble) is in what is known as the East Boundary Butte area. The Superior Oil Company's (Superior) acreage, which is adjacent to East Boundary Butte, has no official field designation. An average daily volume of 4,000 Mcf is involved in the applications. The issuance of certificates of public convenience and necessity is not opposed in this case; the only contested issue is the price at which the certificates should be granted, *i.e.* whether applicants are entitled to certificates in accordance with the contracts filed with their applications or whether the certificates will be conditioned to require the substitution of something less than the contract price. The initial contract rate at which applicants seek certificates is 17.7 cents per Mcf.[2] Staff and the interveners[3] contend that the price should be conditioned to 13 cents for pipeline quality gas. The proceeding is now before the Commission for decision on applicants' exceptions to a decision by the Presiding Examiner, dated January 2, 1964, conditioning the initial price as recommended by staff and the interveners. Superior also excepts to the examiner's action conditioning the take-or-pay provisions in the contracts to be subject to the final order in the rule-making proceeding in Docket No. R–199.

Shell's contract is dated January 6, 1962. Those of Superior and Humble were executed, respectively, on September 5 and 6, 1962. Except for the difference in the dedicated acreage, the contracts are similar in all material respects. Each is for a 20-year period and provides a price of 17.7 cents per Mcf for sweet gas, with escalations at the rate of one cent per Mcf each five years following the date of initial delivery. In the event the gas is sour, and thus not of pipeline quality, the contracts provide that it will be treated by El Paso for the removal of the impurities, with El Paso charging the producers for the cost of treatment based on a specified formula up to a maximum deduction of 6.5 cents per Mcf. The 17.7-cent price is thus for the volumes remaining after processing. The gas, which is moving now under temporary certificates conditioned to a price of 15 cents per Mcf, is delivered by the producer to a central field point where it is picked up by El Paso for transportation via its existing Aneth-San Juan line for treatment at the pipeline's San Juan River plant. With treating charges of 3.2 to 4.65 cents presently being incurred, the producer-applicants would net approximately 13.05 to 14.5 cents per Mcf at their contract price.

The contracts further provide that the deliveries of gas by the producers are to be at a pressure sufficient to allow the gas to enter El Paso's pipeline, although they are not required to make such deliveries at pressures in excess of 950 psig.

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[2] All prices herein are at 15.025 psia.

[3] State of California, California Public Utilities Commission, Southern California Gas Company and Southern Counties Gas Company of California.

As matters now stand no compression is necessary, the natural pressure of the gas from the wells being sufficient to meet the contract requirement. El Paso is required to reimburse the applicants for 75 percent of all additionally enacted taxes. If, in any year, El Paso is required to pay for gas which it does not take, the contracts provide that El Paso may take the gas so paid for over the next succeeding five years during the term of the contract. If El Paso has not taken all the gas for which it has paid by the time the contracts expire, it may take such gas during the three months following. The contracts provide no upward adjustment in price based on the Btu content of the gas. They do, however, require a minimum heating value of 950 Btu's per cubic foot, and provide that if the producers deliver lesser quality gas, their price will be reduced proportionately.

Although the underlying purpose of the Natural Gas Act is to underwrite just and reasonable rates to the consumer, the decision by the Supreme Court in *CATCO* [4] makes clear that a Section 7 proceeding does not require a finding that the initial rate itself be "just and reasonable." It is necessary only to find that the proposed sale, at the initial rate, is "required by the present or future public convenience and necessity." Under *CATCO* we are required to scrutinize proposed sales to determine whether the initial rates are "out of line" in which event ". . . the Commission in the exercise of its discretion might attach such conditions as it believes necessary." [5] In defining the "line" so referred to, the Court of Appeals for the Ninth Circuit stated:

> Considered in this light, the "line" referred to in *CATCO* may properly be referenced to relevant existing producer prices under which substantial amounts of natural gas move in interstate commerce . . .
>
> Existing producer prices are relevant for comparative purposes only if they pertain to gas production in the same or analogous area and if other principal features of the contract are fairly comparable . . . . Disparate provisions relative to facilities to be provided and other services to be rendered should be given effect as well in determining the propriety of the analogy to rates under other existing contracts.[6]

Other Courts of Appeal have approved and adopted [7] the in-line method of initial price regulation for the purpose of certificating sales under Section 7 and a number of in-line pricing determinations have been made in accordance with the procedures outlined by the courts.[8]

All parties to the proceeding agree that the appropriate initial price for these sales is to be determined by comparing the price with other certificated sales. The disagreement lies in deciding which certificated sales should be used in making the comparison, *i.e.* what is the analogous production area and price to which these sales should be rendered in-line. Applicants contend that the area to be looked to is that involved in Opinion No. 335 [9] which granted permanent certifi-

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[4] *Atlantic Refining Co.* v. *P.S.C.*, 360 U.S. 378 (1959).

[5] *Id.* at p. 391.

[6] *U.G.I.* v. *F.P.C.*, 283 F. 2d 817, 823 (CA9, 1960), cert. den. *The Superior Oil Co.* v. *U.G.I.*, 365 U.S. 879 (1961).

[7] *P.S.C.* v. *F.P.C.*, 287 F. 2d 146 (CADC, 1961) cert. den., 365 U.S. 880; *U.G.I.* v. *F.P.C.*, 287 F. 2d 159 (CA10, 1961); *UGI.* v. *F.P.C.*, 290 F. 2d 133, 147 (CA5, 1961) cert. den., 366 U.S. 965; *P.S.C.* v. *F.P.C.*, 329 F. 2d 242 (CADC, 1964) cert. den., 377 U.S. 963.

[8] *E.g.*, *Skelly Oil Co., et al.*, Opinion No. 362, 28 FPC 401; *Texaco Seaboard Inc., et al.*, Opinion No. 383, 29 FPC 593; *Placid Oil Co., et al.*, Opinion No. 398, 30 FPC 283, issued July 17, 1963; *Hassie Hunt Trust, Operator, et al.*, Opinion No. 412, 30 FPC 1438, issued December 9, 1963; *Amerada Petroleum Corp., et al.*, Opinion No. 422, 31 FPC 623, issued March 23, 1964.

[9] *El Paso Natural Gas Co., et al.*, 23 FPC 369, affirmed *sub nom.*, *Texaco Inc.* v. *F.P.C.*, 290 F. 2d 149 (CA5, 1961).

cates to 17 producers at an initial price of 17.7 cents per Mcf for casinghead gas produced in the general Aneth Field area and dry gas produced from the Boundary Butte Field, all located in the Four Corners area of the Paradox Basin in San Juan County, Utah. Staff and the interveners maintain that the 17.7-cent Aneth area prices are "tainted" and should not be used to determine an in-line price for these sales, *i.e.* that Opinion No. 335 does not establish a price line which, under current Commission policy, is automatically applicable to these sales; that the Aneth casinghead sales are not comparable to the dry gas sales here; and that the appropriate comparative area and the proper price to be applied in this proceeding is the 13-cent [10] per Mcf price allowed for recent sales to El Paso from the San Juan Basin in northwest New Mexico.

The contracts in issue in this case are dated in 1962, well after the September 1960 announcement of the Statement of General Policy No. 61–1. However, the area of production here involved was not included within any of the Policy Statement areas, nor has the Commission established any ceiling price level for initial service in the State of Arizona. The closest Policy Statement area of major production is the San Juan Basin in northwestern New Mexico where the guideline rate is 13 cents per Mcf. Since January 1, 1964, the majority of the San Juan contracts have escalated to a total price of 14 cents per Mcf. The Notice of Proposed Revision of Area Boundaries, Docket No. R–218, issued July 11, 1962, proposed an "Aneth Field Area" in southeast San Juan County, Utah, and would have included that portion of the East Boundary Butte area lying in that State. At this time further action on the revision has been suspended.[11] We observe that when the Shell application originally was noticed for hearing Southern California Gas Company and Southern Counties Gas Company indicated they would not intervene (and thus not oppose certification at the contract rate) as the proposed price ". . . is consistent with the 'in-line' price in the Aneth market area" as determined in Opinion No. 335.[12] They also recommended that the proposed Aneth pricing area, which would have terminated at the Utah-Arizona border, be extended southward to include all the East Boundary Butte area situated in Arizona.[13] These expressions were recanted, however, and active intervention sought, upon notice of our conditioning of the temporary certificate to Shell to an initial price of 15 cents per Mcf. As they stated, "The Commission's action indicates that our assumption that the gas to be sold is from an extension of the Aneth formation and that the contract price of 17.7 cents per Mcf was therefore 'in line' may be mistaken. . . ." [14]

Based on consideration of the evidence submitted, the briefs, the examiner's decision and the exceptions thereto, it is our opinion that the in-line price for these sales is 17.7 cents per Mcf and that certification thereof at this rate, which is the initial contract price, is in the public interest and will serve the public convenience and necessity. In the context of the assumption expressed by the aforementioned interveners, as well as the arguments and claims made by the other parties opposing unconditional certificates, we conclude that the production here involved is in fact from an extension of the Aneth formation; that the Aneth rate of 17.7 cents per Mcf is neither a "suspect" price as the term has come to be used in past in-line price determinations [15] nor "tainted" by the

[10] 12 cents plus 1-cent per Mcf minimum guarantee for liquids.

[11] "Order Deferring Further Consideration of Proposed Changes in Pricing Area Boundaries Fixed Under Statement of General Policy 61–1," Docket No. R–218, issued November 27, 1963, 30 FPC 1374.

[12] Hearing exhibit No. 2.

[13] Hearing exhibit No. 3.

[14] Hearing exhibit No. 4.

[15] *U.G.I.* v. *F.P.C.*, 283 F. 2d 817 (CA9, 1960); *Shelly Oil Co., et al.*, 28 FPC 401, 409 (1962).

method of its derivation; and that the gas sold by the applicants is not substantially inferior in quality or in the terms and conditions of sale to that sold by the Aneth producers.

Opinion No. 335 was issued in February 1960. The case, as has been indicated, involved applications for sales of gas to El Paso by 17 producers from the Aneth Field area at an initial contract rate of 20 cents per Mcf. The gas sold by these producers was predominantly low pressure, sweet casinghead gas which was to be gathered by El Paso and then processed and compressed by it at its Aneth plant for the extraction of liquefiable hydrocarbons. El Paso was to retain a portion of the liquids to compensate it for the cost of operating the gathering, pressuring and extraction facilities. As in the case of the sales in this proceeding, the price paid to the producers was based on the residue volume compressed to 850 psig remaining after the extraction process and available for transmission at the plant tailgate.

One of the sales consolidated in the Aneth proceeding involved dry, high pressure, sour gas produced from the Boundary Butte Field.[16] As with the sales here, the price was subject to a reduction for removal of impurities, with payments being based on the volume remaining after treatment. Since the point of delivery was at the wellhead, it was necessary for El Paso to construct approximately nine miles of gathering line to connect with the main transmission line coming from the Aneth plant. Thus, the casinghead gas sales involved in that proceeding are somewhat more favorable than the dry gas sale involved in Opinion No. 335 since, in the latter case, El Paso gathers the gas without reimbursement from extracted liquids. In addition, the Boundary Butte sale is less favorable to El Paso than the sales in this proceeding since here the producers themselves gather the gas to a central point before delivery to the purchaser. Although the estimated first month's production for the Boundary Butte sale certificated in Opinion No. 335 was 465,000 Mcf,[17] equivalent to a yearly volume in excess of 5 million Mcf, the recent annual reports filed by El Paso with the Commission indicate that the actual sales from Boundary Butte Field are in the range of 1.3 to 1.5 million Mcf per year. Whichever figure is used, it is apparent that the Boundary Butte sales do involve the transportation of substantial volumes of gas in interstate commerce. The Aneth area sales are similarly substantial but to a far greater degree, with sales of more than 23 million and 25.5 million Mcf in 1960 and 1961.

In issuing certificates to the producers in Opinion No. 335, the initial contract price of 20 cents proposed in the applications was conditioned by the Commission to require a price no higher than 17.7 cents per Mcf. The Opinion was rendered prior to the full development of the present approach to initial price regulation. Nevertheless, the *CATCO* decision of the Supreme Court, which laid down the outlines for the existing in-line method, was discussed and, as is apparent from a reading of the Opinion, the initial price condition was applied in complete accordance with that decision. Moreover, crucial to the decision herein is the fact that the 17.7-cent initial price condition of the Aneth case was expressly approved by the Fifth Circuit Court of Appeals, thus upholding the Commission's determination, in the face of a direct contention by the State of California that the price should have been conditioned to require an even lesser rate per Mcf.[18] Whether the Aneth price would not be determined in a like manner, in the sense that the same considerations would be applied were that case first

[16] Western Natural Gas Co., Operator, *et al.*, Docket No. G–13964, F.P.C. Gas Rate Schedule No. 24. Although filed in the name of Western, the sale also involves gas from two additional producers, Three States Natural Gas Co. and San Jacinto Petroleum Co., selling under a single contract.

[17] Hearing exhibit No. 13.

[18] *Texaco Inc., et al.* v. *F.P.C.*, 290 F. 2d 149 (CA5, 1961).

coming before us today, is immaterial for the purpose of our decision herein. Far from being suspect, the Aneth price has been judicially approved on review and may, therefore, properly be utilized as a guide in setting the line applicable to these sales. The Aneth price, having been decided on the basis of the *CATCO* principles, is no longer subject to review either by this Commission or by dissatisfied participants to that proceeding. Moreover, arguments attempting to restrict that decision on the ground of the alleged "uniqueness" of the Aneth sales cannot avail where, as here, the evidence convincingly demonstrates a clear comparability at the point at which payment for the gas is computed.

Applicants, both in their briefs and in the other material submitted in support of their applications, point out the many similarities between the Aneth production and the production in this case as well as the distinguishing characteristics of the San Juan gas production. They note that the East Boundary Butte area and Aneth are both in the same geological basin, the so-called southeast Paradox or Blanding Basin, and that both East Boundary Butte and Aneth gas is produced from the same formations. San Juan gas, however, is completely different with respect to basin, conditions of exploration, depths of production, delivery point,[19] pressure,[20] and in the fact that the producers do not pay for the processing necessary in some instances to remove the excess carbon dioxide and hydrogen sulfide. Applicants also note the close proximity of their acreage to the Aneth producers—8 miles from Boundary Butte and 11 miles from Aneth—and the 52 to 75 miles which separates their leases from the San Juan gas fields. Other similarities are that the gas, after processing, is of approximately the same pipeline quality and Btu content as the residue gas available to El Paso at the tailgate of the Aneth plant. The record indicates that Humble's and Shell's gas have a heating value of 1039 and 1103 Btu per cubic foot, respectively, before processing. Superior's gas, after processing, is reported at 1100 Btu and Shell's at 1151 Btu. The residue gas available at Aneth has a value from 1154 to 1168 Btu per cubic foot. Although no notation is made as to the Btu content of the San Juan gas, the evidence shows that a drop of 54 Btu per cubic foot (from 1136 to 1082) was experienced in the Aneth, Boundary Butte and East Boundary Butte stream after introduction of the San Juan gas. Of the six wells currently producing in the area under consideration, two are high gas ratio oil wells and four are dry gas wells. Apparently, any liquefiable hydrocarbons are minimal and serve only to increase the Btu content of the gas stream. In any event, and unlike the San Juan producers, no provision is made for a minimum guarantee on liquids. Moreover, it is important to note that although the East Boundary Butte area is included within the southern boundary of the geographical area covered by the "favored nation" clauses of the Aneth contracts, certification of these sales at the 17.7 cent price will not set a new price plateau in the general Aneth area nor trigger the "favored nation" clauses in those contracts. It is also appropriate to observe that while the original Aneth contracts were executed in 1957 and 1958, at least 19 additional sales, primarily of the "add acreage" type, have since been made at the same initial rate, with certificates at this price being issued as recently as March 12, 1963.

Despite the allegations of the interveners and staff, the evidence does not show that applicants will be selling a product substantially inferior to that purchased from the Aneth case producers. To the contrary, all of the evidence points to the

[19] El Paso's purchase contracts in the San Juan Basin provide that El Paso will take delivery of the gas at the wellhead of the various producers. In order to receive the gas into its system El Paso has constructed an extensive gathering system extending throughout the basin which it operates at its sole expense.

[20] In certain cases El Paso may be required to accept deliveries at pressures as low as 50 and 100 psig.

conclusion that the gas after processing is comparable to that sold to El Paso at the tailgate of the Aneth plant. At Aneth, El Paso gathers and compresses the gas but is compensated by a share of the liquids; in this case the producers deliver high pressure gas within two miles of El Paso's line and, while El Paso must process the gas for the removal of impurities, it is compensated by the producers for the cost of treatment. The criteria of comparable geology, geography, conditions of exploration, production and marketing utilized in past decisions [21] in selecting the sales to be looked to in fixing a price line are met by the Aneth sales. The same conditions, however, generally do not apply with respect to the sales being made from the San Juan Basin. Accordingly, we conclude that no price condition is required for these sales and that certificates may be issued at the contract rate.

The sales herein involved are the first jurisdictional sales by independent producers from Arizona to come before the Commission on applications for permanent certificates.[22] Until recently exploratory activity in the State was sporadic due primarily to the lack of marketing facilities in the area. Following the construction of El Paso's Aneth line, however, increased exploratory activity has been reported. Thus, while the volumes here involved are small, the case has an importance beyond its present circumstances in its possible effect on the development of a new and emerging gas supply area. However, the effect of the case in establishing a precedent price line for future sales throughout the State is mitigated, if not wholly eliminated, by the fact that the southern boundary of the Paradox Basin, with its comparable conditions of production, is but a short distance from the area of these sales. Whether the same price will be permitted on other applications for certificates for sales from Arizona will depend on the particular facts presented in those cases.

The charge of error in conditioning the take-or-pay provision to the final order in the rule-making proceeding in Docket No. R-199 has been considered by us in a number of past proceedings. On each occasion the requests for its deletion have been denied.[23] In our opinion the certificates issued herein were rightfully made subject to the results of the rule-making proceeding. The exception will be denied.

The exceptions submitted by each of the producer-applicants includes a request for an opportunity to present oral argument before the Commission. We conclude that no useful purpose would be served by such argument and that the requests should be denied.

The Commission finds:

(1) The applicants herein are independent producers of natural gas and are engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption and each is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sales of natural gas hereinbefore described, as more fully described in the applications, are made in interstate commerce, subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor,

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[21] *E.g., Standard Oil Co. of California,* Opinion No. 359, 27 FPC 1153, 1157 (1962); order on rehearing, 28 FPC 292 (1962).

[22] On April 10, 1964, a temporary certificate was issued to Pan American Petroleum Corp. in Docket No. CI64-964 to initiate a sale to El Paso from Bita Peak Field, Apache County, Arizona.

[23] *Skelly Oil Co., et al.,* Opinion No. 362-A, 28 FPC 1065, at 1067; *Texaco Seaboard, Inc., et al.,* Opinion No. 383-A, 30 FPC 618, at 615; *Placid Oil Co., et al.,* Opinion No. 398-A, 30 FPC 682, at 683.

are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Subject to the requirements of our order herein and the conditions attached to the certificates herein issued, the applicants are able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sales proposed by the applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity upon the conditions hereinafter set forth, and certificates should be issued to each of them as ordered below.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) Except as herein granted, the exceptions to the examiner's decision should be denied.

The Commission orders:

(A) Certificates of public convenience and necessity are hereby issued, upon the conditions hereinafter set forth, to each of the applicants in this proceeding for the sale of natural gas in interstate commerce for resale as proposed, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described above and in their applications.

(B) The certificates herein issued are granted without price condition; provided, however, that such grant shall not be construed as a determination of the justness or reasonableness of the initial or subsequent prices contained in the gas purchase contracts, nor as a waiver of the requirements of Section 4 of the Natural Gas Act or of Section 154 of the Commission's Rules and Regulations thereunder; and is without prejudice to any findings or order which have been or may hereafter be made by the Commission in any proceeding now pending or which may hereafter be instituted by or against the applicants. Further, the action in this proceeding shall not foreclose nor prejudice any future proceeding or objection relating to the operation of any price or related provision in the gas purchase contracts here involved.

(C) The certificates herein issued are granted upon the further express condition that the allowance of the take-or-pay for provisions in the applicants' contracts is subject to our ultimate disposition with respect to such provisions in the rule-making proceeding in Docket No. R–199. Upon the establishment, by regulation or policy statement, of a general policy governing such provisions in producer contracts, the applicants shall within 30 days file amended rate schedules in conformity therewith, acceptable to the Commission. The producers shall not be required to file take-or-pay provisions for less than 80 percent of the annual contract quantities. Any changes or modifications to be made in accordance with this paragraph shall be prospective only.

(D) The certificates herein issued are not transferable and shall be effective only so long as each of the applicants continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(E) The motions for opportunity to present oral argument before the Commission are denied.

(F) Except as herein granted, the exceptions to the examiner's decision are hereby denied.

Commissioner Ross *dissenting.*

Commissioner Black *dissenting* joins in Commissioner Ross' statement.

Ross, Commissioner, *dissenting:*

The majority has noted that this case has an importance which transcends the small volumes involved in the instant sales. Indeed this is so. Whatever initial price is approved for this new area, that price, for all practical purposes, will become the floor for all future initial sales in this area, and probably for all other areas in Arizona. The pattern is universal—in every producing area of the country. When the Commission determines a ceiling price for an area, that becomes the base price at which contracts are executed. As the majority notes, "It is also appropriate to observe that while the original Aneth contracts were executed in 1957 and 1958, at least 19 additional sales, primarily of the 'add acreage' type, have since been made *at the same initial rate*, with certificates at this price being issued as recently as March 12, 1963." [Emphasis added, Op., p. 30.]

The specific issue here is to determine an in line price for a new area. As such, there are no contracts in the area to examine. The majority has decided that the prices in Aneth are determinative. In so deciding, the majority has followed sensible reasoning as far as it goes; but it neglects to consider the whole picture.

This generation has witnessed the skyrocketing of natural gas prices. From an average wellhead price of 4.9¢ per Mcf in 1945, the price doubled in the period to 1954 to 10.1¢ and rose 5¢ more in the period through 1961.[1]

To the Supreme Court, this situation signaled a clear and present danger to purchasers of natural gas, and the Court implored this Commission to put on the brakes—to hold the line on gas prices until just and reasonable rates are determined. While the Commission has made some contributions to the tapering off of the price rise, the battle is far from won. Certainly, the present decision cannot be considered as a major step in this effort. To the contrary, the 17.7¢ per Mcf price the majority finds required by the public interest represents the highest initial price level for gas over the entire southern and southwestern tier of producing states excepting only Louisiana and Mississippi.[2] Perhaps more important, the 17.7¢ price is over 2½¢ per Mcf higher than the nationwide average wellhead price of gas. The majority describes its result as holding the line. Maybe, but the line must be pointed upward.

This Commission's experience demonstrates that an in-line price determination sets the pattern for future sales in an area. Frequently parties forego the exercise of their contract provisions to file for rate increases rather than establish pricing levels which exceed the in-line price. In fact, at the present time, producers have elected to forego more than $37 million a year in contractually authorized rate increases, principally in situations in which the increased rate would exceed the ceiling.

Of course, a producer can file for and collect precisely what his contract permits in those situations in which the initial rate has been conditioned to a lower level. His only responsibility is to refund that portion ultimately found unjust and unreasonable, a contingency which is eminently equitable. On the other hand, unqualified acceptance of the initial contract rate—the course followed by the majority—forever bars the public from recouping such unjust and unreasonable amounts. The point is that the Commission should select the lower alternative price levels because both the producer and the public are protected: the public, by Section 4(e) refund conditions; the producer, by his intervening right to collect the higher rate. Under the majority's scheme, the public is pre-

[1] *1963 Gas Facts*, 1962 data, American Gas Association.

[2] A proceeding is currently being held to determine the proper initial price level for Mississippi gas.

cluded from recovering rates which could well be found unjust and unreasonable—hardly a promising situation. Despite the repeated schooling by the courts describing this situation, the majority sadly fails to even consider it.[3]

In view of the above circumstances, the majority's unqualified acceptance of Aneth prices bears scrutiny.[4] In this regard, the majority's refusal to take a good hard look at the Aneth price determination is flatly inconsistent with the Commission's decisions involving Texas Gulf Coast and Louisiana prices as well as its argument to the Fifth Circuit Court of Appeals:

> That the Commission should not perpetuate the inflationary effects of its past errors, even when they have not been disclosed by the courts, is not a new or unique concept to the law.
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> * * * * * * *
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> A wrong final decision is nonetheless binding on the parties thereto; but a wrong decision has no claim to immortality as a guide for later action.[5]

The fact of the matter is that the Aneth price would not be determined today as it was in Opinion 335. This doesn't mean that Aneth prices are tainted or suspect as those terms are used in the UGI cases.[6] It simply means that the Commission is not duty bound to commit the same errors of its predecessors. To be specific: The Commission used the San Juan price as a base in determining the level of Aneth prices. (Quaere, if San Juan is a proper reference point for Aneth, why should it not be a proper reference point for the area involved here as well?) To the San Juan price of 13¢, the Commission added on "some 5¢ per Mcf representing processing and related costs. . . ." (23 FPC 370, 376) This is the principal error. In every single in-line case decided since the autumn of 1961, the Commission has steadfastly refused to consider costs. How ironic it is that the majority should retreat now in the echo of the Supreme Court's denial of certiorari, letting stand the D.C. Circuit Court's approval of one of the decisions of the Commission declaring that costs are not relevant.[7] Even more specifically, the Commission has adopted a policy of not escalating an in-line price on the basis of delivery conditions. This decision too has been affirmed in Court.

> * * * We do not think that the Commission was required in this case to consider the exploration and drilling costs or the cost of delivery services in arriving at the "in-line" price in a certificate proceeding. The consideration of these matters may properly be left to a Section 4 proceeding.[8]

In my opinion, the proper in-line price for the initial sales is 14¢ per Mcf. Certainly, the infirmities involved in the Aneth price determination preclude

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[3] See the following paragraph:

> In arriving at initial rates under Section 7, the Commission, of course, does not foreclose a company from obtaining an increase under Section 4. As indicated, Section 4 is a rate proceeding and Section 7 is not. But the public must be protected from the time the gas first enters interstate commerce. Since there is no mechanism for refund of overcharges under Section 7, if the Commission is to err in setting an initial rate, it should err on the low side because the company, under Section 4, can immediately increase the rate, subject to disallowance by the Commission after a full rate proceeding, the public being protected with reference to refunds in the interim. [*Atlantic Refining Company* v. *F.P.C.* 316 F. 2d 677, 679 (1963).]

[4] Whether the Aneth price would now be determined in a like manner, in the sense that the same considerations would be applied were that case first coming before us today, *is immaterial* for the purpose of our decision herein. [Emphasis added. Op., pp. 38, 39.]

[5] *Callery Properties, Inc.* v. *F.P.C.*, CA 5, No. 20872 *et al.*, Brief of FPC to the Court, pages 18, 19.

[6] See *U.G.I. Co.* v. *F.P.C.*, 283 F. 2d 817 (CA9), cert. den. 365 U.S. 881; *P.S.C. of N.Y.* v. *F.P.C.*, 287 F. 2d 146 (CADC), cert. den. 365 U.S. 880; *U.G.I. Co.* v. *F.P.C.*, 287 F. 2d 159 (CA10); *U.G.I. Co.* v. *F.P.C.*, 290 F. 2d 133 (CA5), cert. den. 366 U.S. 965.

[7] *Prado Oil & Gas Co.* v. *F.P.C.*, S. Ct. No. 987 *et al.*, cert. den. June 8, 1964.

[8] *California Oil Co., Western Division* v. *F.P.C.*, 315 F. 2d 652, 660 (CA 10, 1963).

accepting 17.7¢. Rather, the prices in San Juan are determinative, a conclusion reached by both the Examiner and the Commission Staff. San Juan prices are now at the 14¢ level. Consideration of the price in this area makes much more sense than blindly accepting the deficiently determined prices in Aneth. Selection of 14¢ also conforms to the Supreme Court's mandate to hold the line.

Commissioner Black joins in this statement.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

BROWN COMPANY, PROJECT NO. 2327

ORDER ISSUING LICENSE (MAJOR)

(Issued July 7, 1964)

Application was filed on November 16, 1962 by Brown Company (Applicant) of Berlin, New Hampshire, for a license under Section 4(e) of the Federal Power Act (Act) for its constructed Project No. 2327, known as the Cascade Project, located on the Androscoggin River in the Town of Gorham, Coos County, New Hampshire.

According to the application, the original dam and powerhouse, the construction of which was commenced in 1903 and completed in 1904, consisted of six sets of 2,200 horsepower wheels directly connected to wood pulp grinders. In 1916, all grinding operations were abandoned and two sets of the water wheels were removed and replaced by two 3,400 horsepower turbines, each directly connected to a 2,400 kilowatt generator. In 1918, a third set of water wheels was replaced by a 3,400 horsepower turbine and 2,400 kilowatt generator, and the gates on the remaining three adjacent flumes were closed and permanently sealed. There have been no major project revisions since 1918.

The Cascade Development has a total installed capacity of 10,200 horsepower connected to generators having a total rated capacity of 6,900 kilowatts. The energy generated by the project is fed into Applicant's steam-electric and hydroelectric system supplying power to Applicant's mills located in Berlin and Gorham, New Hampshire.

In its order issued July 24, 1958,[1] the Commission found that the Androscoggin River throughout its entire length is a "navigable water" as defined in Section 3(8) of the Federal Power Act and a "navigable water of the United States" within the meaning of Section 23(b) of the Act. The basis for this finding was that the Androscoggin is presently, and for more than a century has been used for the transportation of logs and other forest products by water.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, advised that the project structures affecting navigation were considered satisfactory, and that the plans of the project structures affecting navigation had been approved pursuant to Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license issued for the project conditions in the interests of fish and wildlife resources.

For the reasons set forth in Opinion No. 357 (27 FPC 830, 833), the license herein granted shall have a termination date of December 31, 1993. Since there was no project construction after 1935, we will make the effective date of the license July 1, 1958, the first day of the month in which we determined the Androscoggin River to be a navigable water, as set forth above.

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[1] *New Hampshire Water Resources Board*, Docket No. E-6807, 20 FPC 99-101.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Maine and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the issuance of a license for the project.

(2) Public notice of the filing of the application has been given as required by the Act. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(3) The issuance of a license as hereinafter provided will not affect a Government dam or the development of water resources for public purposes which should be undertaken by the United States.

(4) The project will be best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes, upon compliance with the terms and conditions hereinafter imposed.

(5) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 9,200 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(6) The 2.3/22 kv step-up substation facilities mentioned in paragraph (B) below are parts of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project.

(7) The exhibits designated and described in paragraph (B) below, which were included as part of the application for license, conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to Brown Company (Licensee) of Berlin, New Hampshire, under Section 4(e) of the Federal Power Act (Act), for a period effective as of July 1, 1958, and terminating December 31, 1993, for the continued operation and maintenance of the Cascade Development, Project No. 2327, located on the Androscoggin River, a navigable water of the United States, in Coos County, New Hampshire, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Constructed Project No. 2327 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: Sheet 1 of 2 (FPC No. 2327-1) Plan View of Project Area.

(ii) Project works consisting of:

A fixed crest concrete gravity overflow dam, with wing walls and abutments, about 380 feet long (including a floodgate about 20 feet wide and 6 feet high) with crest elevation about 898 feet, m.s.l., topped with flashboards about 4⅓ feet high: a forebay intake gate section about 183 feet long, extending from

end of dam to the left bank, containing 13 forebay gates (each about 7 feet wide and 11 feet high); a forebay immediately downstream from the gated section, formed by a fixed crest concrete gravity section (parallel to the river and topped with flashboards about one foot high) and 341½ feet long (including a drain gate about 7 feet wide and 9⅛ feet deep and an iceway about 6 feet wide) and a powerhouse intake structure with six gates (3 unused, headworks removed) each about 11⅝ feet wide and 13⅜ feet high: a powerhouse, on the right bank (integral with the intake structure), including three 3,400 horsepower turbines directly, connected to three 2,400 kilowatt generating units; a substation; and appurtenant facilities; the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L	F.P.C. No.	Title
		Cascade Hydroelectric Development
Sheet 1 of 7	2327-3	Plan View of Station and Dam.
Sheet 2 of 7	2327-4	Elevations of Station and Gatehouse.
Sheet 3 of 7	2327-5	Elevations of Forebay Gates.
Sheet 4 of 7	2327-6	Section of Station.
Sheet 5 of 7	2327-7	Section of Station and Gate House.
Sheet 6 of 7	2327-8	Plan View of Operating Floors.
Sheet 7 of 7	2327-9	Plan View of Machines and Draft Tubes.

Exhibit M: Fourteen typewritten pages, "General Description of Mechanical, Electrical, and Transmission Equipment", Filed in the Commission November 16, 1962.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-3 (Revised November 1, 1963) entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (30 FPC 1658), which terms and conditions, designated as Articles 1 through 27, are attached hereto and made a part hereof except for Article 4 thereof; and subject to the following special conditions set forth herein as additional articles:

Article 28. The Licensee shall pay to the United States the following annual charges:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, one (1) cent per horsepower on the authorized installed capacity, plus two and one-half (2½) cents per 1,000 kilowatt-hours of gross energy generated during the calendar year for which the charge is made; or such other amounts as may hereafter be determined as necessary to reimburse the United States for the costs of administration. The authorized installed capacity for such purpose is 9,200 horsepower.

Article 29. The Commission reserves the right to determine at a later date what additional transmission facilities, if any, shall be included in this license.

Article 30. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the costs of making the determinations pursuant to the then current Commission Regulations under the Federal Power Act within 60 days from the date of rendition of a bill therefore and, upon failure to do so, shall thereafter be subject to the payment of the penalties specified in the then current Regulations. The Licensee shall have the right to pay such amounts under protest within the 60-day period and to reconsideration of the amounts billed or a hearing as provided by the then current Regulations under the Act.

Article 31. The Licensee shall within one year from the date of issuance of this license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 32. The project, including its operation and maintenance and any work incident to additions or alterations authorized by the Commission whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and of any such alteration thereof, and shall notify him of the date upon which work with respect to any alteration will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313 (a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

ROCHESTER GAS AND ELECTRIC CORPORATION, DOCKET NO. E-7154

DECLARATORY ORDER

(Issued July 7, 1964)*

Rochester Gas and Electric Corporation (Petitioner) of Rochester, New York, filed a petition, including a statement of facts, pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure, for a declaratory order to remove any uncertainty as to Petitioner's need under the Federal Power Act for a license to continue to maintain and operate its four hydroelectric projects on the Genesee River. Three of these projects, called Stations 5, 2 and 26, whose installed capacities are 6,500 kw, 38,250 kw and 3,000 kw, respectively, are in Rochester, and the fourth, Station 160, with an installed capacity of 425 kw, is some thirty miles southwesterly at Mount Morris, New York.[1]

Petitioner contends that these projects are not located on navigable waters of the United States.[2] We find that this contention is not sustained by the facts set forth in the petition.

Rising in the Allegheny Plateau in Potter County, Pennsylvania, north of the Susquehanna basin, the Genesee River flows northward for about 158 river miles, crossing New York State and discharging into Lake Ontario. It has a drainage area of 2,753 square miles and an average discharge of 2,476 cfs. Its principal tributaries are Canaseraga and Honeoye Creeks from the east and Oatka and Black Creeks from the west. The river has two major stretches of rapids and falls, one at Portageville, river miles 88 to 84, where it descends 380 feet, and another at Rochester, river miles 8.2 to 6.0, where it descends 260 feet. From below the Rochester rapids and falls about three miles above Lake Ontario, the river has been improved by the Federal government to accommodate deep-draft commercial vessels used in the Great Lakes traffic.

There is abundant historical evidence that the Genesee River also has supported commerce above this improved stretch. Settlers of the Genesee Valley in the early decades of the nineteenth century rafted potash, pearlash, lumber, and wheat to Rochester. After 1825, they sent goods downstream for shipment on the then-completed Erie Canal, which crossed the river just above the Rochester rapids and falls at river mile 11.2. Between 1837 and 1857, the State of New York built the Genesee Valley Canal along the Genesee River and certain of its tributaries. The eastern branch of this canal reached Dansville, New York, and the western branch, having reached Olean, New York, followed the Allegheny River to the Pennsylvania border. The Genesee Valley Canal connected with the Erie Canal at Rochester. The canal operated until 1878.

The Genesee River with reasonable improvements could again support interstate traffic. As recently as 1950, Congress authorized preliminary examination and survey of a through waterway to the Allegheny River.[3] Although con-

*Order denying rehearing issued August 28, 1964, 32 FPC 668. Affirmed in part; vacated in part, *Rochester Gas & Electric Corp.* v. *F.P.C.*, 344 F. 2d 594; (CA2–1965); cert. denied, 382 U.S. 832.

[1] These projects are located at river miles 6.0, 7.5, 8.2, and 66.5, respectively.

[2] Subsection 23(b) of the Federal Power Act reads in pertinent part:

> (b) It shall be unlawful for any person . . ., for the purpose of developing electric power, to construct, operate or maintain any dam, water conduit, reservoir, powerhouse, or other works incidental thereto across, along, or in any of the navigable waters of the United States . . ., except under and in accordance with the terms of a permit or valid existing right-of-way granted prior to June 10, 1920, or a license granted pursuant to this Act (16 U.S.C. 817).

[3] River and Harbor Act of 1950 (64 Stat. 169).

struction was not recommended, there might be further development in the future.[4]

Three of Petitioner's projects, stations 2, 5 and 26, are located in the Rochester rapids and falls. Under the definition of navigable waters in the Federal Power Act[5] and leading Supreme Court decisions on navigability,[6] Petitioner is not relieved of the licensing provisions of the Federal Power Act because these projects are located in a stretch of rapids and falls on a navigable stream.

The Commission finds:

(1) The Genesee River from above the Rochester Gas and Electric Company's project works to its mouth at Lake Ontario is a "navigable water of the United States" within the meaning of subsection 23(b) of the Act.

(2) Rochester Gas and Electric Corporation maintains and operates four hydroelectric projects, designated Stations 2, 5, 26 and 160, across, along, or in the Genesee River without a permit or a valid existing right-of-way granted prior to June 10, 1920, or a license granted pursuant to the Federal Power Act.

The Commission orders:

Rochester Gas and Electric Corporation shall, within ninety (90) days of the issuance of this order, file application for a license pursuant to the provisions of the Federal Power Act and the Commission's Rules and Regulations thereunder, for the continued maintenance and operation of its project works in and along the Genesee River at Rochester and Mount Morris, New York.

Before Commissioner: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

HUMBLE OIL & REFINING COMPANY, DOCKET NOS. G–9287 AND G–9288, ET AL.[1]

ORDER CONDITIONALLY APPROVING RATE SETTLEMENT PROPOSAL SEVERING AND TERMINATING PROCEEDINGS, AND PRESCRIBING REFUNDS

(Issued July 8, 1964)*

There is before us for consideration a Motion for Approval of Settlement Proposal, Termination of Rate Proceedings, and for Shortened Procedure Certifica-

[4] The New England-New York Inter-Agency Committee in 1955 said in its report on The Resources of the New England-New York Region, Genesee River Basin, Part Two, Chapter XXXIII, Section VIII at page 3: "Present facilities for navigation are considered adequate. No further development of these facilities in the Genesee River Basin is contemplated *at this time.*" [Emphasis added.]

[5] Section 3(8) reads:

(8) "navigable waters" means those parts of streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, and which either in their natural or improved condition *notwithstanding interruptions between the navigable parts of such streams or water by falls, shallows, or rapids compelling land carriage,* are used or suitable for use for the transportation of persons or property in interstate or foreign commerce, including therein all such interrupting falls, shallows or rapids, together with such other parts of streams as shall have been authorized by Congress for improvement by the United States or shall have been recommended to Congress for such improvement after investigation under its authority . . . [Emphasis added.]

[6] "Navigability, in the sense of the law, is not destroyed because the watercourse is interrupted by occasional natural obstructions or portages." (*Economy Light Co.* v. *United States*, 256 U.S. 113, 122 (1920).) See also: *The Montello*, 87 U.S. (20 Wall.) 430, 442–443 (1874); *United States* v. *Utah*, 283 U.S. 64 (1930); *United States* v. *Appalachian Electric Power Co.*, 311 U.S. 377 (1940).

[1] The additional dockets involved herein are set forth in Appendices A, B, and C attached hereto.

*Modified; rehearing denied by order issued August 7, 1964, 32 FPC 542.

tion filed on May 25, 1964, by Humble Oil & Refining Company (Humble) encompassing the rates for 165 of Humble's currently effective FPC Gas Rate Schedules. Comments have been filed by some of the parties to these proceedings, all of which have been given due consideration. In summary, the settlement proposal as filed by Humble provides:

(1) Settlement rates, including tax reimbursement, equal to or less than the Commission's applicable area ceilings with three exceptions hereinafter discussed.

(2) Humble waives the right to file for contractually authorized increased rates until June 1, 1967, for all of the rate schedules involved in the settlement. However, Humble reserves the right to file for any increased rates, if contractually authorized, up to the applicable area-rate levels established by any order or rule of the Commission, or to file for any contractually authorized increase in tax reimbursement;

(3) Humble will delete any favored nation and price redetermination clauses contained in Rate Schedule Nos. 21, 111, 122 and 125 and additionally will delete the periodic pricing provisions in Rate Schedule Nos. 1, 6, 11, 17, 108, 126, 171, 175, 183, 184, 201, 219 and 295;

(4) Refunds, with interest at the applicable rates, under rate schedules where collection was made subject to refund, of the difference between the revenues actually collected and those which would have been collected at the settlement rate, in each instance, commencing with May 1, 1961, to the date of issuance of this order for all of Humble's rate schedules, excepting Rate Schedule No. 126 for which the commencement date would be September 15, 1962, and Rate Schedule No. 39 for which no refund would be made;

(5) Exclusion from the settlement proposal of all Permian Basin sales; thirty-four sales related to previous offers of settlement accepted by the Commission; one sale to another producer whose resale rate is under suspension; and five sales consolidated in certificate proceedings that are presently before the Commission.

In support of its proposal, Humble states that the settlement rates, refunds, the moratorium period, and other provisions thereof not specifically noted herein, are in the public interest in that they are reasonable and will provide price stability for a long period of time for natural gas moving in interstate commerce.

With respect to refunds, the parties to the settlement conferences utilized cost-of-service studies and revenues based on contract rates to determine Humble's revenue-cost relationship. These studies indicate that it is appropriate that we require that refunds should be computed for sales made on and after May 1, 1961. However, as noted above, Humble proposes to make refunds under its Rate Schedule No. 126 from on and after September 15, 1962, and to make no refunds under its Rate Schedule No. 39. These rates schedules are for sales of natural gas made by Humble to Southern Natural Gas Company (Southern) in the Sandy Hook and Angie Fields in Mississippi and South Louisiana (Rate Schedule No. 39) and in the Gwinville Field in Mississippi (Rate Schedule No. 126).

Humble states, in its proposal, that special circumstances surround these sales which justify the shorter refund period for Rate Schedule No. 126, and no refunds under Rate Schedule No. 39. It cites the fact that at Gwinville the original contract was executed in 1947 for a ten-year term, and at that time it had interest in only two wells. During the term of the contract Humble participated in drilling forty-two additional wells in the field, and developed

approximately 235 billion cubic feet of additional reserves in the shallow formations in the field. In 1957, Humble states, it entered into a new contract with Southern for a twenty-year term. Part of the consideration for the new contract it says was the possible development of deeper formations in the field. Some deep development has been partially successful, and production therefrom had added more than ten percent to current deliveries to Southern.

At Sandy Hook, Humble states that the shallow formations were virtually depleted in 1959, and it began development of the deeper formations at that time. The deeper development has resulted in increased deliverability of the field by more than 4,400 percent. At Angie, Humble says the field is depleted, deliveries have ceased, and the leases have been released.

Humble states that it has acquired considerable acreage in the contract areas in both the Gwinville and the Sandy Hook fields in order to maintain and increase its deliveries to Southern. It proposes settlement rates of 15.968¢ per Mcf for Sandy Hook, and a rate of 15.0256¢ for Gwinville. It makes no proposal for a settlement rate for Angie.

We have considered all of the circumstances set forth by Humble in support of its proposal that the refund period under its Rate Schedule Nos. 39 and 126 be for a shorter period of time than the refund period for all other rate schedules involved in the settlement, and we do not find justification for a departure from the established policy of requiring refunds for all rate schedules, where refunds are due, for the same period of time. In *Pure Oil Company, et al.*, Docket No. G–16790, *et al.*, 28 FPC 889, we provided for different refund periods for two of Pure's rate schedules from the general refund period in order to make the refunds under those schedules conform to the established refund policy in the many *Transco-Seaboard* settlements we had approved[2] since the circumstances surrounding Pure's two rate schedules were the same as those in such settlements. In *Sinclair Oil & Gas Company*, Docket No. G–9291, *et al.*, 30 FPC 1620 (Order issued December 30, 1963) we departed from our established policy, but only in the method of distribution of the refunds. We noted there that the method we approved returned to each purchaser refunds in the same proportion in which it contributed to the total excess earnings of the producer.

Additionally, the circumstances set forth by Humble do not conform to circumstances which in other general rate settlements have caused us to permit exceptions to the general principles governing such settlements. The development by Humble in the fields here involved was entirely within the "contract acreage", as was the acquisition of additional leases, whereas in instances where we have approved exceptions to the applicable area increased rate ceiling, there has been acreage added to the original contract acreage which resulted in increase in deliverability under the contract. Therefore, we hereby condition our approval of the settlement proposal to require Humble to make refunds under its Rate Schedule Nos. 39 and 126 in the same manner, and for the same period of time, as we require for its other rate schedules where collection was made subject to refund. Applicable interest shall be paid on all of the refunds through May 31, 1964. Thereafter, Humble may elect, at its option, to either use these funds in its business and pay 6% interest thereon or to deposit such funds in a special escrow account for the sole benefit of the ultimate owners of such refunds and credit all interest actually earned thereon to the escrow account. As herein conditioned, such refunds will be approximately $8,869,000, exclusive of interest.

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[2] *E.g.: Texaco Inc., et al.*, Docket No. G–13169, *et al.*, 28 FPC 247, 249.

Humble's future revenues will be decreased approximately $3,485,000 annually as a result of the settlement.

The purchasers of gas under the various rate schedules to which this settlement proposal relates are all natural gas pipeline companies subject to our jurisdiction under the Natural Gas Act, and many of these purchasers in turn have customers who are natural gas pipelines. Some of these pipeline customers of Humble or of Humble's customers are required under express provisions of outstanding orders of this Commission to flow through to their customers all or part of any of the refunds they may receive from Humble as a result of this settlement; others may choose to do so in the absence of such express provisions. But in view of our duty to insure that the ultimate consumers of gas actually receive all of the benefits of our rate regulation to which they may be entitled, we shall take action here to assure that, within the limits of our jurisdictional reach, the refunds to be ordered actually flow to those parties legally and equitably entitled thereto.

We are not here determining that a pipeline purchaser from Humble or one down the line in the chain of resales between the producer and ultimate consumer are never entitled as a matter of law or equity to retain all or part of the refunds received from a supplier. We conclude only that merely because a pipeline is under no special express requirement to flow refunds through to its customers and did not previously pass on to its customers the producer's price increase (or higher gas costs arising from sales temporarily certificated at prices higher than that fixed in the settlement), does not determine that it is entitled to retain such refunds. Unlike the corresponding refund provisions of the Federal Power Act (Section 205(e), 16 U.S.C. 824(d)) and the Interstate Commerce Act (Section 15(7), 49 U.S.C. 15(7)), which provided that refunds must be paid "to the persons in whose behalf such amounts [increased rates] were paid," Section 4(e) of the Natural Gas Act does not specify to whom refunds are to be paid. And in *Federal Power Commission* v. *Interstate Natural Gas Co.*, 336 U.S. 577, the Supreme Court rejected the claim that pipeline purchasers were the legal owners of funds placed in escrow pursuant to the terms of a judicial stay of a Commission directed rate reduction, merely because the fund was created from their payments at the previous higher rate. See also *Central States Co.* v. *Muscatine*, 324 U.S. 138 (1945) (dissenting opinion).

Accordingly, we shall require Humble to retain the amounts of refund ordered herein until further order directing the nature of their disposition[3] and also to submit within 45 days of this order to the Commission and each customer a detailed report setting out, by purchasers, the amount of refund related to each rate schedule, the volume of gas sold thereunder and the period covered. We shall also by separate action direct each of the pipeline purchasers within ten days from the receipt of such report, to submit a report of their own setting forth whether they intend to pass on all or part of such refund amounts to their customers and the names of such customers and amounts of refund each would receive, or, if they claim the right to retain any portion of the refunds, a brief statement as to the legal or equitable basis for such claim. In the event such reports indicate that the refunds will flow through to ultimate consumers or distribution companies not subject to the Commission's jurisdiction, the Commission will authorize the release of such refund sums by Humble (unless a state regulatory authority after notification of the sum to be made

[3] Exempted from this requirement are the refunds to be made to Texas Eastern Transmission Corporation and Arkansas Louisiana Gas Company, since the amount of refunds to those companies is *de minimis*.

available to a company subject to its regulatory jurisdiction asks us to defer releasing the funds until it can determine their ultimate disposition). In the event a pipeline purchaser from Humble (or a pipeline customer of such a pipeline) indicates that it is asserting a claim to retain substantial refund sums the Commission will by further order prescribe the procedure for determining the relative rights to such funds of such pipeline or its customers.

Settlement rates which are exceptions to the applicable area ceilings are proposed by Humble for three sales of natural gas made by it to United in South Louisiana.

Two sales to United are made under Humble's FPC Gas Rate Schedule Nos. 35 and 314 in the Duck Lake Field, St. Mary and St. Martin Parishes, Louisiana, where the increased rate of 22.95¢ now being charged subject to refund for each sale is proposed to be reduced to 18¢ per Mcf. The initial rate under Rate Schedule No. 35 was 13.5¢ per Mcf, however, this rate was for a period of approximately one year, at which time the contract provided that the rate would escalate to 21.2¢ per Mcf. During that period of time, the Supreme Court issued its opinion in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, affirming Commission jurisdiction of the sale of natural gas by producers, and when Humble subsequently filed for the 21.2¢ contract rate it was suspended by order of the Commission.[4] Humble's Rate Schedule No. 314 covers interest in the field acquired by it from C. N. Johnston on March 1, 1961. Johnston had filed for the 21.2¢ increased rate, but had not filed to make it effective.[5] After acquisition, Humble, on September 27, 1962, filed for the 21.2¢ per Mcf contract rate. Thus, the same circumstance pertain to each of these schedules. The rate agreed upon by the parties for these sales is below the applicable area initial ceiling. We have considered all of the circumstances surrounding these sales and find them to be similar to others where we have in such circumstances, regarding other sales made to United in the same field, found the increased rate to be in the nature of an initial rate, *The Ohio Oil Company, et al.*, Docket No. RI60-92, *et al.*, 27 FPC 1373; *Cities Service Company, et al.*, Docket No. G-8921, *et al.*, 28 FPC 1108; *R. H. Goodrich, et al.*, Docket No. G-8977, *et al.*, 29 FPC 397; *Hunt Oil Company*, Docket No. G-9065, *et al.*, 30 FPC 220; *Texaco Inc.*, Docket No. G-8969, *et al.*, 30 FPC 1631 (Order issued December 30, 1963). We, therefore, find the settlement rates for these sales to be proper and approve the same.

The third exception contained in Humble's proposal involves a sale to United in the Weeks Island Field, Iberia Parish, Louisiana under Humble's FPC Gas Rate Schedule No. 235 at a present rate of 23.55¢ per Mcf. Prior to February 4, 1960, this sale was made under a six year contract which was to expire in 1961 and the dedication was limited to the known productive limits of the field. On February 4, 1960, the parties entered into a new contract for a twenty year term and containing a definite area dedication. Subsequent thereto Humble acquired 6,340.23 acres outside the known productive limits of the field, and developed the same. The production from this acreage has contributed substantial quantities of gas reserves, which will greatly increase the daily deliverability under the contract. Consideration of all of the circumstances surrounding this sale causes us to believe it to be similar to others where we have considered such a unique situation to warrant exception to the applicable area ceiling, *Gulf Oil Corporation, et al.*, Docket No. G-9520, *et al.*, 29 FPC 837,

[4] *Humble Oil & Refining Company*, Docket No. G-9574 (Order issued October 21, 1955).
[5] *C. N. Johnston, et al.*, Docket Nos. G-9136 and G-9569 (Order issued August 29, 1963), 30 FPC 623.

and, therefore, we find the settlement rate of 17.5¢ per Mcf to be proper and approve the same.

The settlement proposal includes rates for which issuance of related permanent certificates is pending, some of which are for deliveries presently being made under temporary authority.[4] We propose to set such applications for abridged statutory hearing in accordance with Section 7 of the Natural Gas Act, indicating that the settlement rates, as provided for herein, shall be the initial price. The certificate applications in Docket Nos. CI60–578, and G–12353, CI61–771 and CI61–794 are presently consolidated in the proceedings in *Sunray DX Oil Company, et al.*, Docket No. G–4281, *et al.*, from which proceeding they shall hereinafter be severed, however the certificates to be issued in such proceedings, along with the others containing upward Btu adjustment clauses shall be so conditioned as to be subject to final determination in Docket No. R–200. Included among the pending certificate applications are five rate schedules in Texas Railroad Commission District Nos. 3 and 4 where sales are being made under temporary certificates and in-line rates have not been determined for such sales. Consistent with our settlement orders in *Gulf Oil Corporation, et al.*, Docket No. G–9520, *et al.* (*supra*); *Sinclair Oil & Gas Company*, Docket No. G–9291, *et al.* (*supra*) and *Socony Mobil Oil Company, Inc.*, Docket No. G–12193, *et al.* (order issued May 28, 1964) we shall condition the certificates to require adjustment of the rates under Humble's FPC Gas Rate Schedule Nos. 325, 341, 342, 349 and 350 to conform with the appropriate in-line price determination, and require refunds from the date of this order if any rates are reduced.

On June 4, 1964, the Pennsylvania Public Utility Commission (PUC) filed its comments in answer to Humble's motion. PUC questions whether the Commission's continuation of approving settlement proposals, such as Humble's,". . . best serves the public interest in producer regulation." As we have pointed out recently in our order approving the settlement in *Socony* (*supra*) we consider the refunds, which are based on cost-of-service determinations; the reduction in rates; and the stability in rates gained through moratoria, pending determination of just and reasonable rates in the area rate proceedings, to be in the public interest. PUC states that our approval of settlements removes ". . . a major segment of the producing industry from area rate proceedings." However as we stated in our order in *Southwest Gas Producing Company, Inc.* (Operator), *et al.*, Docket No. G–16714, *et al.*, 31 FPC 192 (January 27, 1964):

> All of our orders approving settlement proposals or agreements are unqualifiedly subject to final determination in area proceedings, or proceedings of a similar nature. * * *

Each of our settlement orders expressly provide that our approval of the settlement is without prejudice to any findings or orders we may issue in area rate or similar proceedings, and, further, is without prejudice to any claims or contentions any party may make in such proceedings. The reduction in rates obtained through settlement pending final determination in such proceedings, and the stability gained in the interim is of inestimable value to the consuming public. Our conditional approval of Humble's proposal results in Humble refunding approximately 62% of amounts collected above the settlement rates, subject to refund, and the reduced rates of $2,577,000 annually will constitute disallowance of approximately 56% of the increased rates currently being collected in Section 4(e) proceedings. Additionally, six of Humble's rates are

[4] See Appendix B attached hereto.

being reduced below the "last-firm-rate", of which three are not subject to Section 4 proceedings.[1]

As conditioned herein, we believe that the principles underlying the present settlement proposal are consistent with those utilized in previous major independent producer rate settlements.

Our action herein should not be construed as constituting approval of any future rate increases, if any, that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in future proceedings, including area rate or similar proceedings, involving Humble's rates and rate schedules.

The Commission finds:

The proposed settlement of the subject proceedings on the basis described herein, as more fully set forth in the Settlement Proposal filed by Humble and as herein conditioned on May 25, 1964, is in the public interest, and it is appropriate in carrying out the provisions of the Natural Gas Act, that it be approved and made effective as hereinafter ordered, and good cause exists for approving the settlement rates, for severing and terminating certain proceedings and providing for refunds.

The Commission orders:

(A) The settlement of these proceedings on the basis of the settlement proposal as herein conditioned, filed by Humble on May 25, 1964, is approved and made effective subject to the terms and conditions herein.

(B) The applicable settlement rates set out in Appendix A hereto are approved, and such rates shall be effective as of July 1, 1964.

(C) The settlement rates approved herein shall be applicable during the moratorium period herein provided for to all sales of natural gas from all acreage dedicated as of the date of issuance of this order under each of the rate schedules currently on file with the Commission whether such sales are made by Humble, its successors or assignees.

(D) Approval of this settlement is conditioned so as to require Humble to reduce its rates under its FPC Gas Rate Schedule Nos. 325 and 342, Docket Nos. CI63–1057 and CI64–677, respectively, to the in-line rate finally determined, after court review or otherwise, in the *H. L. Hawkins, et al.*, proceedings, Docket No. G–18077, *et al.*, and to reduce its rates under its Rate Schedule Nos. 341, 349 and 350, Docket Nos. CI64–298, CI64–297 and CI64–299, respectively, to the in-line rate finally determined after court review or otherwise in the *Turnbull and Zoch Drilling Co. (Operator), et al.*, proceedings, Docket No. G–17960, *et al.* In the event that a rate is reduced as a result of such proceedings, Humble shall refund excess amounts collected from the date of this order. The refund requirement imposed herein shall not be construed to affect or limit the position of the parties in the *Hawkins* or *Turnbull* proceedings with respect to refund obligations under temporary authorizations.

(E) Humble shall compute the difference between the rates collected subject to refund and the related settlement rates for the period from May 1, 1961, to the date of this order, together with interest as specified in each docket to May 31, 1964. Humble shall within 45 days from the date of this order submit a report to the Commission, and serve a copy on each of the purchasers involved, setting out by purchasers the amount of refunds related to each rate schedule

[1] The annual reduction in rates effectuated by our approval of this settlement under these six rate schedules approximates $900,000.

(showing separately the principal and applicable interest), the bases used for such determination and the periods covered.

(F) Humble shall retain the amounts shown in the report required under paragraph (E) above, subject to further order of the Commission directing the disposition of those amounts, *provided, however*, Humble shall within 90 days from the date of this order, (1) refund with interest as specified in each docket computed to May 31, 1964, the difference between the rates collected subject to refund and the related settlement rates, on and after May 1, 1961, to the date of this order for all of such of Humble's Rate Schedules, where the rates were collected subject to refund for sales of natural gas to Texas Eastern Transmission Corporation and Arkansas Louisiana Gas Company, and (2) report to the Commission in writing, the amount of refunds made to Texas Eastern and Arkansas Louisiana showing separately the amount of principal and interest so paid, and the bases used for such determination, together with releases from its purchasers showing receipt of the refunds in conformity with the settlement proposal as conditionally approved herein.

(G) If Humble elects to commingle these retained refunds with its general assets and use them for its corporate purposes, it shall pay interest thereon at the rate of 6% per annum on all funds thus available from August 21, 1964, to the date on which they are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission.

(H) If Humble elects to deposit the retained refunds in a special escrow account, Humble shall tender for filing on or before August 21, 1964, an executed Escrow Agreement, conditioned as set out below accompanied by certificate showing service of a copy thereof upon each of its jurisdictional customers. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Humble and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(1) Humble, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such Agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable only for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its rea-

sonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the trust account for the quarterly period.

(I) Humble shall, over the signature of a responsible officer, file with the Commission, within 30 days from the date of the issuance of this order, an original and one copy of its acceptance or rejection of the terms and conditions of this order, including specifically the refund requirements under its Rate Schedule Nos. 39 and 126, and the requirement for possible future refunds under its Rate Schedule Nos. 325, 341, 342, 349 and 350.

(J) Any party to the proceedings or settlement negotiations having objections to the terms of this Order shall within 30 days from the date of issuance of this Order set forth such objections in writing to the Commission (Original and one copy), and by serving copies on the other parties.

(K) If as a result of any objections filed pursuant to paragraph (J) hereof, the Commission by subsequent order changes Humble's duties and obligations hereunder, Humble's acceptance of this settlement order shall not be binding on it without its express agreement.

(L) The pending certificate proceedings set out in Appendix B hereto shall not be terminated on the basis of the approval of the settlement proposal, but shall be determined after hearing in accordance with Section 7 of the Natural Gas Act and the terms and conditions of this order.

(M) Within 90 days from the date of this order, Humble shall make such filings under its rate schedules as are required to make effective the terms of the settlement proposal.

(N) Upon full compliance by Humble with all the terms and provisions of this order, the Section 4(e) proceedings listed in Appendix A and B hereto, and the Section 5(a) proceedings in Docket Nos. G–9287 and G–9288, shall terminate.

(O) Upon termination of the Section 4(e) proceedings listed in Appendix C hereto, in accordance with paragraph (N) above, said proceedings shall be severed from the consolidated proceedings in Docket Nos. AR61–2, AR64–1 and AR64–2, respectively; the Section 7(c) proceedings listed in Appendix C are hereby severed from their respective consolidated proceedings.

(P) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Humble, the Commission staff, or any affected party hereto, in any proceedings now pending, including area rate or similar proceedings, or hereafter instituted by or against Humble or any other companies, person or parties affected by this order.

APPENDIX A

HUMBLE OIL & REFINING COMPANY

FPC RATE SCHEDULES—DOCKET NOS. G–9287, G–9288, ET AL.

Rate schedule No.	Field (area)	Purchaser	Docket No.		Cents Mcf at area pressure base (subject to Btu adjustment where applicable)		
			Certificate	Sec. 4(e) rate increase	Not subject to refund	Rate in effect Feb. 1, 1964	Proposed settlement rate
	Texas RRC District No. 1—14.65 psia						
134	Vinegarone	El Paso Natural	G–14840		14.0	14.0	14.0
170	San Miguel Creek and Dilworth	Transcontinental	G–20136	RI64–599 [1]	*14.189	14.189	[20] 14.189
	Texas RRC District No. 2—14.65 psia						
4	Cabeza Creek, Gottscholt-Weesatche	United Gas	G–3066		12.1536	12.1536	[3] 13.1664
6	Heyser	Tennessee Gas	G–3067	G–17144 [3]	11.02818	15.33333	[20] 15.0
7	Hordes Creek	United Gas	G–3068		12.1536	12.1536	[3] 13.1664
137	Ramirena, Southwest	Natural Gas Pipe	G–15254	RI63–383 [3]	*14.5	15.5	14.5
270	Theis Wilcox	Texas Eastern	CI61–1254		12.0	12.0	12.0
272	Heard Ranch and Medio Creek	Trunkline	CI61–1306		*15.25	15.25	15.25
273	Normanna	United Gas	CI61–1360		*17.595	17.595	16.0
312	Ramirena Southwest	Valley Gas Transmission	CI63–287		*14.0	14.0	14.0
	Texas RRC District No. 3—14.65 psia						
1	Sabine Tram	Trunkline	G–3079	RI63–84 [3]	9.78656	15.144	[20] 15.0
122	Rock Island (Luckett Unit)	Tennessee Gas	G–12171	G–17144 [3]	*13.27820	15.95016	[25 27] 14.6
125	West Rock Island	do	G–13108	G–17144 [3]	*13.27820	15.95016	[25 27] 14.6
318	South Angleton	Natural Gas Pipe	CI63–621		*18.0	18.0	17.0
338	Sugar Valley	do	CI61–157		*16.0	16.0	16.0
343	Big Hill	Texas Eastern	G–4111	RI64–227	*14.6	14.6	14.6
	Texas RRC District No. 4—14.65 psia						
11	District No. 4 area	Tennessee Gas	G–3072	G–19429, [3] RI60–308 [3]	12.12268	17.24347	[20] 15.0
17	Mariposa	do	G–3078	G–19429, [3] RI60–308 [3]	12.12268	17.24347	[20] 15.0
113	Brownlee	Alfred Production	G–9616		10.0960	10.0960	10.0960
139	West Charamousca	Coastal States	G–15272		9.0	9.0	9.0
271	Chihuahua	South Texas Gas	CI61–1296		*14.7	14.7	14.7
339	South Lundell	Natural Gas Pipe	CI63–1453		*16.0	16.0	16.0

	Texas RRC District No. 6—14.65 psia						
21	Woodlawn	Mississippi River Fuel	G-3083	RI62-296	14.1344	14.6392	[37] 14.6
38	Waskom	Arkansas Louisiana	G-3100		11.7438	11.7438	11.7438
108	Red Springs	Lone Star	G-8523	RI64-25	14.49	16.56	[38] 15.0
111	Woodlawn	Mississippi River Fuel	G-8835	RI61-542, RI64-092 [4]	13.630	14.1344	[37] 14.6
151	Southeast Joaquin	Texas Eastern	G-17802	RI61-132, RI62-102	14.8		[5] 14.8
267	Mount Selman	United Gas	CI61-1098		10.8876	10.8876	10.8876
315	East Woodlawn	Arkansas Louisiana	CI63-501		[6] 11.2996	11.2996	11.2996
	Texas RRC District No. 10—14.65 psia						
18	Texas Hugoton	Phillips Petroleum	G-3080		6.195	6.195	6.195
20	do	do	G-3082		10.0853	10.0853	10.0853
70	Panhandle (Pampa)	do	G-6773		4.2431	4.2431	4.2431
121	Hansford	Northern Natural	G-12175	RI63-64 [8]	[6] 16.5	17.5	16.5
153	West Panhandle	Colorado Interstate	G-18123	RI64-408 [7]	[6] 12.0	12.0	12.0
230	Panhandle Area	Transwestern	G-15714		[6] 17.0	17.0	17.0
252	Hansford Field (Nolliner)	Panhandle Eastern	CI61-697		[6] 16.5	16.5	16.5
303	Hansford (Hurliman Unit)	do	CI62-1094		[6] 17.0	17.0	17.0
334	Hansford	Northern Natural	CI64-164		[6] 15.0	15.0	15.0
	Mississippi—15.025 psia						
27	Carthage Point	Humble Gas Transmission	G-3102	RI62-253	14.0	18.0	[9] 14.0
39	Sandy Hook-Angie	Southern Natural	G-3132	G-9679, G-11539 (Miss.), G-16958 [10], RI63-186 (La.)	15.968 / (Miss.). 16.0 / (La.).	17.016 / 16.5	[9] 15.968 / [39] 16.0
110	Pistol Ridge	United Gas	G-8816	G-20086	[6] 20.126	24.0	20.0
126	Gwinville	Southern Natural	G-3105	G-14107, RI63-194	7.3236	21.0	[36] [39] 15.0256
154	Soso	United Gas	G-3103	G-18670	11.979	22.88	14.0
155	Baxterville	do	G-3104	G-18670	11.979	22.88	14.0
	Louisiana, South—15.025 psia						
23	Erath	United Fuel Gas	G-3109	G-9508, G-11313, G-13615 [10], G-16687, G-20014	[6] 21.50	22.8810	21.25
24	Cameron Meadows	do	G-3108	G-9521, G-11314, G-13443, G-16687 [10], G-19903, RI61-132, RI62-82, RI63-94, RI64-236 [11]	[6] 17.5	20.7	17.5

See footnotes at end of table.

APPENDIX A—continued

HUMBLE OIL & REFINING COMPANY

Rate schedule No.	Field (area)	Purchaser	Docket No.		Cents Mcf at area pressure base (subject to Btu adjustment where applicable)		
			Certificate	Sec. 4(e) rate increase	Not subject to refund	Rate in effect Feb. 1, 1964	Proposed settlement rate
	Louisiana, South—15.025 psia—Continued						
25	Ellis	United Fuel Gas	G-3110	G-9522, G-11315, G-13443, G-16801 [10], G-19903, RI61-132, RI62-82, RI63-94, RI64-236 [11]	*17.5	20.7	17.5
26	Avery Island	do	G-3106	G-9523, G-11316, G-13443, G-16801 [10], G-19903, RI61-132, RI62-82, RI63-94, RI64-236 [11]	*17.5	20.7	17.5
34	Roanoke	United Gas	G-3116		10.5	10.5	10.5
35	Duck Lake	do	G-3112	G-9574, G-11317, G-13609 [10], G-15180	15.25	22.95	[12] 18.0
36	South Crowley	Tennessee Gas	G-3117	G-16698 [10]	10.72633	22.8333	15.75
37	Bayou Sale	do	G-3017	G-16698 [10]	10.72633		[13] 15.751
120	Bayou Des Glaise	Gas Gathering Corp	G-11857	G-20214 [10]	*15.25	20.55 (1st 3,000 Mcf/D) 21.30 (Excess).	15.75
123	Lapeyrouse	United Gas	G-12422	RI62-321 [10]	*20.25	22.25	20.25
124	Halter Island, Palmetto Bayou, Bayou Penchant, Deer Island, 4-League Bay.	do	G-13009	RI64-22	*21.75	22.75	21.25
127	Lake Palourde	Texas Gas Transmission	G-14154	RI62-287 [10]	*21.75	23.75	21.25
135	Florence	United Fuel Gas	G-14967	G-16957, G-19903, RI61-132 [10], RI62-82, RI63-94	*18.70	20.70	18.70

140	Chenière Perdue	American Louisiana	G-15365	RI64-72	*19.75	22.25	19.75
143	Chalkley	Texas Gas Transmission	G-3101		12.5464	12.5464	12.5464
145	Go Around Bayou	United Fuel Gas	G-17105	G-19903 RI61-132 RI62-82 [10] RI63-94 RI64-236 [11]	*19.10	20.7	19.10
149	Northeast Gibson	United Gas	G-17570	RI62-393 [10]	*20.25	22.25	20.25
156	Chenière Perdue, East	American Louisiana	G-18605		19.75	19.75	19.75
166	Calcasieu Pass	United Fuel Gas	G-19416	RI61-133 RI62-83 [10] RI63-95 RI64-237	*19.50	20.7	19.50
235	Weeks Island	United Gas	G-9726	RI60-187 [10]	*10.497	23.55	17.5
245	Houma	do	G-3111	RI61-78 [10]	*10.497	23.25	15.75
281	Bayou Sale and Bayou Carlin	Trunkline	CI60-259		*23.25	23.25	21.25
314	Duck Lake (C. N. Johnston)	United Gas	CI63-455	RI63-172 [10]	*14.25	22.95	18.0
	Louisiana, North—15.025 psia						
172	Dubach	Mississippi River Fuel	G-4552		13.70	13.70	13.70
173	Sugar Creek	United Gas	G-4554		13.05076	13.05076	13.05076
176	Hico-Knowles and Choudrant	Mississippi River Fuel	G-4551		13.70	13.70	13.70
185	Ivan	Arkansas Louisiana	G-4555		13.453	13.453	13.453
195	Red Rock and East Red Rock	Louisiana-Nevada Transit	G-10230		13.0	13.0	13.0
201	Bethany-Longstreet	Texas Eastern	G-11224	RI64-236 [13]	15.8007	15.8007	[12] 16.7756
216	Bull Creek	Texas Gas Transmission	G-15268		*18.25	18.25	18.25
222	Cotton Valley	United Gas	G-17472		13.55076	13.55076	13.55076
223	Red Rock-North Shongaloo, R. Carterville	Texas Gas Transmission	G-18289		*18.25	18.25	18.25
224	Red Rock-North Shongaloo	do	G-18290		*15.75	15.75	15.75
225	Red Rock-North Shongaloo	do	G-18291		*13.75	13.75	13.75
228	Locust Ridge	Tensas Gathering	G-19048		*14.5	14.5	14.5
230	Mount Sinai	Arkansas Louisiana	G-19597		13.453	13.453	13.453
231	Calhoun	Texas Gas Transmission	G-20036		*18.75	18.75	18.75
233	Ada	Arkansas Louisiana	G-11378		*11.256	11.256	11.256
268	Chenière Creek	do	CI61-1177		*18.33	18.33	18.33
305	Menden	Texas Gas Transmission	CI62-1236		*18.25	18.25	18.25
306	Colquitt	Arkansas Louisiana	G-15893		13.453	13.453	13.453
309	Chenière Brake	do	CI63-30		*18.333	18.333	18.333
310	Holly Ridge	American Louisiana	CI61-307		*18.5	18.5	18.5
324	Killens Ferry	United Fuel Gas	G-19191	RI64-267 [11]	*18.5	18.5	18.5
	Oklahoma-Panhandle—14.65 psia						
181	Floris (M. B. Dorman Lease)	Michigan Wisconsin	G-4987		*10.0	10.0	10.0
189	South Greenough (Tretbar Unit)	do	G-6827		*10.0	10.0	10.0
190	Blair Unit	Natural Gas Pipe	G-9567	G-11752 [15] G-14261 [15] RI61-392 [9] RI62-306 RI63-216	*16.0	17.4	[14] 16.0

See footnotes at end of table.

APPENDIX A—continued

HUMBLE OIL & REFINING COMPANY

Rate schedule No.	Field (area)	Purchaser	Docket No.		Cents Mcf at area pressure base (subject to Btu adjustment where applicable)		
			Certificate	Sec. 4(e) rate increase	Not subject to refund	Rate in effect Feb. 1, 1964	Proposed settlement rate
	Oklahoma-Panhandle—14.65 psia—Continued						
191	Camrick, Southeast	Natural Gas Pipe	G-9765, G-11836, G-13188	G-12208 [41], G-14667 [41], G-17990 [41], RI60-186 [6], RI61-392, RI62-353, RI63-330, RI64-621 [15]	[20] *16.0, [20] *16.2, [20] *16.4	17.4	16.0, [20] 16.2, [20] 16.4
194	Camrick (Washburn-Topping Units)	Kansas Nebraska	G-10166	RI61-542 [6]	*16.0	17.0	16.0
196	South Greenough	Panhandle Eastern	G-10322	RI62-168 [6]	12.2827747	13.1760674	12.2827747
197	Mocane	Colorado Interstate	G-10383 [16], G-12353 [17], G-16793	RI62-401 [6]	*15.0	17.0	**15.0
198	Greenough (Elden Beard Unit)	Panhandle Eastern	G-10920	RI62-223, RI63-194 [6]	*12.2827747	17.0	12.2827747
199	Greenough (J. L. Still Unit)	do	G-10924	RI62-223, RI63-194 [6]	*12.2827747	17.0	12.2827747
200	Camrick, Southeast (Gulf Coast Western "B" Unit)	Natural Gas Pipe	G-11109	G-15176 [41], G-18463 [41], RI60-361 [6], RI61-392, RI62-401, RI63-406, RI64-692 [18]	*16.2	17.4	16.2
				G-14666 [41], G-17990 [41], RI60-186 [6]	*16.0	17.2	16.0
202	Guymon-Hugoton (Enns)	Panhandle Eastern	G-11608	RI61-392, RI62-354, RI63-338, RI64-620 [18]	*17.0		[20] 17.0
203	Elmwood, Southeast and Southwest (Ross Mitchell Unit)	Northern Natural	G-11739	RI62-253 [6]	*15.0	16.0	**15.00
205	Greenough-Light (Prewitt C-653)	Panhandle Eastern	G-12026	RI62-224, RI63-195 [6]	*12.2827747	17.0	12.2827747

213	Camrick, Southeast (Trimmel Unit)	Natural Gas Pipe	G-14638	G-18090 [41] RI60-186 RI61-392 [6] RI62-354 RI63-331 RI64-620 [31]	*16.4	17.4	16.4
215	Camrick, Southeast (Alice McDonald)	do	G-15095	G-18325 [41] RI60-186 RI61-392 [6] RI62-354 RI63-338 RI64-620 [31]	*16.4	17.4	16.4
220	Camrick, Southeast (York Unit)	do	G-16973	G-18090 [41] RI60-186 RI61-392 [6] RI62-354 RI63-338 RI64-620 [31]	*16.4	17.4	16.4
221	Dower (West Arthur Gray Unit)	Northern Natural	G-15900	RI61-92 RI62-488 [6]	*15.5	17.5	15.5
227	Camrick, Southeast (C. B. Gift Unit)	Natural Gas Pipe	G-18882	RI60-186 RI61-392 RI62-354 [6] RI63-338 RI64-620 [31]	*16.6	17.4	16.6
229	Camrick, Southeast (G. O. Pope)	do	G-19515	RI60-186 RI61-392 RI62-354 [6] RI63-338 RI64-620 [31]	*16.6	17.4	16.6
242	Camrick (Collins Unit)	Natural Gas Pipe	CI60-626	RI61-392 RI62-354 [6] RI63-338 RI64-620 [31]	*16.8	17.4	16.8
253	Camrick (Gray Unit)	do	CI61-723	RI61-392 RI62-354 [6] RI63-338 RI64-620 [31]	*16.8	17.4	16.8
297	Mocane Light	Western Gas Service	CI62-619		*9.8262	9.8262	9.8262
256	Northwest Dower Gas (Sager and Sims Units)	Natural Gas Pipe	CI61-1050	RI62-411 RI63-339 [6] RI64-621 [15]	*17.0	17.4	17.0
279	Camrick (Mayflo-Kerns Unit)	Northern Natural	CI62-566		*17.0	17.0	17.0
321	Camrick	Natural Gas Pipe	CI63-681		*17.0	17.0	17.0
326	Do	do	CI63-1120		*12.0	12.0	12.0
327	Como	Northern Natural	CI63-1162		*17.0	17.0	17.0
333	Camrick	Natural Gas Pipe	CI64-86		*12.0	12.0	12.0
	Oklahoma, Other—14.65 psia						
171	Katie	Lone Star Gas	G-4092	RI60-270	8.0	12.35	[43] 10.0
175	Dillard Gas (Plant Residue)	do	G-4801	RI60-262	11.0	16.8	[43] 12.0

See footnotes at end of table.

APPENDIX A—continued

HUMBLE OIL & REFINING COMPANY

Rate schedule No.	Field (area)	Purchaser	Docket No.		Cents Mcf at area pressure base (subject to Btu adjustment where applicable)		
			Certificate	Sec. 4(e) rate increase	Not subject to refund	Rate in effect Feb. 1, 1964	Proposed settlement rate
	Oklahoma, Other—14.65 psia—Continued						
180	West Edmond	Cities Service	G-4910		10.5	10.5	10.5
183	Golden Trend Natural	Lone Star Gas	G-4986	RI60-270	11.0	16.8	[34] 12.0
209	Chickasha	Arkansas Louisiana	G-13574	RI63-383	12.0	13.0	12.0
219	Golden Trend (Grimes Lease)	Lone Star Gas	G-17046	RI60-262	11.0	16.8	[34] 12.0
284	Beaver, Northwest	Arkansas Louisiana	CI62-242	RI63-383	*12.0	13.0	12.0
285	Do	do	CI62-243	RI63-383	*12.0	13.0	12.0
286	Richland	do	CI62-244	RI63-383	*12.0	13.0	12.0
328	Sho-Vel-Tum	Lone Star Gas	CI63-1163	RI63-471	*15.0	16.0	15.0
337	Arkoma Area	Arkansas Louisiana	CI63-20		*15.0	15.0	15.0
	Oklahoma, Carter Knox—14.65 psia						
232	Deep Knox	Lone Star Gas	G-20293	RI63-471	*16.8	17.9	16.8
	North Dakota						
187	Cedar Creek	Montana-Dakota	G-4988		*5.0	5.0	[33] 5.0
	Wyoming—15.025 psia						
184	Worland	do	G-4909	RI64-624	10.5	10.5	[34] [35] 14.0256
210	East LaBarge	El Paso Natural	G-13579	RI62-122	*15.384	17.0	15.384
214	Elk Basin (Plant Residue)	Montana-Dakota	G-4862		*8.0	8.0	8.0
218	Dry Piney Unit	Mountain Fuel	G-16430	RI64-408 [33]	*15.0	15.0	15.0
226	Elk Basin (Johnson-Watson No. 14)	Montana-Dakota	G-18486		*10.0	10.0	[34] 13.0
249	Green River	El Paso Natural	CI60-65		*15.384	15.384	15.384
250	Figure 4 Canyon Unit	do	CI60-66		*15.384	15.384	15.384
335	Vermillion Creek	Mountain Fuel	CI63-1542		*12.0	12.0	12.0
	Kansas—14.65 psia						
188	Hugoton	Northern Natural	G-5143		*11.0	11.0	11.0
192	Hardtner	Cities Service	G-10073	G-20281 [6] [41]	*12.0	13.0	12.0
193	Greenwood	Colorado Interstate	G-10131	G-17785, [6] [41] RI64-357 [33]	*15.0	16.0	**16.0
204	Taloga	Panhandle Eastern	{G-14793 G-11922	RI62-354 [6]	*15.5 [39] *16.0	16.5 [39] 16.0	15.5 [39] 16.0

206	Light	do	G-12855	{RI62-234 / RI63-195 [5]}	*12.2827747	17.0	12.2827747
207	Adams Ranch	Colorado Interstate	G-12869	RI62-401 [6]	*15.0	17.0	**15.0
208	Hugoton	Northern Natural	G-13278	RI61-132 [5]	*12.0	17.0	12.0
211	Greenough-Leslie	Panhandle Eastern	G-14292	RI63-216 [5]	*16.0	17.0	16.0
217	Hugoton	Northern Natural	G-15913	RI62-488 [5]	*13.5	14.5	13.5
240	do	Colorado Interstate	G-4861	{RI60-474 [5] / RI64-369 [25]}	8.0	12.5	11.0
329	do	Kansas-Nebraska	G-4991		11.0	11.0	11.0
	Utah—15.025 psia						
212	Aneth Area	El Paso Natural	G-14369		*17.7	17.7	17.7
	Nebraska						
174	West Big Springs	Kansas-Nebraska	G-4803		12.625	12.625	[27] 12.625
	Colorado—15.025 psia						
336	Blanco	El Paso Natural	CI64-340	RI64-408 [28]	*12.0	12.0	[31] 13.0
	New Mexico, San Juan—15.025 psia						
146	Bisti	do	G-17200	{RI64-49 / RI64-387 [29]}	*13.0	13.2535	13.0
162	North Lindrith (Mesaverde)	do	G-19315	{RI64-49 / RI64-387 [29]}	12.0	12.2340	[32] 13.0

* Initial rate.
** Rate subject to upward Btu adjustment.
[1] Increase to 15.2025 cents suspended until 8-10-64, RI64-590.
[2] Increase to 13.1664 cents effective 6-19-64.
[3] Consolidated in AR64-2, et al.
[4] Increase to 14.6392 cents suspended until 10-1-64, RI64-692.
[5] Abandoned 7-18-63. Last effective rate was 15.2 cents.
[6] Consolidated in AR64-1, et al.
[7] Increase to 13.0 cents suspended until 11-1-64, RI64-408.
[8] Application for abandonment filed.
[9] Applies to Mississippi sales only; Louisiana reserves depleted and leases abandoned.
[10] Consolidated in AR61-2, et al.
[11] 21.1 cents effective 4-1-64.
[12] Abandoned 12-17-62. Last effective rate was 22.8333 cents.
[13] 16.8263 cents effective 4-1-64, RI64-236.
[14] Abandoned 9-19-62.
[15] Increase to 17.6 cents suspended to 8-21-64, RI64-621.
[16] Does not include acreage added by Supplement No. 9, which is included in Appendix B.
[17] Does not include acreage added by Supplement No. 7, which is included in Appendix B.
[18] Increase to 17.6 cents suspended to 10-10-64, RI64-692.
[19] Increase to 17.4 cents suspended to 8-22-64, RI64-620.
[20] Applicable to acreage added by Supplement.
[21] Increase to 17.6 cents suspended to 8-21-64, RI64-620.
[22] Rate stated at 15.025 psia.
[23] Increase to 16.0 cents suspended to 6-6-64, RI64-408.
[24] Increase to 13.0 cents filed 5-1-64.
[25] Increase to 17.0 cents suspended to 6-1-64, RI64-387.
[26] Increase to 13.5 cents suspended to 6-1-64, RI64-369.
[27] Rate stated at 16.4 psia.
[28] Increase to 13.0 cents suspended to 6-1-64, RI64-408.
[29] Increase to 14.2730 cents suspended to 6-1-64, RI64-387.
[30] Increase to 13.2535 cents suspended to 6-1-64, RI64-387.
[31] Humble will delete the provision of Article XI, Section 2, of the contract (first paragraph, page 15) which guarantees 1 cent/Mcf for liquids.
[32] Humble will delete the provision of Article XIV, Section 2, of the contract (first paragraph, page 20) which guarantees 1 cent/Mcf for liquids.
[33] Certain sour flash vapor gas at a rate of 5.0 cents per Mcf covered by amendment dated 1-21-63, Supplement No. 1 to Rate Schedule No. 170.
[34] Increase to 15.384 cents suspended to 8-1-64, RI64-624.
[35] Rates are subject to 0.21931 cent per Mcf deduction for dehydration, as applicable.
[36] Humble to delete any favored nation, price redetermination and fixed price escalation provisions in the rate schedule.
[37] Humble to delete any favored nation or price redetermination provisions in the rate schedule.
[38] Rate for refund purposes.
[39] Rate subject to 0.5 cent per Mcf deduction for gas requiring compression by purchaser.
[40] Settlement rate includes 0.15 cent per Mcf service charge for services performed by seller.
[41] Formerly The Carter Oil Co.

APPENDIX B

HUMBLE OIL & REFINING COMPANY

FPC RATE SCHEDULES—DOCKET NOS. G–9287, G–9288, ET AL. PENDING CERTIFICATE APPLICATIONS AND AMENDMENTS

Rate schedule No.	Field (area)	Purchaser	Docket No.		Cents/Mcf at area pressure base (subject to Btu adjustment where applicable)		
			Certificate	Sec. 4(e) rate increase	Not subject to refund	Rate in effect Feb. 1, 1964	Proposed settlement rate
	Texas RRC Dist. No. 3—14.65 psia						
325	Quicksand Creek	Trunkline	CI63–1057		*17.0	17.0	17.0
342	Pledger-Miocene	Natural Gas Pipe	CI64–677		*17.0	17.0	17.0
	Texas RRC Dist. No. 4—14.65 psia						
344	North Magnolia City	Tennessee Gas	CI61–158		*17.24347	17.24347	15.0
341	Northeast Kohler, et al	do	CI64–298		*16.0	16.0	16.0
349	Willamar & Willamar, Southeast	Natural Gas Pipe	CI64–297		*16.0		16.0
350	Sal del Rey; Sal del Rey, West; La Coma & Cerda.	do	CI64–299		*16.0		16.0
	Texas RRC Dist. No. 6—14.65 psia						
307	Bryans Mill	do	CI62–1275		*15.0	15.0	15.0
	Mississippi—15.025 psia						
205	Gwinville (Unit 112)	United Gas	CI62–542	G–18107	11.97872	22.88	[5] 15.0256
	Oklahoma, Panhandle—14.65 psia						
197	Mocane	Colorado Interstate	G–10383 [1], G–12353 [2]	RI62–401 [3]	*15.0	17.0	**15.0
248	East Mocane	Panhandle Eastern	CI60–578		*17.0	17.0	**17.0
322	Mocane-Laverne	do	CI63–731		*17.0	17.0	17.0
340	Mocane	Colorado Interstate	CI64–626		*17.0	17.0	**17.0
	Kansas—14.65 psia						
254	Light Heirs Farm	Panhandle Eastern	CI61–771		*16.0	16.0	**16.0
255	Hugoton (Ediger Unit)	Colorado Interstate	CI61–794	RI64–518	*12.5 / *15.0	13.5	12.5 / **[4] 15.0
	Utah—15.025 psia						
298	Walker Hollow Unit	El Paso Natural	CI62–620		*15.0	15.0	15.0

*Initial rate.
**Rate Subject to upward Btu adjustment. Certificate, with respect to the Btu adjustment provision, shall be subject to ultimate disposition in Docket No. R–200, prospectively, from effective date of final order in Docket No. R–200.
[1] Applicable only to acreage added by Supplement No. 9.
[2] Applicable only to acreage added by Supplement No. 7.
[3] Consolidated in AR64–1, et al.
[4] Applies to gas produced from below base of Chase formation.
[5] Humble to delete any favored nation, price redetermination and fixed price escalation provisions in the rate schedule.

APPENDIX C

HUMBLE OIL & REFINING COMPANY

DOCKET NOS. G-9287, G-9288, ET AL.

Dockets in AR61-2	
Docket No.	R.S. No.
G-9508	23
G-9521	24
G-9522	25
G-9523	26
G-9574	35
G-9679	39
G-11313	23
G-11314	24
G-11315	25
G-11316	26
G-11317	35
G-11539	39
G-13443	24, 25, 26
G-13609	35
G-13615	23
G-15180	35
G-16687	23, 24
G-16698	36, 37
G-16801	25, 26
G-16957	135
G-16958	39
G-19903	24, 25, 26, 135, 145
G-20014	23
G-20214	120
R160-187	235
RI61-78	245
RI61-132	24, 25, 26, 135, 145
RI61-133	166
RI62-82	24, 25, 26, 135, 145
RI62-83	166
RI62-287	127
RI62-321	123
RI62-393	149
RI63-94	24, 25, 26, 135, 145
RI63-95	166
RI63-172	314
RI63-186	39

Dockets in AR64-1	
Docket No.	R.S. No.
G-11752	190
G-12208	191
G-14261	190
G-14666	202
G-14667	191
G-15176	200
G-17785	193
G-17990	191, 202, 213, 220
G-18090	215
G-18325	200
G-18463	192
G-20281	191, 202, 213, 215, 220, 227, 229
RI60-186	200
RI60-361	240
RI60-474	221
RI61-92	208
RI61-132	190, 191, 200, 202, 213, 215, 220, 227, 229, 242, 253
RI61-392	194
RI61-542	196
RI62-168	198
RI62-223	199, 205
RI62-224	206
RI62-253	203
RI62-306	190
RI62-353	191, 202, 204, 213, 215
RI62-354	220, 227, 229, 242, 253
RI62-401	197, 200, 207
RI62-411	256
RI62-488	217, 221
RI63-64	121
RI63-194	198, 199, 205, 206
RI63-195	190, 211
RI63-216	191
RI63-330	213
RI63-331	202, 215, 220, 227, 229, 242, 253
RI63-338	256
RI63-339	200
RI63-406	

Dockets in AR64-2	
Docket No.	R.S. No.
G-17144	6, 122, 125
G-19429	11, 17
RI60-308	11, 17
RI63-84	1
RI63-383	137
RI64-227	343

7(c) Dockets Consolidated in Docket No. G-4281, et al.

Docket No.	R.S. No.
G-12353	197-7
CI60-578	248
CI61-771	254
CI61-794	255

7(c) Dockets Consolidated in Docket No. G-18077, et al.

Docket No.	R.S. No.
CI63-1057	325
CI64-677	342

7(c) Dockets Consolidated in Docket No. G-17900, et al.

Docket No.	R.S. No.
CI61-158	244
CI64-297	349
CI64-298	341
CI64-299	350

7(c) Docket Consolidated in Docket No. CI62-608, et al.

Docket No.	R.S. No.
CI62-1275	307

[1] Applicable only to acreage added by Supplement No. 9.

escalation provisions in the rate schedule.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

PACIFIC POWER & LIGHT COMPANY, PROJECT NOS. 2337 AND 1163

ORDER ISSUING LICENSE (MAJOR) AND ACCEPTING SURRENDER OF LICENSE (MINOR PART)

(Issued July 8, 1964)

Application was filed on January 25, 1963 by Pacific Power & Light Company (Applicant) of Portland, Oregon, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2337, known as Prospect No. 3 Hydroelectric Project, located on South and Middle Forks of Rogue River and Imnaha and Daniels Creeks, in Jackson County, Oregon, and affecting lands of the United States within the Rogue River National Forest.

Also on January 25, 1963, Applicant filed application for surrender of its license for minor-part Project No. 1163. This filing was pursuant to Commission order issued June 16, 1961 approving the transfer (among others) of the license for the minor-part project from The California Oregon Power Company to Applicant (See, 25 FPC 1154). The minor-part license covers a dam and about 4,000 feet of conduit within the Rogue River National Forest unconstructed at the time the license therefor was issued. These project works are among those included in the application for license for major Project No. 2337.

The Department of the Army and the Chief of Engineers, in reporting on the application for license, offered no objection to the granting of a license for the project.

The Department of the Interior, in reporting on the application for license, recommended, for inclusion in any license for the project, certain conditions in the interests of the Department.

The Department of Agriculture, in reporting on the application for license, recommended, for inclusion in any license for the project, certain conditions in the interests of the National Forest resources involved.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Maine, is authorized to do business in the State of Oregon, and has submitted satisfactory evidence of its compliance with the requirements of all applicable State laws insofar as necessary to effect the purposes of a license for the project.

(2) The project affects lands of the United States.

(3) Public notice of the application for license has been given as required by the Act. No protests have been filed. The Oregon State Game Commission filed on May 27, 1963 a petition to intervene in the interest of assuring, in any license issued, adequate protective facilities as are necessary to fully protect the fish and wildlife resources affected by the project. The Petitioner is made a party herein to the extent of its interest by Article 10 of the license, and we believe that such license Article affords the protection sought by Petitioner. No conflicting application is before the Commission. Publication of the application for surrender of license has been given. No protests or other petitions to intervene have been filed.

(4) The issuance of a license for the project will not interfere or be inconsistent with the purposes for which the Rogue River National Forest was created or acquired.

(5) The project will not affect a Government dam.

(6) The issuance of a license for the project will not affect the development of any water resources for public purposes which should be undertaken by the United States.

(7) The project is best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public uses, including recreational purposes, upon compliance with the terms and conditions hereinafter imposed.

(8) The installed horsepower capacity of the project for the purpose of computing the capacity component of the administrative annual charge is 9,600 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(9) The amount of annual charges to be paid under the license for the use, occupancy and enjoyment of lands of the United States by the project is reasonable as hereinafter fixed and specified.

(10) The transmission facilities described in paragraph (B) below are parts of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project.

(11) The exhibits designated and described in paragraph (B) below, which were included as part of the application for license, conform to the Commission rules and regulations and should be approved as part of the license for the project, to the extent therein indicated.

(12) Acceptance of surrender of the license for minor-part Project No. 1163, effective as of December 31, 1963 (the date through which annual charges have been paid under that license) is appropriate.

The Commission orders:

(A) This license is hereby issued to Pacific Power & Light Company (Licensee) of Portland, Oregon, under Section 4(e) of the Federal Power Act (Act) for a period of 25 years, effective as of January 1, 1964, for the operation and maintenance of Prospect No. 3 Project No. 2337, affecting lands of the United States within the Rogue River National Forest, subject to the terms and conditions of the Act which is incorporated by reference as a part of this license and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2337 consists of:

(1) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J, Sheet 1 (FPC No. 2337-1) Prospect No. 3 Project—General Map (Approved FPC No. 1163-1).

Exhibit K, Sheet 1 (FPC No. 2337-2) Prospect No. 3 Project—Detail Map (Approved FPC No. 1163-2).

Exhibit K, Sheet 2 (FPC No. 2337-3) Prospect No. 3 Hydroelectric Project—South Fork of Rogue River—Project Boundary.

(ii) Project works comprised of a concrete dam 150 feet long across the South Fork Rogue River at Imnaha Creek; a conduit about 2.5 miles long composed of wood stave pipe, canal, and tunnel sections; spillway; an intake; and a 3,200-

foot steel penstock leading to a concrete powerhouse containing one 7,200 kw hydroelectric unit which discharges into Daniels Creek; a 69-kv substation; a 69 kv transmission line extending from Prospect No. 3 to Prospect No. 2, a distance of approximately 6.8 miles; and appurtenant facilities; the location, nature, and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L, Sheet 1 (FPC No. 2337–4) Prospect No. 3 Project—General Designs and Dam Foundation Data (Approved FPC No. 1163–3), insofar as it shows the Plan, Elevation, and Section A–A for the dam and Typical Cross Section of Canal only.

Exhibit L, Sheet 2 (FPC No. 2337–5) Prospect No. 3 Hydroelectric Project—South Fork of Rogue River—Powerhouse.

Exhibit M comprised of two pages entitled, "General Description and General Specifications of Mechanical and Electrical Equipment", signed April 20, 1931, The California Oregon Power Company, by E. J. McKay Vice President.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–1 (Revised April 1, 1964) entitled "Terms and Conditions of License for Constructed Major Project Affecting Lands of the United States" (*infra*, p. 71). which terms and conditions designated as Articles 1 through 33, are attached hereto and made a part hereof; and subject to the following special conditions set forth herein as additional articles:

Article 34. The Licensee shall adequately maintain the existing fences and construct such additional fences (including draft fences) as may be required to prevent animal access into the canal and to guide them from natural migration routes to the crossings. Two additional deer crossings shall be constructed by the Licensee, making a total of five. All fences and crossings shall be inspected annually and maintained by the Licensee. Specific details for design and location of all fences and crossings shall be approved in writing by United States Forest Service, Oregon State Game Commission, and Bureau of Sport Fisheries and Wildlife, Department of the Interior.

Article 35. The Licensee shall, within one year from the date of issuance of this license, file in conformity with the Commission's rules and regulations, an Exhibit K drawing showing the 69-kv project transmission line and its relationship to the subdivisions of the official government surveys.

Article 36. The Licensee shall pay to the United States the following annual charges:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part 11 of the Commission's regulations as in effect from time to time. The authorized installed capacity for such purpose is 9,600 horsepower.

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, $173.04.

Article 37. The Licensee shall within one year from the date of issuance of this license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with ap-

propriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of the license for Project No. 2337.

(E) Surrender of the license for minor part Project No. 1163 is hereby accepted, effective as of December 31, 1963.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313 (a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission with 60 days from the date of issuance of this order.

FORM L–1

(REVISED APRIL 1, 1964)

TERMS AND CONDITIONS OF LICENSE FOR CONSTRUCTED MAJOR PROJECT AFFECTING LANDS OF THE UNITED STATES

Article 1. The entire project, as described in the order of the Commission, shall be subject to all the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, that if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval amended, supplemental, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. The project area and project works shall be in conformity with the approved exhibits referred to in Article 2 hereof. If the Licensee shall contemplate any alteration in or addition to the project area or project works shown and described by the approved exhibits referred to in Article 2 herein, the Licensee shall submit to the Commission for approval amended, supplemental, or additional exhibits under the provisions of said article covering such alteration or addition, together with a statement in writing setting forth the reasons which necessitate or justify such alteration or addition. Except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works under the license without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in the project works or divergence from such approved exhibits may be made if such changes will not result in decrease in efficiency, in material increase in cost, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may from time to time prescribe for the protection of life, health, or property.

Article 4. The project, including its operation and maintenance and any work incident to additions or alterations authorized by the Commission, whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and of any such alteration thereof, and shall notify him of the date upon which work with respect to any alteration will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 5. The operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Commission may prescribe for the purposes hereinbefore mentioned.

Article 6. The actual legitimate original cost, estimated where not known, and the accrued depreciation of the project as of the effective date of the license shall be determined by the Commission in accordance with the Act and the rules and regulations of the Commission, and such cost less such accrued depreciation, so determined, shall be the net investment in the project as of such effective date.

Article 7. After the first twenty (20) years of operation of the project under the license, six (6) percent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings of the project for the establishment and maintenance of amortization reserves, pursuant to Section 10(d) of the Act; one-half of the project surplus earnings, if any, accumulated after the first twenty years of operation under the license, in excess of six (6) percent per annum on the net investment, shall be set aside in a project amortization reserve account as of the end of each fiscal year, provided that, if and to the extent that there is a deficiency of project earnings below six (6) percent per annum for any fiscal year or years after the first twenty years of operation under the license, the amount of such deficiency shall be deducted from the amount of any surplus earnings accumulated thereafter until absorbed, and one-half of the remaining surplus earnings, if any, thus cumulatively computed, shall be set aside in the project amortization reserve account; and the amounts thus established in the project amortization reserve account shall be maintained therein until further order of the Commission.

Article 8. The Licensee shall install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 9. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 10. The Licensee shall, for the conservation, and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 11. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be prescribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 12. The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such recreational facilities including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal and State agencies, after notice and opportunity for hearing and upon findings based upon substantial evidence that such facilities are necessary and desirable, and reasonably consistent with the primary purpose of the project.

Article 13. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: Provided,

that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and Provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 14. The Licensee shall be responsible for and shall minimize soil erosion and siltation on lands adjacent to the stream resulting from construction and operation of the project. The Commission upon request, or upon its own motion, may order the Licensee to construct and maintain such preventive works to accomplish this purpose and to revegetate exposed soil surface as the Commission may find to be necessary after notice and opportunity for hearing.

Article 15. No lease of the project or any part thereof whereby the lessee is granted the occupancy, possession, or use of the project, or any part thereof, shall be made without prior written approval of the Commission; and the Commission may, if in its judgment the situation warrants, require that all the conditions of the license, of the Act, and of the rules and regulations of the Commission shall be applicable to such property so leased to the same extent as if the lessee were the Licensee: Provided, that the provisions of this article shall not apply to leases of land or buildings or other property while not required to achieve the purposes of the license.

Article 16. The Licensee shall clear and keep clear to an adequate width lands of the United States along open conduits, and shall dispose of all temporary structures, unused timber, brush, refuse, or inflammable material resulting from the clearing of the lands or from the maintenance or alteration of the project works. In addition, all trees along the margins of reservoirs which may die during operations of the project shall be removed. The clearing of the lands and the disposal of the material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission.

Article 17. In the construction and maintenance of the project, the location and standards of roads and trails, and other land uses, including the location and condition of quarries, borrow pits, spoil disposal areas, and sanitary facilities, shall be subject to the approval of the department or agency of the United States having supervision over the lands involved.

Article 18. In the construction and maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines, and telegraph, telephone, and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling and obstructing traffic and endangering life on highways, streets, or railroads. None of the provisions of this article is intended to relieve the Licensee from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

Article 19. The Licensee shall make provision, or shall bear the reasonable cost, as determined by the agency of the United States affected, of making provision for avoiding inductive interference between any project transmission line or other project facility constructed, operated, or maintained under the license, and

any radio installation, telephone line, or other communication facility installed or constructed before or after construction of such project transmission line or other project facility and owned, operated, or used by such agency of the United States in administering the lands under its jurisdiction.

Article 20. The Licensee shall clear such portions of transmission line rights-of-way across lands of the United States as are designated by the officer of the United States in charge of the lands; shall keep the areas so designated clear of new growth, all refuse, and inflammable material to the satisfaction of such officer; shall trim all branches of trees in contact with or liable to contact the transmission line; shall cut and remove all dead or leaning trees which might fall in contact with the transmission line; and shall take such other precautions against fire as may be required by such officer. No fires for the burning of waste material shall be set except with the prior written consent of the officer of the United States in charge of the lands as to time and place.

Article 21. Timber on lands of the United States cut, used, or destroyed in the construction and maintenance of the project works or in the clearing of said lands shall be paid for in accordance with the requirements of and at the current stumpage rates applicable to the sale of similar timber by the agency of the United States having jurisdiction over said lands; and all slash and debris resulting from the cutting or destruction of such timber shall be disposed of as the officer of such agency may direct.

Article 22. The Licensee shall do everything reasonably within its power and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon request of officers of the agency of the United States concerned, to prevent, make advanced preparations for suppression, and suppress fires on lands occupied under the license.

Article 23. The Licensee shall interpose no objection to, and shall in no way prevent, the use by the agency of the United States having jurisdiction over the lands of the United States affected, or by persons or corporations occupying lands of the United States under permit, of water for fire suppression from any stream, conduit or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license, or to the use by said parties of water for sanitary and domestic purposes from any stream or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license.

Article 24. The Licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, lands, or other property of the United States, occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license. Arrangements to meet such liability, either by compensation for such injury or destruction, or by reconstruction or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.

Article 25. The Licensee shall allow any agency of the United States, without charge, to construct or permit to be constructed on, through, and across the project lands, conduits, chutes, ditches, railroads, roads, trails, telephone and power lines, and other means of transportation and communication not inconsistent with the enjoyment of said lands by the Licensee for the purposes stated in the license. This article shall not be construed as conferring upon the Licensee any right of use, occupancy, or enjoyment of the lands of the United States other than for the construction, operation, and maintenance of the project as stated in the license.

Article 26. There is reserved to the appropriate department or agency of the United States, or of the State or county involved, the right to take over, maintain, and supervise the use of any project road as a public road.

Article 27. The Licensee, its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and none of such properties necessary or useful to the project and to the development, transmission, and distribution of power therefrom will be voluntarily sold, transferred, abandoned, or otherwise disposed of without the approval of the Commission: Provided, that a mortgage or trust deed or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article. In the event the project is taken over by the United States upon the termination of the license, as provided in Section 14 of the Act, or is transferred to a new Licensee under the provisions of Section 15 of the Act, the Licensee, its successors and assigns will be responsible for and will make good any defect of title to or of right of user in any of such project property which is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and will pay and discharge, or will assume responsibility for payment and discharge, of all liens or incumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, that the provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear, or to require the Licensee, for the purpose of transferring the project to the United States or to a new Licensee, to acquire any different title to or right of user in any of such project property than was necessary to acquire for its own purposes as Licensee.

Article 28. For the purpose of determining the stage and flow of the stream or streams from which water is diverted for the operation of the project works, the amount of water held in and withdrawn from storage, and the effective head on the turbines, the Licensee shall install and thereafter maintain such gages and stream-gaging stations as the Commission may deem necessary and best adapted to the requirements; and shall provide for the required readings of such gages and for the adequate rating of such stations. The Licensee shall also install and maintain standard meters adequate for the determination of the amount of electric energy generated by said project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission and may be altered from time to time if necessary to secure adequate determinations, but such alteration shall not be made except with the approval of the Commission or upon the specific direction of the Commission. The installation of gages, the ratings of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of said project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient record of the foregoing determina-

tions to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 29. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without any replacement, or shall abandon or discontinue good faith operation of the project for a period of three years, or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address to the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license, and not less than 90 days after public notice may in its discretion terminate the license.

Article 30. Whenever the Licensee is directly benefited by the construction work of another Licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission shall determine to be equitable and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the costs of making the determinations pursuant to the then current Commission Regulations under the Federal Power Act within 60 days from the date of rendition of a bill therefor and, upon failure to do so, shall thereafter be subject to the payment of the penalties specified in the then current Regulations. The Licensee shall have the right to pay such amounts under protest within the 60-day period and to reconsideration of the amounts billed or a hearing as provided by the then current Regulations under the Act.

Article 31. Upon abandonment of the project the Licensee shall remove all buildings, equipment and power lines from lands of the United States and restore said lands to a condition satisfactory to agency having jurisdiction over the lands and shall fulfill such other obligations under the license as the Commission may prescribe.

Article 32. The right of the Licensee and of its transferees and successors to use or occupy lands of the United States under the license for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless a new license is issued pursuant to the then existing laws and regulations.

Article 33. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

Before Commissioners: Harold C. Woodward, Acting Chairman; Charles R. Ross and David S. Black.

WISCONSIN MICHIGAN POWER COMPANY, PROJECT NO. 1759

ORDER APPROVING CHANGES IN TRANSMISSION FACILITIES

(Issued July 8, 1964)

On March 9, 1964, Wisconsin Michigan Power Company, licensee for Project No. 1759, applied for Commission approval of certain proposed relocation and

changes in the 69 kv electrical transmission facilities of the Twin Falls development of the project located on the Menominee River, Michigan-Wisconsin.

The proposed relocation and changes would include the removal of all 69 kv equipment from the powerhouse structure and the re-routing of the 69 kv transmission lines presently terminating at the powerhouse structure. The lines would then terminate at a new switching facility to be constructed in the immediate area, but which will be located outside of the present project boundary. Also, the 69 kv switching equipment will be removed from the 6.9/69 kv outdoor substation to the new switching station. Present plans call for this work to be completed in 1964.

The licensee advises that the proposed changes are necessary to improve system reliability and capacity by: permitting removal of the hazardous 69 kv indoor switching facilities; eliminating the existing 69 kv bus which covers a large area making operation difficult and exposing the bus to excessive faults; increasing the current capacity of certain lines now limited by the capacity of the roof bushing on the powerhouse structure; allowing the application of fast, modern breakers and improved protective equipment; and by conveniently allowing for additions contemplated in the future, but inconvenient under the present bus arrangement. The proposed changes will be advantageous to the licensee's transmission system since it will provide increased reliability, increase the current carrying capacity of certain lines, and facilitate switching on the 69 kv system.

The Commission finds:

Commission approval of the proposed changes will not be incompatible with the public interest as hereinafter provided.

The Commission orders:

The aforementioned proposed relocation and changes are hereby approved. provided that within three months after the construction is completed, the licensee for the project shall file for Commission approval a revised Exhibit L showing the project with the aforementioned construction as completed.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

WISCONSIN PUBLIC SERVICE CORPORATION, PROJECT NO. 1957

ORDER APPROVING REVISED PROJECT EXHIBIT

(Issued July 8, 1964)

On February 19, 1964, Wisconsin Public Service Corporation, licensee for Project No. 1957, filed revised prints of Exhibit J & K map (FPC No. 1957-1), and requested our staff to reflect the revision on the Exhibit J & K map on file with the Commission, which had heretofore been approved by the Commission as part of the license for the project. The staff has made the revision as requested, and Commission approval of the revised exhibit is requested by the licensee.

The revision shows for the first time that a small parcel of land of the United States (less than one half an acre) has been inundated by the project reservoir. The parcel is described as Lot 9, Section 25, T. 40 N., R. 10 E., 4th P.M., Vilas County, Wisconsin. The license for the project was issued effective as of January 1, 1938.

The Commission finds:

(1) Exhibit J & K (FPC No. 1957–1), entitled "General & Detail Map of Project Area—Otter Rapids Hydro Electric Development" as further revised on February 19, 1964 by the staff, conforms to the Commission's rules and regulations and should be approved as part of the license for the project.

(2) Superseded Exhibit J & K (FPC No. 1957–1), now on file with the Commission and which was approved by the Commission on August 16, 1950, should be eliminated from the license.

The Commission orders:

The revised exhibit described in finding (1) above is hereby approved as part of the license for Project No. 1957, and the superseded exhibit described in finding (2) above is hereby eliminated from the license for the project.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

GEORGIA POWER COMPANY, PROJECT NO. 2237

ORDER DETERMINING ACTUAL LEGITIMATE ORIGINAL COST, ACCRUED DEPRECIATION, NET INVESTMENT, AND CHANGES THEREIN, AND PRESCRIBING ACCOUNTING THEREFOR

(Issued July 9, 1964)

Georgia Power Company, Licensee for Project No. 2237,[1] filed on May 24, 1961, pursuant to Sections 4.1 and 4.20 of the Commission's Regulations under the Federal Power Act, its Initial Statement, showing a claimed cost of $1,333,-135.44, accrued depreciation in the amount of $500,593.62, and a net investment in the project of $832,541.82, as of March 1, 1959, the effective date of the license.

This statement also shows claimed net changes in project plant accounts consisting of gross additions of $818,383.59, gross retirements of $30,030.51, and contributions in aid of construction-Federal, of $411,550.39, resulting in a claimed net increase of $376,802.69, for the period from March 1, 1959 through December 31, 1960, and a total claimed actual legitimate original cost of the project of $1,709,938.13, as of December 31, 1960.

Licensee's claimed net change in project accrued depreciation shows a net decrease of $15,220.64, for the period from March 1, 1959, to December 31, 1960, and results in a total claimed project accrued depreciation of $485,372.98, as of December 31, 1960.

Commission's staff conducted a field examination of Licensee's books, records and other data for the purpose of determining the accuracy of Licensee's claims.

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[1] The project is located near Roswell, on the Chattahoochee River, in Fulton and Cobb Counties, Georgia, about 12½ miles upstream from the City of Atlanta, and may be described as the Morgan Falls project. It was constructed and placed in operation in 1904. The license, authorizing construction, operation, and maintenance of the redeveloped Morgan Falls Project was issued pursuant to Section 4(e) of the Federal Power Act for a period of 50 years, effective as of March 1, 1959 (21 FPC 425, 428).

As a result of that examination, staff proposes, subject to Commission approval,[2] certain adjustments, agreed to by the Licensee, as follows: (1) a reduction of $1,137.50, including a reclassification within project plant accounts of $360.81, in the claimed actual legitimate original project cost as of March 1, 1959; (2) a decrease in contributions in aid of construction-Federal of $18,915.57, effecting an increase in the claimed actual legitimate original cost of $17,778.07, for the period from March 1, 1959, to December 31, 1960, and (3) an increase in accumulated provision for depreciation of project plant of $14,830.14, as of December 31, 1960. These adjustments and accounting dispositions of all amounts involved are summarized in the attached Schedules I and II.

By letter dated April 20, 1962, Licensee confirmed its agreement with the adjustments proposed by the staff and with the resulting project costs and depreciation.

The Georgia Public Service Commission was advised by letter of this Commission dated December 21, 1962 as to the proposed adjustments and resulting project costs and accrued depreciation. By its letter of December 27, 1962, the Georgia Commission indicated no objection thereto.

The Commission finds:

(1) Licensee, by its acceptance of the proposed adjustments, including the accounting dispositions and resulting project costs and project accrued depreciation, and the Georgia Public Service Commission by its concurrence, have obviated the necessity for notice and opportunity to protest provided in Sections 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act.

(2) The proposed adjustments including the accounting dispositions are reasonable and appropriate for the purposes of the Federal Power Act and, therefore, should be approved and directed as hereinafter provided.

(3) As of the effective date of the license, March 1, 1959, the actual legitimate original cost of Project No. 2237 is $1,331,997.94.

(4) The accrued depreciation of Project No. 2237 as of March 1, 1959, the effective date of the license, is $500,593.62.

(5) The net investment in Project No. 2237 as of March 1, 1959, the effective date of the license, is $831,404.32.

(6) The net increase in the actual legitimate original cost of Project No. 2237, for the period from March 1, 1959 through December 31, 1960, is $395,718.26, ($788,353.08, project electric plant in service less $392,634.82 contributions in aid of construction-Federal), and the resulting actual legitimate original cost of Project No. 2237 as of December 31, 1960 is $1,727,716.20, classified by accounts as shown in Schedule I.

(7) The net increase in project accrued depreciation of Project No. 2237 for the period from March 1, 1959 through December 31, 1960 is $14,830.14 and the accrued depreciation as of December 31, 1960 is $500,203.12, classified by functional groups as shown on Schedule III.

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[2] Articles 21 and 22 of the license provide as follows: Article 21. The actual legitimate original cost, estimated where not known, and the accrued depreciation of the parts of the project completed prior to the effective date of the license shall be determined by the Commission as of such effective date, in accordance with the Act, and the rules and regulations of the Commission, and such cost less such accrued depreciation, so determined, shall be the net investment in the project as of such effective date. Article 22. The actual legitimate original cost of the parts of the project to be completed after the effective date of the license, and of any addition to or betterment of the project, shall be determined by the Commission in accordance with the Act and the rules and regulations of the Commission thereunder.

The Commission orders:

(A) The provisions of Sections 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments including accounting dispositions, proposed by the staff and agreed to by the Licensee, are hereby approved and directed to be made by the Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and subsidiary project plant accounts showing the actual legitimate original cost of the project, as of December 31, 1960, in the amount of $1,727,716.20, classified by primary plant accounts as shown in Schedule I.

(D) Licensee, to the extent that it has not already done so, shall establish and maintain a project accumulated provision for depreciation in the amount of $500,203.12, as of December 31, 1960, classified by functional groups as shown in Schedule III.

(E) Licensee shall within 90 days from the issuance of this order file with the Commission FPC Form No. 7 and three certified copies of the adjusting journal entries showing compliance therewith.

SCHEDULE

PROJECT NO. 2237 (MORGAN FALLS)

SUMMARY OF CLAIMED ORIGINAL COST AS OF MARCH 1, 1959, RECORDED CHARGES FOR AND ALLOWED BALANCES

Account number	Description	Initial cost at Mar. 1, 1959			Redevelopment at Dec. 31, 1960
		Claimed cost	Adjustments	Allowed cost	Claimed cost
(1)	(2)	(3)	(4)	(5)	(6)
	Hydraulic production plant				
330	Land and land rights	$81,861.76	$(1,137.50)	$80,724.26	$77,714.44
331	Structures and improvements	75,046.50		75,046.50	
332	Reservoirs, dams and waterways	532,087.51		532,087.51	563,368.13
333	Water wheels, turbines and generators	511,489.91		511,489.91	
334	Accessory electric equipment	67,202.33		67,202.33	
335	Miscellaneous power plant equipment	9,430.06	360.81	9,790.87	154.96
336	Roads, railroads and bridges	4,819.08		4,819.08	
	Total production plant	1,281,937.15	(776.69)	1,281,160.46	641,237.53
	Transmission plant				
353	Station equipment	50,837.48		50,837.48	
	General plant				
397	Communication equipment	360.81	(360.81)		
	Total direct costs	1,333,135.44	(1,137.50)	1,331,997.94	641,237.53
	Indirect costs				
61	Temporary construction facilities				2,965.63
62	Construction equipment				5,091.88
64	Labor expense				2,103.73
65	Superintendents, timekeepers, clerks, etc.				59,546.14
66	Insurance, injuries and damages				84.10
	Total indirect costs				69,791.48
	Overhead construction costs				
71	Engineering				71,216.42
76	Administrative and general expense				7,608.52
	Total overhead construction costs.				78,824.94
	Total indirect and overhead costs				148,616.42
	Total project plant	1,333,135.44	(1,137.50)	1,331,997.94	789,853.95
271	Contributions in aid of construction—Federal.				(411,550.39)
	Total actual legitimate original cost.	1,333,135.44	(1,137.50)	1,331,997.94	378,303.56

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GEORGIA POWER COMPANY, LICENSEE

THE PERIOD MARCH 1, 1959 TO DECEMBER 31, 1960, WITH ADJUSTMENTS THERETO, AS OF DECEMBER 31, 1960

Redevelopment at Dec. 31, 1960—Continued				Net additions from Mar. 1, 1959 to Dec. 31, 1960			Total allowed cost Dec. 31, 1960
Adjustments	Adjusted totals before distribution	Distribution of indirects and overheads	Allowed cost	Claimed cost	Adjustments	Allowed cost	
(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
	$77,714.44		$77,714.44				$158,438.70
				$15,354.41		$15,354.41	90,400.91
	563,368.13	$148,575.55	711,943.68	(22,488.02)		(22,488.02)	1,221,543.17
							511,489.91
				3,099.80		3,099.80	70,302.13
	154.96	40.87	195.83	2,532.94		2,532.94	12,519.64
							4,819.08
	641,237.53	148,616.42	789,853.95	(1,500.87)		(1,500.87)	2,069,513.54
							50,837.48
	641,237.53	148,616.42	789,853.95	(1,500.87)		(1,500.87)	2,120,351.02
	2,965.63	(2,965.63)					
	5,091.88	(5,091.88)					
	2,103.73	(2,103.73)					
	59,546.14	(59,546.14)					
	84.10	(84.10)					
	69,791.48	(69,719.48)					
	71,216.42	(71,216.42)					
	7,608.52	(7,608.52)					
	78,824.94	(78,824.94)					
	148,616.42	(148,616.42)					
	789,853.95		789,853.95	(1,500.87)		(1,500.87)	2,120,351.02
$18,915.57	(392,634.82)		(392,634.82)				(392,634.82)
18,915.57	397,219.13		397,219.13	(1,500.87)		(1,500.87)	1,727,716.20

SCHEDULE II

PROJECT NO. 2237 (MORGAN FALLS) GEORGIA POWER COMPANY, LICENSEE

SUMMARY OF ADJUSTMENTS TO CLAIMED COST AS OF MARCH 1, 1959, AND TO RECORDED NET ADDITIONS FOR THE PERIOD MARCH 1, 1959, TO DECEMBER 31, 1960, AND ACCOUNTING DISPOSITION THEREOF

Account number	Description	101-Electric plant in service—Project No. 2237, Morgan Falls				Accounting disposition				
		Total	330	335	397	Total	Accumulated provision for depreciation of electric plant in service		Appropriated earned surplus	Contributed in aid of construction, Federal
							108 (Project 2237)	108 (Non-project)	216	271
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
	Initial cost at Mar. 1, 1959									
1	Reclassification between accounts			$360.81	($360.81)					
2	Unsupported land costs suspended	($1,137.50)	($1,137.50)			$1,137.50			$1,137.50	
	Total initial cost at Mar. 1, 1959	(1,137.50)	(1,137.50)	360.81	(360.81)	1,137.50			1,137.50	
	Net change from Mar. 1, 1959, to Dec. 31, 1960									
3	Correction of accounting for contributions in aid of construction						($14,830.14)	($4,085.43)		$18,915.57
4	Transfer of accrued depreciation applicable to general plant transferred to hydraulic plant, amount of transfer $137.72									
	Total adjustments, Project No. 2237, Morgan Falls	(1,137.50)	(1,137.50)	360.81	(360.81)	1,137.50	(14,830.14)	(4,085.43)	1,137.50	18,915.57

SCHEDULE III

PROJECT NO. 2237 (MORGAN FALLS) GEORGIA POWER COMPANY, LICENSEE

SUMMARY OF ACCUMULATED PROVISION FOR DEPRECIATION OF ELECTRIC PLANT IN SERVICE AS OF MARCH 1, 1959, RECORDED CHANGES FOR THE PERIOD MARCH 1, 1959 TO DECEMBER 31, 1960, WITH ADJUSTMENTS THERETO AND ALLOWED BALANCES AS OF DECEMBER 31, 1960

	Project No. 2237—Morgan Falls			
	Hydraulic (1)	Transmission (2)	General (3)	Total (4)
Initial accrued depreciation, Mar. 1, 1959				
As recorded	$479,111.44	$21,366.48	$115.70	$500,593.62
Adjustments	115.70		(115.70)	
Allowed	479,227.14	21,366.48		500,593.62
Changes in accrued depreciation from Mar. 1, 1959 to Dec. 31, 1960				
As accorded	(18,346.29)	3,103.63	22.02	(15,220.64)
Adjustments	14,852.16		(22.02)	14,830.14
Allowed	(3,494.13)	3,103.63		(390.50)
Accrued depreciation as of Dec. 31, 1960				
As recorded	460,765.15	24,470.11	137.72	485,372.98
Adjustments	14,967.86		(137.72)	14,830.14
Allowed	475,733.01	24,470.11		500,203.12

( ) Denotes debit.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

NORTHERN STATES POWER COMPANY (MINNESOTA), DOCKET NO. E-7168

ORDER AUTHORIZING THE ISSUANCE OF PREFERRED STOCK

(Issued July 9, 1964)

Northern States Power Company (Applicant), incorporated under the laws of the State of Minnesota and qualified to do business in the States of Minnesota, North Dakota and South Dakota, with its principal business office at Minneapolis, Minnesota, filed an application on June 1, 1964, for authorization, pursuant to Section 204 of the Federal Power Act, to issue and sell at competitive bidding, 150,000 shares of Cumulative Preferred Stock with a par value of $100 per share.

Applicant proposes, on or about July 15, 1964, to invite sealed, written proposals for the purchase of the 150,000 shares of Cumulative Preferred Stock, $— Series, by newspaper publication and by distribution of a public invitation containing a statement of terms and conditions relating to proposals for the proposed issuance, together with an individual form of bid and purchase contract for the issuance here proposed.

Each proposal, which may be made by a single bidder or by a group of bidders, must be for the purchase of all the new Preferred Stock. In case the proposal of a group of bidders is accepted, the obligations of the members of the group, subject to the provisions of the purchase contract, shall be several and not joint to purchase the respective number of shares of New Preferred Stock indicated in the proposal opposite the names of such members. No bidder may submit

or participate in more than one proposal. All proposals must be on a form of proposal, signed by the bidder, and in the case of a proposal by a group of bidders, by the representative on behalf of the group. Each proposal shall specify (a) the annual dividend rate to be established for the New Preferred Stock, which rate shall be a multiple of $.01, and, (b) the price per share to be paid to the company for the New Preferred Stock, which price (exclusive of accrued dividends) shall be not more than $102.50 per share, nor less than $100 per share. Each proposal shall provide that accrued dividends on the New Preferred Stock from July 1, 1964, to the date of payment for the New Preferred Stock and delivery thereof will be paid by the purchaser or purchasers to the Company.

Unless postponed, all proposals for the purchase of the proposed issuance of Preferred Stock must be presented before 10:00 a.m., Central Daylight Saving Time on July 22, 1964, to the Applicant at Room T, Vault Floor, The First National Bank of Chicago, 38 South Dearborn Street, Chicago, Illinois, 60603. Each bid must be accompanied by a certified or bank cashier's check or check payable in Chicago or New York Clearing House Funds to the order of the Company, in the aggregate amount of $450,000. Unless the Applicant shall reject all proposals or exclude a proposal or proposals for reasons set forth in the invitation, it will accept the proposal which provides for the lowest cost of money.

The Applicant will use the proceeds from the sale of the New Preferred Stock to pay an equal amount of 1964 short-term bank loans. The Applicant had bank loans of $2,000,000 outstanding as of March 31, 1964, and at the time of the issuance and delivery of the New Preferred Stock, Applicant's outstanding bank loans will aggregate approximately $19,000,000. These loans replenished the general funds of Applicant which were reduced by 1964 construction expenditure payments.

Applicant's construction program for 1964 is estimated at $50,200,000 of which there is allocated $34,080,000 for electric production, transmission and distribution facilities, $6,020,000 for gas facilities, $181,000 for heating facilities, $640,000 for telephone facilities, and $9,280,000 for general expenditures. Completion of Pathfinder atomic plant and Riverside Unit No. 8 will require $7,197,000 in 1964 and other miscellaneous improvements of production facilities will require $621,000. Major transmission line construction includes, the start of a new 100-mile 345 kv line from Red Rock Sub to Adams Sub (Applicant's portion of Twin Cities-St. Louis tie), at a cost of $70,000 in 1964 and continuation of construction of the 14-mile, 345 kv line from Red Rock Sub to Minn-Wisc Boundary (Applicant's portion of Twin Cities-Chicago tie), at a cost of $848,000 in 1964. Construction of additional transmission lines during 1964 will require an expenditure of $2,422,000. The program also provides for the installation of new substation facilities at six locations at a total cost of $707,000. In addition, $519,000 has been allocated for the design and procurement of rights-of-way, $1,382,000 has been allocated for miscellaneous improvements to lines and stations, and $20,314,000 has been allocated for miscellaneous improvements and extensions to the distribution system to provide for new loads.

Written notice of the application has been given to the Minnesota Railroad and Warehouse Commission, the North Dakota Public Service Commission, and the South Dakota Public Utilities Commission and to the Governor of each of those States. Notice has also been given in the Federal Register on June 13, 1964 (29 F.R. 7620) stating that any person desiring to be heard or to make any protest with reference to the application, shall file petitions or protests on or before June 26, 1964 with the Federal Power Commission, Washington, D.C.,

20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described in the Commission's order issued September 1, 1955, *In the Matter of Northern States Power Company*, Docket No. E-6637 (14 FPC 946).

(2) The proposed issuance and sale of Preferred Stock as described above will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating under the laws of a State in which the security issue here involved is regulated by a state commission within the meaning of Section 204(f) of the Act; and the proposed issuance of securities is therefore not exempt by virtue of that section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of Preferred Stock, as hereinafter authorized, will be for a lawful object and within the corporate purposes of Applicant and compatible with the public interest which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service and is reasonably appropriate for that service.

The Commission orders:

(A) The proposed issuance and sale of Preferred Stock, as described above, upon the terms and conditions, and for the purposes specified in the application, is authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Preferred Stock at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Preferred Stock and the dividend rate thereon.

(C) This authorization shall expire unless the transaction hereby authorized is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

PACIFIC GAS & ELECTRIC COMPANY, PROJECT NO. 619

ORDER DETERMINING NET CHANGE IN ACTUAL LEGITIMATE ORIGINAL PROJECT COST AND PRESCRIBING ACCOUNTING THEREFOR

(Issued July 9, 1964)

Pacific Gas & Electric Company, Licensee for Project No. 619,[1] from time to time filed statements, pursuant to Section 4.1 of the Commission's Regulations under the Federal Power Act, claiming for the period from April 2, 1936, through December 31, 1954, a net increase in the actual legitimate original cost of the project of $683,062.92[2] consisting of gross additions of $1,057,663.01, gross retirements of $373,986.68, and contributions in aid of construction in the credit amount of $613.41, resulting in a claimed total actual legitimate original cost of the project as of December 31, 1954, of $9,692,905.01, as more specifically shown in the attached Schedule I.[3]

The staff made a field examination of licensee's books, records and other data for the purpose of ascertaining the correctness of the above claimed and recorded project costs for the period from April 2, 1936, through December 31, 1954. Following that examination agreement, subject to Commission approval, was reached between staff and representatives of Licensee with respect to proposed adjustments for the period from April 2, 1936, through December 31, 1954, affecting a net increase of $11,928.54 in claimed and recorded project costs as follows:

Net overstated and unrecorded retirements	$4,393.21
Overheads improperly capitalized	(1,460.95)
Nonproject costs	(11,236.90)
Cost of project facilities improperly classified as project No. 1962	20,233.18
Total	11,928.54

The detailed adjustments (including reclassification of certain items totaling $85,951.13 within project accounts) are summarized in the attached Schedule II.

The accounting dispositions of amounts involved in the proposed adjustments are shown by the following journal entry:

Account	*Title*	*Debit*	*Credit*
101	Electric Plant in Service		
	Project No. 619	$11,928.54	
	Nonproject	10,832.34	
	Project No. 1962		$20,233.18
108	Accumulated Provision for Depreciation of		
	Electric Plant in Service		
	Nonproject	404.56	
	Project No. 619	3,988.65	
			4,393.21
402	Maintenance Expense	767.66	
408	Taxes Other than Income	693.29	

[1] The project is located on the North Fork of the Feather River in Plumas County, California, and may be described as the Bucks Creek Development. The License issued pursuant to Section 4 of the Federal Water Power Act to the Feather River Power Company, authorizing the construction, operation and maintenance of the project is by its terms effective for a period terminating December 31, 1968. By order issued April 14, 1936, the Commission approved the transfer of the License from Feather River Power Company to Pacific Gas and Electric Company effective April 7, 1936.

[2] By order issued February 27, 1950 (9 FPC 528), the Commission determined the actual legitimate original cost of the project to be $9,009,842.09 as of April 1, 1936.

[3] Article 20 of the license provides for Commission determination of the actual legitimate original cost of the project.

After giving affect to the proposed adjustments, Staff recommends and Licensee concurs that the Commission determine the net increase or change in Project Cost for the period from April 2, 1936 through December 31, 1954 to be $694,991.46 and the resulting total project cost as of December 31, 1954 to be $9,704,833.55.

Licensee did not segregate and record on its books a depreciation reserve for Project No. 619. The staff has not completed its studies with respect to project depreciation reserve and recommends that this phase of the accounting examination be deferred for later consideration by the Commission.

By letter dated March 6, 1962, Licensee confirmed its agreement with respect to the proposed adjustments and resulting project costs.

The California Public Utilities Commission was advised by letter of this Commission dated June 28, 1962, of the proposed adjustments, and resulting project costs, all as recommended by this Commission's Staff and agreed to by Licensee as set forth above. By letter of July 11, 1962, addressed to this Commission's Regional Accountant, San Francisco, California, that Commission indicated no objection to the Staff's recommendations.

The Commission finds:

(1) Licensee, by its tentative agreement to the proposed adjustments, including the accounting dispositions, and resulting project costs, and its letter dated March 6, 1962, and the California Public Utilities Commission, by its letter dated July 11, 1962, have obviated the necessity for notice and opportunity to protest provided in Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

(2) The foregoing adjustments, including the accounting dispositions, proposed by the Staff and agreed to by the Licensee, are reasonable and appropriate for the purposes of the Federal Power Act, and, therefore, should be approved and directed as hereinafter provided.

(3) The net increase or change in the actual legitimate original cost of Project No. 619 for the period from April 2, 1936, through December 31, 1954, is $694,991.46, comprised of gross additions of $1,065,198.34, gross retirements of $369,593.47, and contributions in aid of construction in the credit amount of $613.41, and the resulting actual legitimate original cost of the project as of December 31, 1954 is $9,704,833.55, classified by primary accounts as shown in the attached Schedule I.

(4) It is necessary and appropriate for the purposes of the Federal Power Act that the determination of the accrued depreciation applicable to in-service project properties of Project No. 619 as of December 31, 1954, be reserved for future Commission consideration hereinafter provided.

The Commission orders:

(A) The provisions of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments, including accounting dispositions, as proposed by the Staff and agreed to by the Licensee, are hereby approved and directed to be made by Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed project plant accounts for Project No. 619 showing the debit amount of $694,991.46 as the net increase or change in actual legitimate original project cost for the period from April 2, 1936. through December 31, 1954, and the debit balance of $9,704,833.55 as the actual legitimate original project cost as of December 31, 1954, classified by primary plant accounts of the

Commission's Uniform System of Accounts prescribed for Public Utilities and Licensees as shown in the attached Schedule I.

(D) Licensee shall within 90 days from the issuance of this order file with this Commission certified copies of Licensee's adjusting journal entry as of December 31, 1954, showing compliance with this order; three copies of that journal entry to be submitted to the Secretary, Federal Power Commission, Washington, D.C., 20426, and two copies thereof to be submitted to the Regional Accountant, Federal Power Commission, San Francisco, California, 94111.

(E) The matter of Commission determination of the amount of accrued depreciation applicable to in-service project properties of Project No. 619 as of December 31, 1954, is hereby expressly reserved for future Commission consideration and determination.

SCHEDULE I

PROJECT NO. 619 (BUCKS CREEK) PACIFIC GAS & ELECTRIC COMPANY

SUMMARY BY DETAILED PLANT ACCOUNTS OF APPROVED PROJECT COST AS OF APRIL 1, 1936, CHANGES FOR THE PERIOD APRIL 2, 1936 THROUGH DECEMBER 31, 1954, ADJUSTMENTS THERETO AND BALANCE FOR ALLOWANCE AS OF DECEMBER 31, 1954

Account number and title (A)		Allowed original cost as of April 1, 1936 (B)	Changes from Apr. 2, 1936 through Dec. 31, 1954			Allowed original cost as of Dec. 31, 1954
No.	Title		As claimed	Adjustments	As recommended	
	Hydraulic production plant					
320	Land and land rights	$233,101.19				$233,101.19
321	Structures and improvements	543,184.86	$87,495.03	$47,827.29	$135,322.32	678,507.18
322	Reservoirs, dams and waterways	6,910,099.17	90,884.04	1,894.73	92,778.77	7,002,877.94
323	Water wheels, turbines, and generators	447,660.99	342,635.98	(767.66)	341,868.32	789,469.31
324	Accessory electric equipment	190,715.75	77,273.49	(303.87)	76,969.62	267,685.37
325	Miscellaneous power plant equipment	25,725.91	15,919.91		15,919.91	41,645.82
329	Roads, railroads, and bridges	87,076.24	8,325.14	(27,357.17)	(19,032.03)	68,044.21
	Total hydraulic production plant	8,437,504.11	622,533.59	21,293.32	643,826.91	9,081,331.02
	Transmission plant					
340	Land and land rights	554.70	234.36	(234.36)		554.70
341	Clearing land and rights of way	279.02	178.93		178.93	457.95
343	Station equipment	520,947.90	54,606.06	(9,769.34)	44,836.72	565,784.62
344	Towers and fixtures	18,968.55	936.44	289.88	1,226.32	20,194.87
345	Poles and fixtures		6,401.38		6,401.38	6,401.38
346	Overhead conductors and devices	23,855.23	(11,400.88)	349.04	(11,060.84)	12,794.39
	Total transmission plant	564,595.40	50,947.29	(9,364.78)	41,582.51	606,177.91
	General plant					
378	Communication equipment	8,794.73	10,195.45		10,195.45	18,990.18
	Total electric plant in service	9,010,894.24	683,676.33	11,928.54	695,604.87	9,706,499.11
265.2	Contributions in aid of construction—Federal	(1,052.15)	(613.41)		(613.41)	(1,665.56)
	Total Cost of Project	9,009,842.09	683,062.92	11,928.54	694,991.46	9,704,833.55

(A) Account references are to account numbers and titles prescribed in the Commission's Uniform System of Accounts effective prior to January 1, 1961.
(B) Per Commission Order issued February 27, 1950 (9 FPC 528).
( ) Denotes credit.

SCHEDULE II

PROJECT NO. 619 (BUCKS CREEK) PACIFIC GAS & ELECTRIC CO.

ADJUSTMENTS OF CLAIMED CHANGES IN PROJECT PLANT ACCOUNTS AND ACCOUNTING DISPOSITION THEREOF FOR THE PERIOD FROM APR. 2, 1936 THROUGH DEC. 31, 1954

Account number and title*		Adjustments to claimed changes					
No.	Title	Total	No. 1 Overstated and unrecorded retirements	No. 2 Prorated general overheads and taxes improperly capitalized	No. 3 Nonproject items	No. 4 Facilities at storrie included in error in project No. 1962	No. 5 Reclassifications
	Hydraulic production plant						
321	Structures and improvements	$47,827.29			($1,856.98)	$20,233.18	$29,451.09
322	Reservoirs, dams, and waterways	1,894.73	$3,988.65				(2,093.92)
323	Waterwheels, turbines, and generators	(767.66)		($767.66)			
324	Accessory electric equipment	(303.87)		(303.87)			
326	Roads, railroads, and bridges	(27,357.17)					(27,357.17)
	Total hydraulic production plant	21,293.32	3,988.65	(1,071.53)	(1,856.98)	20,233.18	
	Transmission plant						
340	Land and land rights	(234.36)					(234.36)
343	Station equipment	(9,769.34)		(389.42)	(9,379.92)		
344	Towers and fixtures	289.88	55.52				234.36
346	Overhead conductors and devices	349.04	349.04				
	Total transmission plant	(9,364.78)	404.56	(389.42)	(9,379.92)		
	Total adjustments	11,928.54	4,393.21	(1,460.95)	(11,236.90)	20,233.18	
	Accounting disposition						
10.1	Electric plant in service:						
	Project No. 1962	(20,233.18)				(20,233.18)	
	Nonproject	10,832.34	(404.56)		11,236.90		
250.1	Reserve for depreciation of electric plant in service:						
	Project No. 619	(4,393.21)	(4,393.21)				
	Nonproject	404.56	404.56				
502	Operating expenses	767.66		767.66			
507	Taxes	693.29		693.29			
	Total disposition	(11,928.54)	(4,393.21)	1,460.95	11,236.90	(20,233.18)	

*Account references are to account numbers and titles prescribed in the Commission's Uniform System of Accounts effective prior to January 1, 1961.
( ) Denotes credit.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

WISCONSIN VALLEY IMPROVEMENT COMPANY, PROJECT NO. 2113

ORDER MODIFYING ORDER ON REHEARING

(Issued July 9, 1964)

Pursuant to application filed March 16, 1964 by Wisconsin Valley Improvement Company, licensee for Project No. 2113, by order issued April 15, 1964, we granted rehearing of our order issued February 17, 1964, 31 FPC 417, approving project exhibits and fixing annual charges for the project.

In its application for rehearing, the licensee requested modification of the February 17, 1964 order to reduce the acres of lands of the United States occupied by the project from 101.30 acres, as specified in the order, to 17.10 acres, with a resultant decrease in the amount of annual charges for such occupancy.

A staff re-examination of the lands in question, based upon information furnished by the licensee and on additional land records now within the Commission, shows that the project actually occupies 22.10 acres of lands of the United States for purposes of annual charges. The difference between the licensee's figure of 17.10 acres and the staff's new figure of 22.10 acres is predicated on the fact that lands of the United States occupied by the project in Rainbow Reservoir comprise 17.15 acres rather than the 12.15 acres listed in the Commission's February 26, 1964 letter to the licensee.

The Commission finds:

It will be consistent with the public interest to modify our aforesaid February 17, 1964 order as hereinafter provided.

The Commission orders:

(A) Paragraph (E) of our February 17, 1964 order is hereby modified to read as follows:

(E) Article 32 of the license for the project is hereby modified to read as follows:

Article 32. The Licensee shall pay to the United States the following annual charges, effective as of August 1, 1943:

(i) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands (22.10 acres) the sum of $53.04.

(B) The aforementioned Commission order issued February 17, 1964, as modified by this order, shall be accepted by the licensee and returned to the Commission on or before July 31, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. RP64-9

ORDER ON APPEAL FROM RULING OF THE PRESIDING EXAMINER

(Issued July 10, 1964)

On May 7, 1964, during the course of the prehearing conference in this proceeding, the Presiding Examiner ruled that he proposed "to accept in this case the filed rates of the Cities Service Oil Company [Oil Company] and the Columbian Fuel Corporation [Columbian] as legitimate costs of service of the Cities Service Gas Company [Gas Company] exactly in the same form and extent as I will do

to all other producers supplying Cities Service Gas Company in respect of their filed rates," which, in effect, was a ruling that Gas Company was not required to adduce evidence pertaining to its affiliated gas purchases in this proceeding.[1]

On June 12, 1964, the Commission staff filed an appeal[2] herein requesting the Commission to overrule the Examiner's ruling, to direct the Examiner to require the Gas Company to adduce cost evidence in this proceeding to support the purchased gas expense claimed by Gas Company with respect to all of its purchases from its affiliated suppliers, and to consolidate with this proceeding the pending Section 4(e) proceedings involving sales to Gas Company by its affiliated suppliers. In its appeal, staff contends that, because of the relationship of the Gas Company, Oil Company, and Columbian, Gas Company is required to adduce cost evidence to support its claimed purchase gas expense from those suppliers under the Court's ruling in *City of Detroit* v. *F.P.C.*, 230 F. 2d 810, and the Commission's recent decision in *United Gas Pipe Line Company*, Opinion No. 428, issued May 14, 1964, 31 FPC 1180. Staff further states that it would not object to the evidence being supplied by the affiliated producers and would not oppose their petition to intervene herein, if tendered. Additionally, the staff contends that the cost evidence, sought to be required herein, may be a duplication of the evidence required in the pending producers' rate proceedings and, therefore, moved to have those rate proceedings consolidated with this proceeding.

On June 22, 1964, Gas Company filed its answer and objections to staff's appeal. In this document, Gas Company contends that "the real issue in this appeal is whether or not the rates for Oil Company's and Columbian's sales to Gas Company *must* be fixed *in this proceeding*" [emphasis in original] and that, based on our recent decisions in *Union Producing Company*, Opinions Nos. 414 and 414–A, 31 FPC 41 and 503, and *United Gas Pipe Line Company*, *supra*, the cost evidence sought by staff need not the adduced in this proceeding. However, the posture of the *United* case in reference to its purchased gas costs from its affiliated supplier, Union, was materially different from the instant proceeding. The *United* hearing commenced on November 27, 1962, approximately five months after the Examiner had issued his decision in the *Union* case (*Union Producing Company, et al.*, Docket No. G–13811, *et al.*). Therefore, the attempt to try the issue of Union's rates in the *United* proceeding would have resulted in a retrial of the same issues that the Examiner had ruled on in his decision in the *Union* case, which retrial would have unnecessarily prolonged the *United* proceeding to the detriment of the public interest. The instant proceeding is not similar to the *United* proceeding and, therefore, the cost evidence of Gas Company's affiliated suppliers, sought to be required herein by staff, will expedite, rather than prolong the final determination of this proceeding.

Under the *City of Detroit* case, the Court stated that the costs of a pipeline's own production should "be used at least as a point of departure" in ascertaining the costs that will be allowed in the pipeline's cost of service for such gas purchases (230 F. 2d at 810). In *Mississippi River Fuel Corp* v. *F.P.C.*, 252 F. 2d 619, the Court, in dealing with costs to be allowed a pipeline for its purchases from affiliated suppliers, stated (252 F. 2d 622):

> We think the Commission could no more test the reasonableness of inter-affiliate prices by the use of fair field prices (without more) than it could allow as costs the fair field prices (without more).

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[1] Gas Company, Oil Company, and Columbian are subsidiaries of Cities Service Company.

[2] On June 17, 1964, staff filed a motion herein requesting the Commission to consider its appeal as having been filed under Section 1.18(d) of our Rules of Practice and Procedure. We grant this motion and will consider the appeal as having been filed under Section 1.18(d).

Based on those Court rulings, we stated, in the *United* case, "that we would be remiss in accepting Union's filed rates for United's purchased gas costs" (p. 1187). We would similarly be remiss in this instance if we failed to require Gas Company to adduce cost evidence related to gas purchases from its affiliates.

Gas Company also contends that the consolidation of the producers' rate proceedings with this proceeding would prolong and delay the eventual determination herein to the detriment of the public interest. Gas Company asserts that if Oil Company's and Columbian's pending rate cases with respect to sales to Gas Company are consolidated herewith, those companies would require a minimum period of six months in which to prepare for hearing. However, Oil Company and Columbian are presently preparing cost data for the year 1962 on all of their jurisdictional sales, including the sales to Gas Company, pursuant to questionnaires submitted to them by this Commission, which data are due to be filed on July 31, 1964. The test period involved herein is for the twelve months ending June 30, 1963. If the cost data due to be filed by Columbian and Oil Company based on the calendar year 1962 are claimed to be substantially out-moded in reference to the test year in this proceeding, such data can be updated, if necessary, upon a proper showing.

We are reluctant to delay the determination of this proceeding. However, this issue is no minor matter (*e.g.*, *Mississippi* and *City of Detroit* cases, *supra*) and, in this proceeding, affects approximately 10 percent of Gas Company's purchases for the test period. Accordingly, we shall require the Gas Company to submit cost evidence in support of the purchased gas expense claimed by it with respect to purchases from its affiliated suppliers and to file and serve such testimony and exhibits on the parties hereto on or before September 8, 1964. At the hearing now scheduled to convene on September 15, 1964, the Presiding Examiner shall set the dates for the filing of evidence by the interveners and staff, rebuttal testimony, and for cross-examination, on the issue of the amounts to be allowed in Gas Company's cost of service for affiliated gas purchases. We would be willing to consider a motion to try this issue apart from this proceeding and tentatively reflect the gas purchases from affiliates at the filed rates, provided Gas Company will stipulate that such reduced rates as may be determined for its affiliates in the separate proceeding will be reflected in the cost of service in this proceeding for all gas purchased from such affiliate and refunds, if any, resulting therefrom will be made by Gas Company to its customers from the date the proposed rates in this proceeding became effective subject to refund, *i.e.*, April 23, 1964. Absent such stipulation the procedure provided herein will be controlling.

The Commission orders:

(A) Gas Company, on or before September 8, 1964, shall serve on the parties to this proceeding its cost evidence comprising the direct testimony and exhibits on the issue of the amounts to be allowed in its cost of service for gas purchased from its affiliated suppliers.

(B) At the hearing scheduled to convene herein on September 15, 1964, the Presiding Examiner shall set the dates for the filing of answering testimony and exhibits, rebuttal evidence, and for cross-examination of the issue stated in Paragraph (A) above in conformity with our desire to expedite this proceeding.

(C) Gas Company, within 30 days from the date of this order, may file a motion herein with a stipulation, as contemplated above, requesting the Commission to establish a separate hearing on the issue stated in Paragraph (A) above.

(D) The hearing scheduled to commence herein on September 15, 1964, for cross-examination on all of the other issues in this proceeding shall be continuous until concluded as heretofore ordered.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

JONES-O'BRIEN, INC., ET AL. (OPERATORS), ET AL., DOCKET NO. RI64-403

ORDER ACCEPTING OFFER OF SETTLEMENT AND TERMINATING PROCEEDINGS IN PART

(Issued July 10, 1964)

On June 10, 1964, Jones-O'Brien, Inc., *et al.* (Operators), *et al.* (Jones-O'Brien) submitted an offer of settlement pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure.[1][2] The offer involves the proposed increased rate of 16.8263¢ per Mcf, suspended in the above-entitled proceeding,[3] for sales of natural gas made to Texas Eastern Transmission Corp. (Texas Eastern) under Jones-O'Brien's FPC Gas Rate Schedule No. 5, in Bethany-Longstreet Field, Caddo and De Soto Parishes, Louisiana (North Louisiana). Under the terms of the offer, Jones-O'Brien proposes to eliminate all price escalation provisions from its rate schedule and to establish a 16.7756¢ per Mcf rate for the subject sale. No protests or objections have been filed to the offer.

Concurrently, Jones-O'Brien filed a notice of change in rate to 16.7756¢ per Mcf, inclusive of tax reimbursement, at 15.025 psia under the subject rate schedule to be effective July 1, 1964[4] and an executed contract amendment eliminating all price escalation provisions under the instant rate schedule.[5]

The proposed settlement is consistent with the provisions of the *Seventh Amendment to the Commission's Statement of General Policy No. 61-1*, issued November 27, 1963, in Docket No. R-251, 30 FPC 1370, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Jones-O'Brien's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservation of the right to file increases to cover future tax increases under the subject rate schedule, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Jones-O'Brien's rate and rate schedule.

The Commission finds:

The proposed settlement, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Jones-O'Brien on June 10, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Jones-O'Brien on June 10, 1964, is hereby approved in accordance with the provisions of this order.

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[1] Although no formal offer was filed, the notice of change and executed contract amendment filed by Jones-O'Brien are treated herein as constituting an offer of settlement within the meaning of the Seventh Amendment to the Commission's Statement of General Policy No. 61-1.

[2] Jones-O'Brien's offer specifically relates only to its own interest under the subject rate schedule. However, it is deemed to be applicable also to the signatory parties covered by its rate schedule to the extent they comply with the provisions of this order.

[3] The proposed 16.8263¢ rate has not been placed in effect subject to refund.

[4] Adequate notice has not been given for the proposed effective date.

[5] The notice of change and contract amendment is designated as Supplement No. 13 to Jones-O'Brien's FPC Gas Rate Schedule No. 5.

(B) Supplement No. 13 to Jones-O'Brien's FPC Gas Rate Schedule No. 5 is hereby accepted for filing, effective as of July 11, 1964. The settlement rate herein approved shall be considered applicable to Jones-O'Brien's interest and to the interest of any other signatory party covered by the subject rate schedule who files an executed contract amendment similar to the one filed by Jones-O'Brien, but shall not be applicable to any signatory party who does not so comply.

(C) The above-designated proceeding is hereby terminated as to Jones-O'Brien's interest and shall also be deemed terminated as to any other signatory party covered by the subject rate schedule who files an executed contract amendment in accordance with paragraph (B) hereof. As to any signatory party who does not so comply, Docket No. RI64-403 shall remain in full force and effect.

(D) The acceptance by the Commission of Jones-O'Brien's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Jones-O'Brien, including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP64-246

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 10, 1964)

On April 20, 1964, Southern Natural Gas Company (Applicant) filed in Docket No. CP64-246 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain loop pipeline on its (1) Patterson Field Supply Line in St. Mary Parish, Louisiana, consisting of approximately 7.604 miles of 10¾-inch loop line extending from a point 12.577 miles north of the Lake Sand Receiving Station on the west leg of its South Louisiana Supply System to a point in the Patterson Field, St. Mary Parish, Louisiana, and (2) Calera Branch Line in Jefferson and Shelby Counties, Alabama, consisting of approximately 10.409 miles of 8⅝-inch loop line extending from M.P. 10.646 to M.P. 21.055 on said lateral, all as more fully set forth in the application on file with the Commission.

Applicant is presently taking gas from its own reserves in the Patterson Field through a 6⅝-inch line, and will with the proposed 7.604 miles of 10¾-inch loop line increase its take to avoid drainage by other producers in the field, and to maintain ratable production. The proposed loop line will have a maximum daily capacity of approximately 96,800 Mcf. The proposed looping of the Calera Branch Line will provide greater safety and security of operations, and will enable Applicant to make necessary repairs to the existing line.

The estimated cost of constructing the proposed Patterson Field Supply Line and the Calera Branch Line loops is $378,720 and $316,570, respectively, and will be defrayed from cash on hand.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 9, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorizations sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Southern Natural Gas Company, a Delaware corporation, having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G–296 (3 FPC 822).

(2) The proposed construction and operation of facilities and the transportation of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application and exhibits filed in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and the transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Southern Natural Gas Company, in this proceeding authorizing the construction and operation of facilities, and the transportation of natural gas in interstate commerce, as hereinbefore described, all as more fully described in the application and exhibits filed in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized by paragraph (A) above shall be constructed and placed in operation within 12 months from the date of the issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

AREA RATE PROCEEDING, ET AL. (SOUTHERN LOUISIANA AREA), DOCKET NO. AR61–2, ET AL.

ORDER ON MOTION FOR RECONSIDERATION OF SECRETARY'S REJECTION OF APPEAL

(Issued July 13, 1964)

On May 11, 1964, Hunt Oil Company and fourteen other Hunt entities filed a document entitled "Appeal From Presiding Examiner's Exclusion From Evidence

of Exhibit No. 182." On May 14, 1964, the Secretary rejected Hunt's appeal on the grounds that the Presiding Examiner had not made a finding of "extraordinary circumstances" within the meaning of Section 1.28(a) of the Commission's Rules of Practice and Procedure. On May 25, 1964, Hunt filed with the Secretary a letter requesting a definitive construction as to whether the rule invariably requires an examiner's finding as a prerequisite to an appeal. We treat Hunt's letter as a petition for reconsideration.

Rule 1.28(a) does not absolutely bar appeals where the examiner declines to find the "extraordinary circumstances", but we expect the would-be appellant to make a strong showing of extraordinary circumstances if he would justify our entertaining an interlocutory appeal. See *Area Rate Proceeding*, 29 FPC 1101 and cases there cited. Hunt's appeal document recited no pressing reason for immediate review besides the contention that the Examiner has erred in his rulings. Accordingly, the Secretary was justified in rejecting the appeal as it was presented. Objection to the Examiner's evidentiary rulings may be renewed when the case is properly before us on exceptions.

Our examination of Hunt's appeal indicates a possible need for clarification of our prior orders on admissibility of evidence. According to Hunt, our order of May 16, 1963, in this proceeding (29 FPC 981) has been construed as requiring the exclusion of Hunt's Exhibit 182 which purports to show the unit exploration and development cost, excluding return, for each of eighty-one respondents whose composite cost is shown in certain staff exhibits. Hunt has appended a copy of Exhibit 182 (but not of the related testimony nor of the Examiner's rulings) to its appeal document. The exhibit consists of four columns. The first column lists the numerical rank of the respondent (from 1 to 81). The second lists the respondent's name. The third lists unit cost (from zero to 42.33 cents per Mcf and the fourth lists total exploration costs as a percentage of total revenue. Hunt indicates, however, that its offer of proof would delete the names of the particular companies from the exhibit so as to make clear that Hunt is not attempting an individual cost presentation. Our prior orders do not require exclusion of such proof.

Our May 16, 1963, order merely holds that "individual company cost presentations" are not proper matters for consideration in determining any area price. (29 FPC at 982) The May 16 order adheres to the view declared early in the Permian Basin proceeding that in order for cost data to be useful in determining just and reasonable rates on an area basis "they must be consistently and uniformly developed on a group basis." (25 FPC at 616) Our prior holdings mean that a showing of Hunt Oil Company's costs would be irrelevant as such. We have never held, however, that an array, consistently and uniformly developed, if the ingredients of cost composites would be irrelevant if presented for purposes other than those of showing the costs of particular respondents. We go further to state that such arrays, particularly if they indicate the related gas volumes may well be relevant in analyzing composite cost presentations. Indeed, in the absence of such analyses the proponents of composite cost studies may be offering little more than "unsifted averages." *I.C.C.* v. *Mechling*, 330 U.S. 567, 583. We would welcome the appropriate presentation of such arrays.

We believe the foregoing statement offers adequate clarification to guide Hunt, the parties, our staff and the Presiding Examiner without necessitating an interlocutory ruling by the Commission as to the details raised by Hunt's appeal document. Accordingly, reconsideration of the Secretary's rejection of Hunt's appeal is hereby denied without prejudice to renewal at the proper time.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP64-251

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 13, 1964)

On April 23, 1964, Cities Service Gas Company (Applicant) filed in Docket No. CP64-251 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain meter and regulator equipment to enable Applicant to render direct interruptible natural gas service to 8 industrial customers in Texas, Oklahoma, Kansas and Missouri, all as more fully set forth in the application.

Specifically, the lines which will be tapped, location, customer, use of gas, estimated annual sales volume for each customer and the average rate per Mcf for each customer are as follows:

(1) Superior 8-inch pipeline in Lincoln County, Kansas, for sale to Walker Products, Inc., for alfalfa dehydration operations (28,160 Mcf—28 cents).

(2) Eureka Field 4-inch gathering pipeline in Grant County, Oklahoma, for sale to Mr. Leonard Ranson for irrigation operations (500 Mcf—46 cents).

(3) Pampa Field 6-inch gathering pipeline in Gray County, Texas, for sale to Mr. Raymond Barrett for irrigation operations (500 Mcf—46 cents).

(4) Lindsay 16-inch pipeline in Garvin County, Oklahoma, for sale to Mr. R. E. Reeves for irrigation operations (500 Mcf—46 cents).

(5) Quapaw 16-inch pipeline in Newton County, Missouri, for sale to Mr. C. J. Elliott for truck stop operations (1,560 Mcf—52 cents).

(6) Alden Storage Field 2-inch pipeline in Rice County, Kansas, for sale to Mr. R. G. Wellman for irrigation operations (1,360 Mcf—44 cents).

(7) Chase 6-inch pipeline in Rice County, Kansas, for sale to the City of Lyons, Kansas, for a standby water pumping unit (500 Mcf—46 cents).

(8) Cement 16-inch pipeline in Cleveland County, Oklahoma, for sale to the Independent Manufacturing Company for steam generation for heating, manufacturing and processing of rubber products and foundry operations (6,000 Mcf—39 cents).

The total estimated cost of the 8 meters and regulators to be installed is $5,850, which cost will be paid out of treasury cash.

On June 18, 1964, the State Corporation Commission of the State of Kansas filed a notice of intervention in support of the subject application.

After due notice, no petition to intervene, other notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 9, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G-298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (1), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of pubic convenience and necessity be and the same is hereby issued authorizing Applicant, Cities Service Gas Company, to construct and operate the proposed facilities and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (1), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

CUMBERLAND AND ALLEGHENY GAS COMPANY, DOCKET NO. CP64-183; WEIPENN GAS COMPANY, INC., DOCKET NO. CI64-915

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 13, 1964)*

Cumberland and Allegheny Gas Company (Cumberland) on February 18, 1964, filed in Docket No. CP64-183 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to (1) abandon by sale to Weipenn Gas Company, Inc. (Weipenn) its natural-gas facilities situated in the Otter and Salt Lick Districts, Braxton County, West Virginia, and (2) abandon the sale and transportation through said facilities of natural gas and the exchange of natural gas with Equitable Gas Company (Equitable), all as more fully set forth in the application and exhibits on file with the Commission.

*Amended by order issued July 31, 1964, *infra.*, p. 474.

Weipenn referred to above filed in Docket No. CI64-915 on February 14, 1964, an application for a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act authorizing the sale of natural gas to Equitable, the transportation of natural gas for Equitable, and the acquisition of among other things facilities of Cumberland located in Braxton County, West Virginia, all as more fully set forth in the application and exhibits on file with the Commission.

Cumberland, a subsidiary of The Columbia Gas System, Inc., proposes to abandon by sale to Weipenn its off-system facilities located in Braxton County, West Virginia consisting of approximately 65,882 feet of 6-inch, 8-inch, 9⅝-inch, and 10-inch pipeline extending from the Engle Farm in Otter District, Braxton County, West Virginia, generally in a northeasterly direction to the Burnsville Compressor Station of Equitable situated in Salt Lick District, Braxton County, West Virginia, together with approximately 57,481 feet of connecting lines ranging from 2-inch to 6⅝-inch pipeline (designated "field lines"), and appurtenant measuring and metering facilities. Under an exchange agreement with Equitable entered into December 1, 1954, (Cumberland's FPC Gas Rate Schedule X-2) Cumberland is presently delivering on an exchange basis to Equitable at Equitable's Burnsville Compressor Station approximately 120,000 Mcf annually of natural gas produced and purchased in the Braxton County Field, as well as transporting and delivering to Equitable approximately 948,000 Mcf annually of Equitable's locally-produced gas from sources of production to Equitable's Burnsville Compressor Station at the eastern end of Cumberland's system.

Cumberland and Weipenn by agreement dated September 20, 1962, have provided for the sale for $25,000 and transfer to Weipenn of approximately 123,363 feet of various sized pipe and appurtenant facilities, nine producing gas wells, casing, tubing, etc., nine oil and gas leases covering approximately 1,036 acres, and also the assignment to Weipenn of all of Cumberland's interest in ten gas purchase contracts.

Weipenn proposes to sell approximately 12,000 Mcf of natural gas annually to Equitable, and to gather and transport approximately 948,000 Mcf annually of Equitable's locally produced gas, all to be delivered to Equitable at its Burnsville Compressor Station in accordance with the terms of their contract entered into April 26, 1963.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 9, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the applications and exhibits, submitted in support of the authorizations sought by Cumberland in Docket No. CP64-183, and Weipenn in Docket No. CI64-915, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Cumberland and Allegheny Gas Company, a West Virginia corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued January 5, 1944, in Docket No. G-387 (4 FPC 472).

(2) Weipenn Gas Company, Inc., a West Virginia corporation having its principal place of business in Charleston, West Virginia, upon acquisition of the facilities of Cumberland and the commencement of the sale and transportation of natural gas as proposed in Docket No. CI64-915 will be engaged in the business of transporting and selling natural gas in interstate commerce subject to the

jurisdiction of the Commission, and will therefore be a "natural-gas company" within the meaning of the Natural Gas Act.

(3) The facilities proposed to be abandoned by sale and transfer in Docket No. CP64–183 by Cumberland, as hereinbefore described and as more fully described in the application herein, are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(4) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and permission and approval therefor should be granted as hereinafter ordered and conditioned.

(5) The proposed acquisition of facilities by Weipenn, the sale and delivery of natural gas by Weipenn to Equitable, and the transportation of natural gas for Equitable by Weipenn as hereinbefore described, and as more fully described in the application filed by Weipenn in Docket No. CI64–915 are subject to the requirements of Subsection (c) and (e) of Section 7 of the Natural Gas Act.

(6) The aforesaid proposed acquisition of facilities, and the transportation and sale of natural gas in interstate commerce by Weipenn are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(7) Weipenn is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(8) Weipenn's related FPC Gas Rate Schedule and supplements should be accepted for filing as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the proposed abandonment by sale of facilities by Cumberland to Weipenn, and of the transportation and sale of natural gas by Cumberland as hereinbefore described and as more fully described in the application filed by Cumberland in Docket No. CP64–183 are hereby granted.

(B) A certificate of public convenience and necessity be and the same is hereby issued to Weipenn Gas Company, Inc., authorizing the acquisition of facilities from Cumberland, the sale and delivery of natural gas to Equitable, the transportation of natural gas for Equitable, and the sale and transportation for resale of natural gas in interstate commerce, as hereinbefore described, all as more fully described in the application and exhibits filed in Docket No. CI64–915, upon the terms and conditions of this order.

(C) The issuance of the certificate granted in paragraph (B) above is without prejudice to the requirement that Weipenn comply with the Commission's Uniform System of Accounts and the filing for Commission approval of appropriate accounting entries reflecting the transfer of the subject facilities.

(D) The certificate granted in paragraph (B) above is not transferable and shall be effective only so long as Weipenn Gas Company, Inc. continues the acts or operations hereby authorized, in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(E) The related rate filings listed below are hereby accepted subject to all applicable Commission Regulations under the Natural Gas Act, to be effective upon the date of this order:

Description and date of document	*Rate schedule designation Weipenn Gas Company, Inc.*
Contract 4–26–63	FPC Gas Rate Schedule No. 1
Agreement 4–26–63	Supplement No. 1 thereto
Assignment 9–20–62	Supplement No. 2 thereto

(F) Cumberland and Allegheny Gas Company shall advise the Commission of the date of abandonment within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64-61

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING WITHDRAWAL OF INTERVENTION

(Issued July 13, 1964)

On September 16, 1963, as supplemented by letter filed June 10, 1964, El Paso Natural Gas Company (Applicant) filed in Docket No. CP64-61 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1964 and the operation of field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application and supplemental letter.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its existing pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the proposed facilities will not exceed a maximum of $5,000,000 with no single project to exceed a cost of $500,000, which costs will be financed from current working funds or through the sale of bonds or other long-term securities.

Due notice of the subject application was published in the Federal Register on October 18, 1963 (28 F.R. 11205). On November 4, 1963, Transwestern Pipeline Company filed a petition to intervene in this proceeding but on the basis of Applicant's supplemental statement of June 10, 1964, emphasizing that none of the facilities proposed under this application will be used to expand or enlarge Applicant's main line transmission facilities as presently certificated, said petition to intervene was withdrawn by Transwestern by letter filed June 11, 1964. No other petition to intervene, notice of intervention or protest to the granting of the subject application has been filed.

At a hearing held on July 9, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G-288 (4 FPC 486).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1964 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $5,000,000, with no single project to exceed a cost of $500,000.

(8) Good cause has been shown for permitting the withdrawal of the petition to intervene filed by Transwestern Pipeline Company on November 4, 1963.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct during the calendar year 1964, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1964 and the total expenditure for facilities to be constructed thereunder are hereby limited to a maximum of $5,000,000, with no single project to exceed a cost of $500,000.

(E) The petition to intervene filed in this proceeding on November 4, 1963, by Transwestern Pipeline is hereby permitted to be withdrawn effective on the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

THE MANUFACTURERS LIGHT & HEAT COMPANY, DOCKET NO. CP64-224

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT AND ACCEPTING TARIFF SHEETS AND NOTICE OF CANCELLATION FOR FILING

(Issued July 13, 1964)

On April 3, 1964, The Manufacturers Light & Heat Company (Manufactures) filed in Docket No. CP64-224 an application pursuant to Section 7(b) of the

Natural Gas Act for permission and approval to abandon certain facilities and the service being rendered Mountain Gas Company (Mountain Gas) in Hamlin Township, McKean County, Pennsylvania, all as more fully set forth in the application on file with the Commission.

Manufacturers presently delivers and sells approximately 85,000 Mcf of natural gas annually to Mountain Gas from Manufacturer's 8-inch Line No. 4226 in Hamlin Township, McKean County, Pennsylvania under its CDS–1 Rate Schedule. Mountain Gas has requested termination of the service being rendered by Manufacturers for the reason that one of its customers, Pennzoil Company, has drastically reduced its take from Mountain Gas, and will not require any gas after May 1, 1964. Mountain Gas assertedly has ample gas from its own production and from independent producers to adequately supply remaining customers.

Upon termination of the sale to Mountain Gas, Manufacturers proposes to abandon its interconnection with Mountain Gas consisting of 35 feet of 2-inch line and 91-feet of 4-inch line, together with two (2) regulators and meters used for the delivery of natural gas to Mountain Gas.

On March 23, 1964, Manufacturers filed with the Commission its Fourth Revised Sheet No. 5 and its Seventh Revised Sheet No. 76 to its FPC Gas Tariff, Fourth Revised Volume No. 1, reflecting the termination of this sale. Concurrently therewith Manufacturers filed notice of the cancellation of its service agreement with Mountain Gas.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 9, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application and exhibits, submitted in support of the authorizations sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, The Manufacturers Light & Heat Company, a Pennsylvania corporation and a subsidiary of The Columbia Gas System, Inc., having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 29, 1944, in Docket No. G–593, *et al.* (4 FPC 821).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval therefor should be granted as hereinafter ordered.

(4) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that Manufacturer's Fourth Revised Sheet No. 5 and its Seventh Revised Sheet No. 76 to its FPC Gas Tariff, Fourth Revised Volume No. 1 and the notice of cancellation of its service agreement with Mountain Gas dated August 27, 1963, be accepted for filing effective April 25, 1964, as requested.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application in this proceeding, are hereby granted to Manufacturers.

(B) Manufacturers shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

(C) Manufacturers Fourth Revised Sheet No. 5 and its Seventh Revised Sheet No. 76 to its FPC Gas Tariff, Fourth Revised Volume No. 1, and the notice of cancellation of its service agreement with Mountain Gas dated August 27, 1963, are hereby accepted for filing effective April 25, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

MISSISSIPPI RIVER FUEL CORPORATION, DOCKET NO. CP64-222

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 13, 1964)

On April 1, 1964, Mississippi River Fuel Corporation (Applicant) filed in Docket No. CP64-222 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the transportation of natural gas for sale to The Ruberoid Company (Ruberoid) for use in the latter's plant near the Town of Annapolis, Iron County, Missouri, all as more fully set forth in the application.

Specifically, Applicant proposes to construct and operate 23 miles of 4½-inch O.D. pipeline from a point south of its Twelvemile Compressor Station, Madison County, Missouri, to the plant of Ruberoid, together with a tap connection and metering and regulating facilities. The total estimated cost of the proposed facilities is $338,850. Over a period of approximately seven years, Ruberoid will reimburse Applicant up to $286,000 of the estimated cost of the facilities.

Ruberoid's third year estimated peak day and annual natural gas requirements are 1,700 Mcf and 212,000 Mcf, respectively.

Ruberoid, a roofing material manufacturer, will utilize the natural gas for firing kilns and space and water heating.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 9, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Mississippi River Fuel Corporation, a Delaware corporation having its principal place of business in St. Louis, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 1, 1944, in Docket No. G-291 (4 FPC 535).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Mississippi River Fuel Corporation, to construct and operate the proposed facilities and to transport and deliver a maximum daily volume of 1,700 Mcf of natural gas to Ruberoid as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas authorized in Paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

(D) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Mississippi River Fuel Corporation for firm service to its customers.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP62-85

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 13, 1964)

On April 13, 1964, Northern Natural Gas Company (Northern) filed in Docket No. CP62-85 an application to amend the order of the Commission issued September 30, 1963, in Docket No. CP62-85, 30 FPC 859, which granted a certificate of public convenience and necessity authorizing, among other things, the construction and operation of main and branchline facilities to provide initial natural gas service to 76 communities including Alden, Iowa, all as more fully set forth in the application to amend on file with the Commission.

The application to amend states that Iowa Electric Light & Power Company (Iowa Electric), the distributor in Alden, has recently signed agreements to

serve two limestone quarries near Alden on an interruptible basis and has requested Northern to install facilities to provide this service. To provide the requested service Northern now requests authority to construct and operate 5.9 miles of 3-inch pipeline to Alden in lieu of 5.6 miles of 2-inch pipeline authorized by the aforesaid order issued September 30, 1963, and to modify measuring facilities for Alden so as to provide for two meters in lieu of one. Cost of the facilities requested in the application to amend is estimated to be $105,500.00.

Due notice of the subject application to amend and opportunity for hearing has been given by publication in the Federal Register on June 9, 1964 (29 F.R. 7439). No protest or petition to intervene has been filed concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued September 30, 1963, in Docket No. CP62–85 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued September 30, 1963, in Docket No. CP62–85 be and the same is hereby amended by authorizing Northern to construct and operate 5.9 miles of 3-inch branch pipeline to Alden, Iowa, in lieu of the 5.6 miles of 2-inch branch pipeline authorized by the aforesaid order, and to modify measuring facilities for Alden so as to provide for two meters in lieu of one, all as hereinbefore described and as set forth in the subject application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold Woodward and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP64–112

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 13, 1963)

On April 17, 1964, Northern Natural Gas Company (Petitioner) filed in Docket No. CP64–112 a petition to amend the Commission's order issued February 10, 1964, in said docket by increasing the contract demand of the City of Ponca, Nebraska, from 538 Mcf of natural gas per day to 563 Mcf per day, an increase of 25 Mcf per day, all as more fully set forth in the subject petition.

The order issued February 10, 1964, 31 FPC 399, authorized Petitioner to construct facilities to provide an additional 20,031 Mcf per day of contract demand gas for resale to its existing customers for the heating season of 1964–65.

The application states that the City of Ponca, an existing customer, has advised Petitioner that an increase in its contract demand is required because of new building activity and the connection of new gas users. No additional facilities will be required to deliver the increased volumes.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publication in the Federal Register on May 26, 1964 (29 F.R. 7031). No protest, petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued February 10, 1964, in Docket No. CP64–112 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order of February 10, 1964, in Docket No. CP64–112 be and the same is hereby amended by authorizing Northern Natural Gas Company to sell and deliver to the City of Ponca, Nebraska, for resale an increase of 25 Mcf of natural gas per day over the volume of gas authorized by said order, all as heretofore described and as set forth in the subject petition.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP64–241

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued July 13, 1964)

On April 15, 1964, Northern Natural Gas Company (Applicant) filed in Docket No. CP64–241, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon and remove approximately 3.39 miles of 4-inch, 2.89 miles of 6-inch and 2.47 miles of 8-inch pipeline located in Stevens County, Kansas.

The facilities proposed to be abandoned consists of 4, 6 and 8-inch lines, with three wells connected to the 4 and 6-inch segments. Applicant states that due to the small size of the present lines a pressure drop occurs in this area of its gathering system which causes operating difficulties. Since Applicant has larger lines located in the immediate area, it proposes to overcome such pressure drop by connecting the three wells to the larger lines. The 8-inch line to be abandoned has no wells attached and will not be required after transfer of the wells from the 4 and 6-inch lines.

The abandonment and removal of the subject facilities will not result in the abandonment of any service now being rendered. The estimated cost of removing the lines is $21,300.

After due notice, no petition to intervene, or protest to the granting of the application has been filed. On June 19, 1964, the State Corporation Commission of the State of Kansas, filed a Notice of Intervention indicating active interest in the matter but stating that it did not intend to hinder the orderly processing of the application.

At a hearing held on July 9, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization herein and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as hereinbefore found by the Commission in its order of April 6, 1943, in Docket No. G–280 (3 FPC 967).

(2) The facilities proposed to be abandoned as hereinbefore described, all as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission and the abandonment and removal thereof by Applicant are subject to the provisions of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The abandonment by Applicant as hereinbefore described is permitted by the public convenience and necessity and should be permitted and approved as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant, Northern Natural Gas Company of the facilities hereinbefore described, as more fully described in the application in this proceeding, is hereby granted.

(B) Applicant shall advise the Commission of the date of removal of said facilities within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

SUN OIL COMPANY, DOCKET NO. CI60-75

ORDER AMENDING TEMPORARY CERTIFICATE, CONDITIONALLY ACCEPTING RATE FILING AND ORDERING REFUNDS

(Issued July 13, 1964)

On March 2, 1964, Sun Oil Company (Sun) filed an amendment to its application for a certificate of public convenience and necessity in the above-captioned docket and an application for an amendment to its presently effective temporary authorization in this docket. Sun seeks authorization to sell natural gas from certain acreage in the Lower Mud Lake Field, South Louisiana pursuant to an amendment to its contract with Tennessee Gas Transmission Company (Tennessee) which constitutes Sun's F.P.C. Gas Rate Schedule No. 119.[1] Sun's original application for a certificate was filed on January 20, 1960, and by order issued December 31, 1962, was consolidated for hearing with *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.*[2] A temporary certificate to make the original sale at a total initial rate of 22.833¢ per Mcf, inclusive of tax reimbursement,[3] was issued to Sun on April 8, 1960.[4]

In its present application Sun states that its interest gas for which the amendment is sought has been delivered to Tennessee by Quintana Petroleum Corporation (Quintana), the operator of the property, under the Isaac Arnold, *et al.*, (Arnold) Rate Schedule No. 1. In its statement accompanying its rate schedule supplement filing Sun states that it had intended to include all of its interest in the Lower Mud Lake Field in its original contract but "through an oversight" left the subject acreage out of both its original contract with Tennessee and its original certificate application in Docket No. CI60-75.

Arnold, which until November 1, 1963, was the only signatory to a contract relating to the acreage which Sun now seeks to have its interest in covered by its Rate Schedule No. 119, settled its related certificate application in Docket

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[1] The basic contract is dated December 21, 1959; the amendment is dated November 1, 1963.

[2] Unreported order.

[3] Volumes expressed at 15.025 psia.

[4] The presently effective rate under Sun's Rate Schedule No. 119, being collected subject to refund in Docket No. RI63-129, is 23.675¢ per Mcf.

No. CI60–237 under terms which include a total initial rate, effective April 1, 1963, of 20.625¢ per Mcf; a 5 year moratorium on rate increase filings with certain exceptions; extension of take-or-pay make-up period to 4 years and agreement that the applicable rate determined in Area Rate Proceeding AR61–2 will apply prospectively to such rate schedule.[5]

Since, as Sun states, its interest in the acreage which it now seeks to add to its Rate Schedule No. 119 was and is covered by Arnold's Rate Schedule No. 1 and Arnold's certificate in Docket No. CI60–237, the substantive matters involved in Sun's instant certificate application amendment and application for an amendment to its temporary authorization have been settled. Accordingly, we shall amend Sun's temporary certificate in Docket No. CI60–75 under the terms of the Arnold settlement. We shall defer final procedural action on the amendment to the application for a permanent certificate in Docket No. CI60–75 until after the issuance of our final order in the Union Texas Petroleum, *et al.*, consolidated proceeding wherein the original application of Sun in Docket No. CI60–75 is in issue.[6]

Since Sun has not yet made its share of the refunds required by the Arnold settlement,[7] we shall order such refunds together with interest at 7 percent per annum to be made at this time. Sun's supplementary rate filing, the contract amendment between it and Tennessee dated November 1, 1963, will be designated as Supplement No. 4 to Sun's F.P.C. Gas Rate Schedule No. 119.

The Commission finds:

(1) Sun Oil Company is a natural gas company within the meaning of the Natural Gas Act, and is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission.

(2) It is appropriate in carrying out the provisions of the Natural Gas Act that the temporary certificate issued to Sun Oil Company in Docket No. CI60–75 on April 8, 1960, be amended as ordered below.

(3) The settlement proposal of Isaac Arnold, *et al.*, in Docket No. CI60–237 conditionally approved by the Commission on August 23, 1963, included the settlement of Sun Oil Company's interests in sales from acreage described in paragraphs 3 and 4 of Exhibit A to Isaac Arnold, *et al.*, F.P.C. Gas Rate Schedule No. 1.

The Commission orders:

(A) The temporary certificate issued to Sun Oil Company in Docket No. CI60–75 on April 8, 1960, is hereby amended to authorize the sales of natural gas in interstate commerce from acreage dedicated by the instrument described below in ordering paragraph (C) upon the same terms and conditions as Isaac Arnold, *et al.*, was allowed to make sales from the same acreage by the Commission's order of August 23, 1963, 30 FPC 550.

(B) Within 60 days from the date of issuance of this order Sun Oil Company shall refund to Tennessee Gas Transmission Company all amounts above 20.625¢ per Mcf inclusive of tax reimbursement, received by Sun Oil Company for deliveries of gas since April 1, 1963, attributable to the acreage dedicated by the instrument described below in paragraph (C) together with interest thereon computed at the rate of 7 percent per annum, such interest to accrue until such refund is made.

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[5] *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, 30 FPC 550.

[6] The Union Texas Petroleum, *et al.*, consolidated proceeding is pending before the Commission on exception to the presiding examiner's decision issued on January 14, 1964.

[7] All amounts above 20.625¢ per Mcf collected for deliveries made since April 1, 1963, the effective date of the rate reduction.

(C) Upon compliance with paragraph (B) above, the agreement between Sun Oil Company and Tennessee Gas Transmission Company dated November 1, 1963, and hereby designated Supplement No. 4 to Rate Schedule No. 119 shall be accepted for filing effective as of the date of this order.

(D) Within 30 days after making the refunds required by this order Sun Oil Company shall report to the Commission, in triplicate, the amount of refund made to Tennessee Gas Transmission Company, showing separately the amount of principal and interest so paid and the bases used for such determinations, together with a release from the purchaser showing receipt of the refund and interest in conformity with this order.

(E) The temporary certificate issued to Sun Oil Company in Docket No. CI60–75 on April 8, 1960, as amended by this order remains in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP64–165

ORDER DENYING PETITION TO INTERVENE

(Issued July 13, 1964)

On June 30, 1964, Pennsylvania Gas and Water Company (Penn Gas) filed a petition to intervene in the above-entitled proceeding which involves an application filed January 24, 1964, by Tennessee Gas Transmission Company (TGT) seeking a certificate of public convenience and necessity authorizing TGT to construct and operate additional pipeline facilities, at an estimated cost of about $49,997,000, in order to increase its system annual average day delivery capacity by about 84,000 Mcf.

Penn Gas' reason for seeking permission to intervene in this proceeding is related solely to a dispute between TGT and Penn Gas regarding the interpretation of the "availability" clause in TGT's G–4 Rate Schedule. According to Penn Gas' petition to intervene, the dispute arose when Penn Gas began to purchase storage service from Transcontinental Gas Pipe Line Corporation (Transco) under the latter's GSS Rate Schedule. It is TGT's position that Penn Gas is no longer eligible to purchase gas under TGT's G–4 Rate Schedule, because Penn Gas now has underground storage available to it, and that Penn Gas will have to purchase gas under TGT's CD–4 Rate Schedule instead. Penn Gas, on the other hand, contends that it is still entitled to purchase gas under TGT's G–4 Rate Schedule and that TGT's interpretation of the availability clause is erroneous.

TGT constructs capacity to meet the full requirements of its CD customers on each day of the year, but constructs pipeline capacity to meet only the annual average day requirements of its G Rate Schedule customers. Consequently, although Penn Gas, under TGT's G–4 Rate Schedule, is entitled to purchase up to a maximum daily quantity of 29,182 Mcf for its Wilkes-Barre-Scranton Division, TGT's system is designed to have average daily pipeline capacity to deliver only 19,428 Mcf of the peak day requirements. TGT would deliver up to 9,754 Mcf, or the difference between the average annual daily quantity of 19,428 Mcf and the peak day requirements of 29,182 Mcf, from storage. However, when a customer is transferred from purchasing under the G–4 Rate Schedule to purchasing under the CD–4 Rate Schedule, TGT provides pipeline capacity to meet its full contracted demand quantity on each day of the year. Therefore, in its application in Docket No. CP64–165 TGT seeks authority to construct, *inter alia*, facilities which would enable TGT to deliver 9,754 Mcf of additional gas, or a total of 29,182

Mcf, to Penn Gas. This additional capacity would have to be provided in order to transfer Penn Gas to the status of a purchaser under the CD–4 Rate Schedule as opposed to a purchaser under the G–4 Rate Schedule.

In its petition to intervene, Penn Gas states that it executed a precedent agreement with TGT, "* * * acting under a mistake of fact and law, * * *" providing for the transfer of its purchases from the G–4 to the CD–4 Rate Schedule. Penn Gas contends that "a proper interpretation" of the availability clause in the G–4 Rate Schedule would require Penn Gas to be either a producer of natural gas or a direct purchaser of natural gas from a producer in addition to having underground storage available to it. Since it is neither a producer nor a direct purchaser from a producer, it claims that it is still entitled to purchase gas from TGT under the G–4 Rate Schedule.

Penn Gas also contends that having underground storage available to it from Transco is not the type of underground storage which would make it ineligible to purchase under the G–4 Rate Schedule even if TGT's interpretation of the G–4 Rate Schedule were otherwise correct. Additionally, Penn Gas claims that TGT's construction of the G–4 Rate Schedule is unlawful under the Natural Gas Act, that transferring Penn Gas to the CD–4 Rate Schedule will increase Penn Gas' cost of gas substantially and will adversely affect Penn Gas' customers, and that if Penn Gas is permitted to intervene in a hearing regarding TGT's application in Docket No. CP64–165, it will show that TGT's capacity is sufficient to provide for Penn Gas' needs so long as Penn Gas continues to purchase under the G–4 Rate Schedule, that it is unnecessary and unlawful to transfer Penn Gas to the status of a purchaser under the CD–4 Rate Schedule, and for these reasons there is no need to consider whether TGT's design day capacity should be increased by an additional 9,754 Mcf as alleged by TGT. Penn Gas thereafter requests that the Commission issue an order fixing a date for hearing with respect to that part of TGT's application relating to the 9,754 Mcf of design day capacity required for conversion of Penn Gas to the status of a customer purchasing under the CD–4 instead of the G–4 Rate Schedule.

On July 2, 1964, TGT filed an answer in opposition to the granting of Penn Gas' petition to intervene. TGT claims that it has consistently interpreted its G–4 Rate Schedule so as to require those customers who can control their purchases to receive service under TGT's CD–4 Rate Schedule which contains contract demand and minimum bill provisions as opposed to the G–4 Rate Schedule which does not contain minimum bill provisions. TGT alleges that it would be discriminatory against TGT's other customers to interpret the G–4 Rate Schedule in the manner contended for by Penn Gas.

TGT further points out that regardless of the final determination of the rate schedule eligibility dispute, the facilities for which authorization is sought in Docket No. CP64–165 should be constructed in order to provide the most economic capacity from the standpoint of orderly construction. TGT states that since the filing of its application in Docket No. CP64–165 it has already received requests for additional service totaling 22,624 Mcf and that these additional requests would utilize all of the unallocated capacity in its system, assuming construction of all the facilities requested in Docket No. CP64–165, except 4,000 Mcf. Additionally, TGT alleges that its customers' requirements increase each year by more than 50,000 Mcf per day and that even if TGT should be permitted to construct excess capacity in the amount of 9,754 Mcf, that such design day capacity when added to TGT's existing unallocated capacity would still provide TGT with only 1.23 percent of unallocated capacity.

The pipeline facilities which TGT seeks authority to construct consist entirely of loops to existing 30- and 36-inch lines except for about 44.4 miles of 26-inch pipeline to transport gas from South Pass Block 27 to Station 527 in southern

Louisiana and for replacement of some lateral pipelines in New England. TGT proposes to loop its main line at points extending from Louisiana to storage fields located in Pennsylvania and New York. As TGT points out, elimination of any specific part of these facilities would result in eliminating considerably more than 9,754 Mcf of capacity. Under these circumstances, even if this certificate proceeding were an appropriate forum for resolving the TGT-Penn Gas dispute and we were to be in agreement with Penn Gas, we would not deny the application merely because the additional 9,754 Mcf of capacity would temporarily be added to TGT's unallocated capacity.

In any event, we do not think that this certificate case is a proper vehicle for resolving the tariff dispute—a matter which, as TGT points out, may affect many of TGT's customers who have expressed no interest in becoming interveners in the certificate proceeding. According to Penn Gas' petition to intervene, TGT and Penn Gas are expected to have a conference some time after July 1, 1964, in an effort to resolve their rate schedule eligibility dispute. If TGT and Penn Gas are still in disagreement after this conference has been held, adequate means are available under the Natural Gas Act whereby Penn Gas can bring its dispute with TGT before the Commission for a decision regarding the proper interpretation of the availability clause in TGT's G–4 Rate Schedule. In the meantime we will protect Penn Gas' rights by providing in any certificate order we may issue that the authorization is without prejudice to its claim that it is entitled to remain a purchaser under the G–4 Rate Schedule and that issuance of the certificate is not to be interpreted as permanently allocating 9,754 Mcf of TGT's additional capacity to Penn Gas.

The Commission finds:

Good cause has not been shown by Penn Gas for its being permitted to become an intervener in the proceeding regarding TGT's application filed in Docket No. CP64–165.

The Commission orders:

The petition to intervene in Docket No. CP64–165 filed June 30, 1964, by Pennsylvania Gas and Water Company is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Harold C. Woodward and David S. Black.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP64–165

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 13, 1964)

On January 24, 1964, Tennessee Gas Transmission Company (Applicant) filed in Docket No. CP64–165 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities in order to increase its system design day capacity by 84,000 Mcf of natural gas and to sell and deliver additional volumes of natural gas to meet the increased requirements of existing customers, all as more fully set forth in the application.

Specifically, Applicant proposes to construct and operate approximately 197.09 miles of 26 to 36-inch mainline loops in states in the eastern half of the country from Louisiana to New York; 19,000 additional compressor horsepower at new

and existing compressor stations in Louisiana, Kentucky and New York and approximately 39.44 miles of 6 to 10-inch pipeline replacement in New England.

The application indicates that of the proposed increased design day capacity of 84,000 Mcf, Applicant proposes to utilize 62,060 Mcf for increased deliveries to contract demand, general service and storage service customers and the remaining 21,940 Mcf design day capacity will be available to new or existing customers. Applicant states that the proposed facilities will increase its system design day capacity from 2,840,000 Mcf to 2,924,000 Mcf.

The total estimated cost of the proposed facilities is $49,997,000, which cost will be financed by the sale of first mortgage bonds, debentures and preferred stock.

On March 16, 1964, and on March 23, 1964, El Paso Natural Gas Company and Transwestern Pipeline Company, respectively, filed petitions to intervene in this proceeding. By order issued May 26, 1964, said petitions were denied.

On June 30, 1964, Pennsylvania Gas and Water Company (Penn Gas) also filed a petition to intervene herein. By order issued July 13, 1964, Penn Gas' petition was denied. However, the authorization hereinafter granted to Applicant is without prejudice to Penn Gas' claim that it is entitled to remain a purchaser under Applicant's G–4 Rate Schedule and issuance hereinafter of the certificate to Applicant is not to be interpreted as permanently allocating 9,754 Mcf of Applicant's additional capacity to Penn Gas.

Another petition to intervene on behalf of several of Applicant's customers has been filed herein. The burden of said filing is that the petitioners do not request formal hearing in this proceeding and do not object to the hearing and disposition of the subject application under the shortened procedure provided for by the Commission's Rules, but that each petitioner desires to preserve its rights to appear and participate fully in the event that this matter should be set for formal hearing. Inasmuch as the shortened procedure is being used herein, no further action on said petition appears necessary.

After due notice, no other petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 13, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 12, 1947, in Docket No. G–910 (6 FPC 777).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and sales of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sales of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Tennessee Gas Transmission Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sales and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP64-159

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued July 13, 1964)

On January 10, 1964, as supplemented on January 30, 1964, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP64-159 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the following described facilities:

(1) 5,417 feet of 4-inch transmission purchase lateral pipeline known as the "Sour Lake Lateral" running from M.P. 396.24 an Applicant's 30-inch main line to a point in the Sour Lake Field, Hardin County, Texas;

(2) 1,851 feet of 3-inch transmission purchase lateral pipeline, three purchase meter stations, one field booster compressor unit (No. 17) and one dehydration unit, collectively known as the "Mission Bridge Facilities" located in the Staff Area off Transco's 24-inch McMullen Lateral in Victoria County, Texas; and

(3) One field booster compressor unit (No. 6) located adjacent to and connected with Applicant's 14-inch Goebel Lateral in the Tynan Field, Bee County, Texas, approximately 18.14 miles northwesterly from Transco's 24-inch main line;

all as more fully represented in the application, and supplement in this proceeding.

These facilities originally were utilized in taking into Applicant's pipeline system natural gas purchased from independent producers in the respective fields

in which such facilities are located. Deliveries of gas by means of these facilities from each of the sources has now ceased due to exhaustion, of reserves, or decline to the point where the wells are no longer economically feasible to produce. All of the producers who supplied Applicant from the Sour Lake Field or Mission Bridge Area have received authorization from the Commission to abandon their sales to Applicant or have executed letter agreements terminating their gas purchase contracts with Applicant.

Applicant intends to salvage the "Mission Bridge Facilities" and hold them in storage for future use at other locations or for possible sale; to use the Tynan Field booster compressor unit to replace a unit in the Oakville Area recently destroyed by fire; and to abandon the "Sour Lake Lateral" in place.

The subject facilities will be abandoned in place, salvaged, or used at other locations on Applicant's system.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 9, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement thereto and exhibits, submitted in support of the authorization sought herein and upon consideration of the record,

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G–1143 (7 FPC 139).

(2) The facilities proposed to be abandoned as hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are subject to the jurisdiction of the Commission and the abandonment thereof by Applicant is subject to the provisions of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment by Applicant as hereinbefore described is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

The Commission orders:

(A) Applicant, Transcontinental Gas Pipe Line Corporation, be and it is hereby permitted to abandon the facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding.

(B) Applicant shall advise the Commission of the date of completion of the subject abandonment within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

TRANSWESTERN PIPELINE COMPANY, CP63–204, CP64–91; EL PASO NATURAL GAS COMPANY, CP64–76; GULF PACIFIC PIPELINE COMPANY, CP63–223

ORDER DENYING MOTIONS TO DISMISS

(Issued July 13, 1964)

On June 1, 1964, Gulf Pacific Pipeline Company (Gulf Pacific) and Humble Oil & Refining Company (Humble) filed motions to dismiss the application of El Paso Natural Gas Company (El Paso) in Docket No. CP64–76, in which El Paso pro-

poses the construction of facilities and the delivery of increased quantities of gas to the California market. Answers opposing the motions were filed by El Paso; Southern California Gas Company, Southern Counties Gas Company of California, and Pacific Lighting Gas Supply Company jointly; and by the staff of this Commission. While under § 1.12(e) of our Rules the motions may now be denied by lapse of time, we think it appropriate to express our views on the matter.

Both Gulf Pacific and Humble contend that El Paso's application is based on the assumption that Pacific Northwest Pipeline Corporation was lawfully merged into El Paso. Since the decision of the Supreme Court in *United States* v. *El Paso Natural Gas Company*, 376 U.S. 651, 84 S. Ct. 1044, decided April 6, 1964, held that the merger violated the Clayton Act and directed the divestiture of Pacific Northwest, Gulf Pacific and Humble contend that El Paso's application is rendered impossible of prosecution because founded on evidence that is now incompetent and on circumstances that have changed. El Paso alleges, however, that it is still able to render the service essentially as proposed although it will have to file updated evidence to reflect the effect of the divestiture. It now appears that it has actually served revised evidence (although the evidence has not yet been admitted), and that the hearing will be delayed little if at all.

We have no basis for assuming at this stage in the proceedings that El Paso's revised evidence is not competent evidence tending to support its proposed deliveries of gas to California in substantial accord with the proposal previously filed and the evidence it has already submitted. There is no justification for dismissing its application prior to affording it an opportunity to make such a showing, particularly in view of the Supreme Court's concern with maintaining competition for the California market.

California has had an increasing need for gas; this proceeding is designed to meet that need in the wake of our denial of El Paso's application for the Rock Springs project. *El Paso Natural Gas Co.* 30 FPC 77. It is in the public interest that all available methods of supplying that market be explored. We will not countenance unnecessary delays or maneuvering for position by untimely substitution of plans inconsistent with the basic schedule which we adopted in our order of August 22, 1963. But this order expressly provided that reasonable amendments to any of the comparative proposals would be entertained "in extraordinary circumstances and for good cause shown." (30 FPC 533, 535).

Humble also contends alternatively that the original evidence submitted by El Paso fails to support a previous amendment to its application. Reserving judgment upon the question of how substantial a deviation from El Paso's original applications would be appropriate, in view of the fact that they were filed when the possibility of an adverse determination in the antitrust action was clear, it seems obvious that El Paso was not required to assume it would lose the case to the extent of filing applications and supporting evidentiary material which reflected a divestment not yet ordered. Originally, El Paso sought permission to sell 250,000 Mcf of natural gas per day to Southern California Gas Company and Southern Counties Gas Company. Later it amended its application to sell up to 575,000 Mcf of gas per day to these companies for resale to Southern California Edison Company and the Department of Water & Power of the City of Los Angeles, or to sell the gas directly to Edison and the Department at their plants with 290,000 Mcf/d to be received from Transwestern Pipeline Company. Humble alleges that the record does not show contractual support for these sales. We do not believe that we should attempt to pass on this question here, or the collateral question of whether a showing of such contractual support is necessary to support El Paso's expanded proposal. These are matters which obviously

can more appropriately be passed upon by the Examiner in the first instance and reviewed by the Commission on exception from his initial decision.

The Commission orders:

The motions to dismiss El Paso's application in Docket No. CP64-76 filed by Gulf Pacific and Humble are hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

DUKE POWER COMPANY OF NORTH CAROLINA, PROJECT NO. 2331

ORDER ISSUING LICENSE (MAJOR)

(Issued July 15, 1964)

Application was filed on December 20, 1962 by Duke Power Company of Charlotte, North Carolina (a New Jersey Corporation) for license under Section 4(e) of the Federal Power Act (Act) for the constructed Ninety-Nine Islands development, designated as Project No. 2331, located on the Broad River, South Carolina. On April 8, 1964, a supplement to the application was filed being a joint application by Duke Power Company, the New Jersey Corporation, and Duke Power Company of North Carolina, to substitute the latter company as Applicant for the license.

In a separate order issued May 18, 1964,[1] we approved the disposition by Duke Power Company of the whole of its facilities to Duke Power Company of North Carolina.

Project No. 2331, which is located about 6 miles south of Blacksburg, South Carolina, was placed in operation in 1910 and there has been no additional construction since. The project has a total installed capacity of 31,200 horsepower connected to generators having a total rated capacity of 18,000 kilowatts. The project develops approximately 70 feet of head. It operates as a run-of-river plant with the natural flows being augmented by releases from pondage during peak hours. The reservoir is silted to about elevation 509 feet and there is about 2 or 3 feet of drawdown available for usable pondage. This pondage is sufficient for daily regulation of flows. The silt is not expected to present any operation problems since the usable reservoir capacity can be preserved through the removal of the flashboards and the operation of sluices near the powerhouse. Applicant states that the average annual energy output for the 34 year period 1928 through 1961 was 64,200,000 kwh. The power developed is integrated into Applicant's electric system to meet its over-all load.

There are 49.1 feet of undeveloped head between Project No. 2331 and the existing Lockhart project operated by the Lockhart Power Company, which is located about 20 river miles downstream. The hydraulic capacity of the Ninety-Nine Islands project is about 4,000 cfs. A U.S. Corps of Engineers' study of a plan of comprehensive development[2] of the Santee-Congaree-Broad River system includes the Greater Lockhart project which, if constructed, would be located at river mile 73, would have its maximum power pool at elevation 510 feet, and would completely inundate both Project No. 2331 and the existing Lockhart project. While recent consultation between Commission staff and the Corps disclosed that present studies by the Corps of the Santee River Basin do not include the

[1] Duke Power Company, Docket No. E-7156, 31 FPC 1264.

[2] Senate Document No. 189, 78th Congress, 2d Session.

Broad River, provision is hereinafter made in the interest of a more comprehensive plan of development of the Santee-Congaree-Broad River system.

In its order issued November 21, 1963,[3] the Commission found that the Broad River is a navigable waterway of the United States from its mouth at Columbia, South Carolina, at least to a point in the State of North Carolina about 28 miles northerly from the North Carolina-South Carolina boundary, and about 141 miles upstream from Columbia. Project No. 2331 is within this 141-mile reach of Broad River.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, advised that the plans of the project structures affecting navigation are satisfactory, and that the plans of the structures affecting navigation had been approved pursuant to Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project certain conditions in the interests of fish and wildlife resources.

For the reasons set forth in our Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of April 1, 1962 and a termination date of December 31, 1993.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of North Carolina, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(2) No conflicting application is before the Commission. Public notice of the filing of the application has been given as required by the Act. No protests or petitions to intervene have been received.

(3) The issuance of a license as hereinafter provided will not affect a Government dam or the development of any water resources for public purposes which should be undertaken by the United States.

(4) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(5) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 24,000 horsepower, and the amount of annual charges, based upon such capacity, to be paid under the license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(6) The following described transmission facilities, while not included in the application for license, are parts of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project as hereinafter provided: four 44 kv lines, consisting of the circuits from the Ninety-Nine Islands project to: Gaffney Tie, Shelby, Kings Mountain, and Clover; one 33 kv line extending from Ninety-Nine Islands to Gaffney; and the 44 kv step-up transformers and facilities appurtenant thereto.

(7) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

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[3] South Carolina Electric & Gas Company, Project No. 2315 (30 FPC 1346).

The Commission orders:

(A) This license is hereby issued to Duke Power Company of North Carolina (Licensee), under Section 4(e) of the Federal Power Act (Act), for a period effective as of April 1, 1962, and terminating December 31, 1993, for the continued operation and maintenance of the Ninety-Nine Islands Project No. 2331, located on the Broad River, a navigable water of the United States, in Cherokee County, South Carolina, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Constructed Project No. 2331 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2331-2) General Map and Profile (FPC No. 2331-3) Transmission System Map (FPC No. 2331-4) Transmission System Details

Exhibit K: (FPC No. 2331-5) Project Area

(ii) All project works consisting principally of:

A concrete gravity spillway section 891 feet long; a concrete gravity bulkhead section 120 feet long tying into the west bank; a concrete intake and powerhouse section 196.7 feet long; a concrete gravity bulkhead section 359.5 feet long tying into the east bank; a 960 acre reservoir with normal pool elevation of 511.1 feet; a powerhouse containing six 5,200 hp turbines driving generators rated at 3,000 kw each; and appurtenant facilities: the location, nature and character of which structures are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit L: (FPC No. 2331-6) Ninety-Nine Islands Station Plans, Profile & Spillway Rating Curve (FPC No. 2331-7) Ninety-Nine Islands Station Sections and Details

Exhibit M: Consisting of two typewritten pages, entitled, "General Descriptions of Mechanical, Electrical and Transmission Equipment", filed in the Commission December 20, 1962.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-3 (Revised November 1, 1963), entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States", (30 FPC 1658) which terms and conditions, designated as Articles 1 through 27, are attached and made a part hereof, except for Article 4 thereof; and subject to the following special conditions set forth herein as additional articles:

Article 28. The project, including its operation and maintenance and any work incident to additions or alterations authorized by the Commission whether

or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and of any such alteration therof, and shall notify him of the date upon which work with respect to any alteration will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 29. The Licensee shall pay to the United States the following annual charge:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purposes is 24,000 horsepower.

Article 30. The Licensee shall within one year from the date of issuance of the license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 31. The Licensee shall, within one year from the date of issuance of this license, file in conformity with the Commission's rules and regulations an application for amendment of license to include the transmission lines listed in finding 6 above.

Article 32. Whenever the Licensee is directly benefited by the construction work of another Licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the costs of making the determinations pursuant to the then current Commission Regulations under the Federal Power Act within 60 days from the date of rendition of a bill therefor and, upon failure to do so, shall thereafter be subject to the payment of the penalties specified in the then current Regulations. The Licensee shall have the right to pay such amounts under protest within the 60-day period and to reconsideration of the amounts billed or a hearing as provided by the then current Regulations under the Act.

Article 33. The right, power, and authority is reserved to the United States to construct or to the Commission to issue a license authorizing the construction, operation and maintenance of a hydroelectric project which will more completely utilize the water resources of the reach of the Broad River in which the project is located.

Article 34. The acceptance of this license by the Licensee shall constitute its stipulation, consent and agreement made upon its own behalf and upon the behalf of its successors and assigns for the benefit of the United States, or the person or persons hereinafter constructing, operating and maintaining such more complete hydroelectric project or his or their successors and assigns, that said Licensee, its successors or assigns, shall surrender its license at such time as the project becomes inoperative by reason of inundation by such more complete hydroelectric project; Provided that Licensee shall be paid the net investment in Project No. 2331 upon surrender of its license; and provided further that Licensee shall not be entitled to any compensation for severance damages sustained by reason of inundation or destruction of the project or project works of Project No. 2331.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of the license for the project.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Commissioner Ross *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

LOWER VALLEY POWER AND LIGHT, INC., PROJECT NO. 1861

ORDER ACCEPTING SURRENDER OF LICENSE

(Issued July 15, 1964)

Application was filed on August 12, 1960 by Lower Valley Power and Light, Inc., (Licensee) under Section 6 of the Federal Power Act (Act) for surrender of its license for major Project No. 1861 located on Flat Creek, a tributary of the Snake River, in Teton County, Wyoming, and affecting lands of the United States within the Teton National Forest and lands of the United States reserved for Elk Refuge.

The license was issued for a period of 50 years, effective as of February 1, 1944.

The application states that due to the high cost of operation, the project stopped operating in November, 1956, and no plans are being considered by the Licensee to rehabilitate the project.

The Forest Service has reported that restoration of the National Forest lands occupied by the project was completed on October 3, 1963. Annual charges under the license for the project have been paid through December 31, 1961, and the license instrument has been returned.

The Commission finds:

(1) Public notice of the application has been given as required by the Act. No protests or petitions to intervene have been received.

(2) Acceptance of surrender of the license for the project is appropriate, as hereinafter provided.

The Commission orders:

Surrender of the license for Project No. 1861 is hereby accepted, effective as of October 3, 1963, subject to the payment of annual charges through said date in the amount of $38.58.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

MONTANA-DAKOTA UTILITIES CO., DOCKET NO. E-7164

SUPPLEMENTAL ORDER AUTHORIZING THE ISSUANCE OF FIRST MORTGAGE SINKING FUND BONDS

(Issued July 15, 1964)

By order issued June 29, 1964, in the above-entitled matter, the Commission authorized Montana-Dakota Utilities Co. (Applicant) to issue and sell at competitive bidding $12,000,000 principal amount of First Mortgage —% Sinking Fund Bonds, due July 1, 1984, subject to the provisions, among others, set forth in Paragraph (B) of that order as follows:

(B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h) of those Regulations relating to affiliation and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations;

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

Applicant, on July 15, 1964, filed an amendment, pursuant to the requirements of the aforementioned Commission order, setting forth, among other things, that it proposes to accept as providing the lowest annual cost of money to it the bid of Eastman Dillon, Union Securities & Co. to purchase the proposed issuance of $12,000,000 principal amount of Bonds, for the price of 99.88% of principal amount, with an interest rate of 4⅝%.

The Commission finds:

(1) Applicant has satisfactorily complied with the requirements of Paragraph (B) of the Commission's order issued June 29, 1964, in the above docket, and under the bid it proposes to accept for the Bonds, the price to be received by Applicant therefor and the interest rate thereof are reasonable.

(2) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by the Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

The Commission orders:

(A) The price to be received by Applicant for the proposed Bonds and the interest rate thereof under the bid referred to above are approved as reasonable.

(B) The proposed issuance and sale of Bonds referred to above, upon the terms and conditions and for the purposes specified in the application, as supplemented by the amendment referred to above, are hereby authorized subject only to the provisions of paragraphs (C), (D) and (E) of the Commission's order issued June 29, 1964 in the above docket.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

NIAGARA MOHAWK POWER CORPORATION, PROJECT NO. 2330

ORDER ISSUING LICENSE (MAJOR)

(Issued July 15, 1964)*

Application was filed on December 14, 1962 by Niagara Mohawk Power Corporation (Applicant) of Syracuse, New York, under Section 4(e) of the Federal Power Act (Act) for the constructed Raquette River Project, designated as Project No. 2330, located on the Raquette River in St. Lawrence County, New York.

Project No. 2330 is located on the Raquette River downstream from Applicant's constructed and licensed Project No. 2084 and from constructed Project No. 2320. Project No. 2330 consists of four hydroelectric developments known as (going downstream) Norwood, East Norfolk, Norfolk and Raymondville. These developments were constructed between 1904 and 1928, various changes and additions having been made during these years.

The entire Project No. 2330 has a total installed capacity of 15,320 horsepower connected to generators having a total rated capacity of 11,500 kilowatts. The energy generated by the project is delivered to Applicant's transmission and distribution system for public utility purposes.

In Docket No. DI-179, In the Matter of Central New York Power Corporation[1] (Successor to Northern Development Corporation), the Commission in its Opinion, No. 185, issued November 22, 1949, found that the "Raquette River, from its confluence with the St. Lawrence River to at least Piercefield at about mile 91 is a navigable waterway of the United States." (8 FPC 390).

The Secretary of the Army and the Chief of Engineers, in reporting on the application, advised that the project structures affecting navigation are satisfactory, and that the plans of the structures affecting navigation had been approved pursuant to Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project certain conditions in the interests of fish and wildlife resources.

For the reasons set forth in our Opinion No. 357 (27 FPC 830), the license herein granted shall have a termination date of December 31, 1993. Since there was no project construction after 1935, we will make the effective date of the license November 1, 1949, the first day of the month in which we determined the Raquette River to be a navigable water, as set forth above.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of New York and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

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*See Opinion No. 481, issued November 15, 1965, 34 FPC 1298. Affirmed, *Niagara Mohawk Power Corp.* v. *F.P.C.* — F. 2d — (CADC–1967)

[1] Central New York Power Corporation was consolidated with two other companies on January 5, 1950 and the survivor became Niagara Mohawk Power Corporation.

(2) No conflicting application is before the Commission. Public notice of the filing of the application has been given as required by the Act. No protests or petitions to intervene have been received.

(3) The issuance of a license as hereinafter provided will not affect a Government dam or the development of any water resources for public purposes which should be undertaken by the United States.

(4) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(5) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 15,300 horsepower, and the amount of such charges, based upon such capacity, to be paid under the license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(6) The following described transmission facilities, while not included in the application for license, are parts of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project as hereinafter provided:

(a) The 23 kv Norwood—Norfolk line, about 13 miles long;

(b) The 23 kv East Norfolk—Norfolk line, 4 miles long;

(c) The short Norfolk 2.4 kv underground cable.

(d) The Raymondville—Norfolk 115 kv line, 6.73 miles long; and

(e) The 23 kv substations at Norwood and East Norfolk and the 115 kv substation at Raymondville.

(7) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to Niagara Mohawk Power Corporation (Licensee) of Syracuse, New York, under Section 4(e) of the Federal Power Act (Act) for a period effective as of November 1, 1949, and terminating December 31, 1993, for the continued operation and maintenance of Raquette River Project No. 2330, located on the Raquette River, a navigable water of the United States, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Constructed Project No. 2330 consists of:

(1) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purposes of the project, whether such lands or interests therein are owned or held by the applicant or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2330-1) Entitled, "Raquette River Project—General Location Map"

Exhibit K–1: (FPC No. 2330–2) Entitled, "Existing Norwood Development—Detail Map"

Exhibit K–2: (FPC No. 2330–3) Entitled, "Existing East Norfolk Development—Detail Map"

Exhibit K–3: (FPC No. 2330–4) Entitled, "Existing Norfolk Development—Detail Map"

Exhibit K–4: (FPC No. 2330–5) Entitled, "Existing Raymondville Development—Detail Map".

(ii) Project works consisting of:

1. The Norwood development consisting of a concrete gravity type dam 23 feet high and 188 feet long, a 350 acre reservoir, a concrete intake structure, a concrete and masonry powerhouse containing a 2000 kw generating unit;

2. The East Norfolk development consisting of a concrete gravity type dam 16 feet high and 245 feet long, a 135 acre reservoir, an open steel flume and concrete intake structure, a concrete and masonry powerhouse containing a 3000 kw generating unit;

3. The Norfolk development consisting of a timber crib dam 20 feet high and 400 feet long, a ten acre reservoir, an open flume, a wood stave pipeline, a steel penstock with surge tank, a concrete powerhouse containing a 4500 kw generating unit; and

4. The Raymondville development consisting of a concrete dam 17 feet high and 293 feet long, a 50-acre reservoir, an open flume with a concrete intake structure, a concrete powerhouse containing a 2000 kw generating unit;

and appurtenant hydraulic, mechanical, and electrical facilities and miscellaneous project works

the location, nature, and character of which structures are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit L, sheet No. 1 (FPC No. 2330–6) entitled "Existing Norwood Development Plan, Elevation and Sections Dam, Intake and Powerhouse";

Exhibit L, sheet No. 2 (FPC No. 2330–7) entitled "Existing East Norfolk Development Plan, Elevation and Sections Dam, Intake and Powerhouse";

sheet No. 3 (FPC No. 2330–8) entitled "Existing Norfolk Development Plan, Elevation and Sections Dam, Intake, Surge Tank, and Powerhouse";

sheet No. 4 (FPC No. 2330–9) entitled "Existing Raymondville Development Plan, Elevation and Sections Dam, Intake and Powerhouse"; and

Exhibit M, consisting of 5 typewritten pages and 4 maps, entitled "General Descriptions and General Specifications of Mechanical, Electrical and Transmission Equipment and their Appurtenances", filed in the Commission December 14, 1962.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission: also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–3 (Revised November 1, 1963), entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States." (30 FPC 1658), which terms and conditions designated as Articles 1 through 27, are

attached and made a part hereof except for Article 4 thereof; and subject to the following special conditions set forth herein as additional articles:

Article 28. The project, including its operation and maintenance and any work incident to additions or alterations authorized by the Commission whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and of any such alteration thereof, and shall notify him of the date upon which work with respect to any alteration will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 29. The Licensee shall pay to the United States the following annual charge:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purposes is 15,300 horsepower.

Article 30. The Licensee shall within one year from the date of issuance of the license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 31. Whenever the licensee is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission shall determine to be equitable, and shall pay to the United States for the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States the licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the costs of making the determinations pursuant to the then current Commission Regulations under the Federal Power Act within 60 days from the date of rendition of a bill therefor and, upon failure to do so, shall thereafter be subject to the payment of the penalties specified in the then current Regulations. The Licensee shall have the right to pay such amounts under protest within the 60-day period and to reconsideration of the amounts billed or a hearing as provided by the then current Regulations under the Act.

Article 32. The Licensee shall, within one year from the date of issuance of this license, file in accordance with the rules and regulations of the Commission an application for inclusion in the project license of the following transmission facilities:

1. The 23 kv Norwood-Norfolk line, approximately 13 miles long.
2. The 23 kv East Norfolk-Norfolk line, 4 miles long.
3. The short Norfolk 2.4 kv underground cable.
4. The Raymondville-Norfolk 115 kv line, 6.73 miles long.
5. The 23 kv substations at Norwood and East Norfolk and the 115 kv substation at Raymondville.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

WESTERN MASSACHUSETTS ELECTRIC COMPANY, PROJECT NO. 2334

ORDER ISSUING LICENSE (MAJOR)

(Issued July 15, 1964)*

Application was filed on December 31, 1962 by Western Massachusetts Electric Company (Applicant) of West Springfield, Massachusetts, for license under Section 4(e) of the Federal Power Act (Act) for constructed major Project No. 2334, known as the Gardners Falls Project, located on the Deerfield River, in the Towns of Buckland and Shelburne, in Franklin County, Massachusetts.

As originally constructed in 1904, the project consisted of a dam, a power canal, and a powerhouse which contained two 400 kw generators driven by two horizontal waterwheels. Later equipment replacements, and safety and maintenance measures were as follows: 1914—two vertical waterwheels and two 940 kw generators were installed; 1924—a new 1,300 kw generator was installed; 1938—flood conditions made necessary the construction of protective structures and repairs to the existing facilities; and 1945—construction was accomplished to enhance the stability of the dam and to improve its hydraulic characteristics. No major changes were made in the project works since 1935. Power generated at the project is delivered to Applicant's distribution system for public utility purposes.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, have advised that the plans of the project structures affecting navigation are satisfactory, and that the plans of the structures affecting navigation had been approved pursuant to Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project certain conditions in the interest of fish and wildlife.

The Department of Health, Education, and Welfare, in reporting on the application, advised that the project does not constitute a source of pollution, and

*Modified on rehearing by order issued September 10, 1964, 32 FPC 733.

that it is not envisioned that the granting of a license for the project will create or intensify vector problems.

In its order issued October 29, 1963,[1] the Commission found that the Deerfield River and its tributaries from points upstream from the Somerset Reservoir to its confluence with the Connecticut River constitute navigable waters of the United States. Project No. 2324 is located within this reach of the Deerfield River.

For the reasons set forth in Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of April 1, 1962, and a termination date of December 31, 1993.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Massachusetts and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(2) Public notice of the filing of the application has been given as required by the Act. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(3) The issuance of a license for the project will not affect a Government dam or the development of any water resources for public purposes which should be undertaken by the United States.

(4) Subject to the terms and conditions hereinafter imposed, the project will be adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development and for other beneficial public uses, including recreational purposes.

(5) The 2.3/13.8 kv substation, the 2.3/4.8 kv substation, and appurtenant electrical and mechanical facilities mentioned or referred to in paragraph (B) below, and which were included in the application, are parts of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project.

(6) Although not included in the application for license, a double circuit 13.8 kv transmission line extending from the Gardners Falls Project to the 115 kv Montague substation is a part of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project.

(7) The installed horsepower capacity of the project hereinafter authorized, for the purpose of computing the capacity component of the administrative annual charge, is 5,300 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the purpose of reimbursing the United States for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(8) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to Western Massachusetts Electric Company (Licensee) of West Springfield, Massachusetts, under Section 4(e) of the Federal Power Act (Act) for a period effective as of April 1, 1962 and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2334, located on the Deerfield River, navigable waters of the United States, subject to the terms and conditions of the Act, which is incorporated herein by

[1] *New England Power Company*, Project No. 2323 (30 FPC 1120).

reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2334 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interests therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2334–1) "General Map of Project Area"

Exhibit K: (FPC Nos. 2334–2 and –3) "Detail Map of Area".

(ii) All project works as follows: (1) a 337 foot concrete gravity type dam constructed to elevation 332.79 feet (U.S.G.S. Datum); (2) a 1,300 foot canal parallel to the river with headgates at the west end of the dam and penstock headgates, sluice-gates, and gate-houses located at its downstream end; (3) a powerhouse containing two horizontal and three vertical units, operating under a 39 foot head, and having a total generator capacity of 3,980 kw and turbine capacity of 5,983 horsepower; (4) a 2.3/13.8 kv substation and a 2.3/4.8 kv substation; (5) appurtenant electrical and mechanical facilities, the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L: General Design Drawings

Sheet 1 (FPC No. 2334–4) "Plan and Sections of Dam"

Sheet 2 (FPC No. 2334–5) "Plan and Sections of Canal"

Sheet 3 (FPC No. 2334–6) "Plan of Station"

Sheet 4 (FPC No. 2334–7) "Cross Sections of Nos. 1 and 2 Units"

Sheet 5 (FPC No. 2334–8) "Cross Section No. 3 and 4 Units"

Sheet 6 (FPC No. 2334–9) "Cross Section No. 5 Unit"

Exhibit M: Seven typewritten pages entitled, "General Description of Equipment and Appurtenances of the Project," filed in the Commission December 31, 1962.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–3 (Revised November 1, 1963) entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (30 FPC 1658), which terms and conditions, designated as Articles 1 through 27, are attached hereto and made a part hereof, except for Article 4 thereof; and subject to the following special conditions set forth herein as additional articles:

Article 28. The project, including its operation and maintenance and any work incident to additions or alterations authorized by the Commission whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the

Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and of any such alteration thereof, and shall notify him of the date upon which work with respect to any alteration will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 29. The Licensee shall pay to the United States the following annual charge:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purposes is 5,300 horsepower.

Article 30. The Licensee shall within one year from the date of issuance of the license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 31. Whenever the licensee is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States the licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the costs of making the determinations pursuant to the then current Commission Regulations under the Federal Power Act within 60 days from the date of rendition of a bill therefor and, upon failure to do so, shall thereafter be subject to the payment of the penalties specified in the then current Regulations. The Licensee shall have the right to pay such amounts under protest within the 60-day period and to reconsideration of the amounts billed or a hearing as provided by the then current Regulations under the Act.

Article 32. The Licensee shall within six months from the date of issuance of this license, file with the Commission an application for amendment of this license to include the double circuit 13.8 kv Gardners Falls-Montague transmission line.

(D) The exhibits designated and described in Paragraph (B) above are hereby approved as a part of this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license.

In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA, PROJECT NO. 2426

ORDER ISSUING PRELIMINARY PERMIT

(Issued July 16, 1964)

Application was filed on November 14, 1963 by the Department of Water Resources of the State of California (Applicant) of Sacramento, California, for a preliminary permit under Section 4(f) of the Federal Power Act (Act) for proposed Project No. 2426, to be known as the California Aqueduct Project, to be located on the Sacramento-San Joaquin Delta System, in the Counties of Kern, Los Angeles, San Bernardino, Riverside, Contra Costa, Alameda, Stanislaus, Merced, Fresno, Kings, and San Luis Obispo, California, in the region of Castaic, Palmdale, Littlerock, Pearblossom, Hesperia, San Bernardino, Colton, Riverside, Sunnymead, Perris, Tracy, Los Banos, Kettleman City, and San Luis Obispo, California; and affecting lands of the United States within the Angeles and San Bernardino National Forests and other lands of the United States.

The Secretary of the Army and the Chief of Engineers have stated that there is no objection to the issuance of a preliminary permit for the project.

The Department of the Interior, in commenting on the application, recommended for inclusion in any preliminary permit for the project a special condition in the interests of fish and wildlife.

The Department of Agriculture, in commenting on the application, recommended for inclusion in any preliminary permit for the project conditions for the protection of the National Forest land and resources involved.

The Department of Health, Education and Welfare, in commenting on the application, stated that close liaison should be maintained by the permittee and the California State Department of Public Health as to appropriate prevention and control measures to be built into the project and continued as a part of the regular operations pertaining to features which may otherwise result in man-made aquatic habitats favorable for the production of mosquitoes and other insects of public health importance.

Applicant requests the period of any preliminary permit issued be for a period of 36 months. Since the large area traversed by the project proposed and the alternate routes to be studied will require considerably more time for investigation than a usual single project, we consider the period requested as reasonable.

No construction is authorized under a preliminary permit. Such a permit gives the permittee, during the period of the permit, the right of priority of application for license while the permittee undertakes the necessary studies and examinations required by Section 9 of the Federal Power Act in order to determine the economic feasibility of the proposed project, the means of securing the necessary financial arrangements for construction, the market for power, and all other information necessary for inclusion in an application for license, should one be applied for under the permit.

262-497—67——12

The Commission finds:

(1) Applicant is a municipal corporation organized under the laws of the State of California.

(2) Public notice of the filing of the application has been given as required by the Act. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(3) The proposed project will affect lands of the United States but will not affect any Government dam, and no reason is apparent at this time for development of the proposed project by the United States.

The Commission orders:

(A) This preliminary permit is hereby issued to the Department of Water Resources of the State of California (Permittee) for a period of 36 months, effective as of July 1, 1964, for the sole purpose of maintaining priority of application for license for Project No. 2426, affecting lands of the United States within the Angeles and San Bernardino National Forests and other lands of the United States, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this permit, and subject to such rules and regulations as the Commission has issued or prescribed thereunder.

(B) Proposed Project No. 2426 will include the following facilities: *North San Joaquin Division*—Aqueduct features from Italian Slough in the vicinity of Tracy to San Luis Forebay on San Luis Creek; nine 34,500 and two 11,300 horsepower pumps; *South San Joaquin Division*—Aqueduct features from Kettleman City to Tehachapi Pumping Plant; three pumping plants; Buena Vista containing eight pumps; Wheeler Ridge I and II each containing eight pumps; *Tehachapi Division*—Aqueduct features from Tehachapi Pumping Plant to the surge tank of the Cottonwood Power Plant; eight pumps totaling 674,000 horsepower; *Antelope Division*—Aqueduct features from the surge tank of Cottonwood Power Plant to the junction of the East and West Branch Aqueducts near Fairmont Reservoir; Cottonwood Power Plant would develop 30,000 kilowatts under a static head of 208 feet; *West Branch Division*—Aqueduct features from Fairmont Junction to Castaic Reservoir; pumping plant would have a static lift of 271 feet; three power plants: Elizabeth Power Plant No. 1 would develop 58,000 kilowatts under a static head of 700 feet; Elizabeth Power Plant No. 2 would develop 36,000 kilowatts under a static head of 425 feet; Elizabeth Power Plant No. 3 would develop 50,000 kilowatts under a static head of 590 feet; Castaic Dam on Castaic Creek would be 325 feet high creating a reservoir of 350,000 acre-feet; *East Branch Division*—Aqueduct features from Fairmont Junction to Perris Reservoir; pumping plant containing four pumps operating under a static head of 535 feet; Cedar Springs Dam on West Fork of Mojave River would be 280 feet high creating a reservoir of 200,000 acre-feet; Devil Canyon Power Plant No. 1 would develop 97,000 kilowatts under a static head of 1,115 feet; Devil Canyon Power Plant No. 2 would develop 51,000 kilowatts under a static head of 647 feet; Perris Dam would be 120 feet high creating a reservoir of 100,000 acre-feet; *Coastal Aqueduct Division*—Aqueduct features from a turnout near Kettleman City to a terminal structure on Santa Maria River near San Luis Obispo—Santa Barbara County Line; Pumping Plant C–3 containing two 6,850 horsepower pumps operating under a static head of 211 feet; Pumping Plant C–4 containing two 2,530 horsepower pumps operating under a static head of 342 feet; Pumping Plant C–5 containing two 2,770 horsepower pumps operating under a static head of 374 feet; Pumping Plant C–6 containing two 5,610 horsepower pumps operating under a static head of 754 feet; San Luis Obispo Power Plant would develop 8,000 kilowatts under a static head of 993 feet; *Summary*—The pumping plants would develop 5,748 feet of

static head of which 4,678 feet of static head would be regained by power plants developing 330,000 kilowatts. *Alternate Route*—Oso-Pyramid Route is being considered as an alternate route to the Elizabeth Lake Canyon Route for the West Branch Aqueduct. Changes involved would be in the Antelope and West Branch Divisions. *Antelope Division (Alternate)*—Aqueduct features from Tehachapi Afterbay to the junction of the East and West Branch Aqueducts; Cottonwood Power Plant would develop 19,000 kilowatts under a static head of 152 feet; *West Branch Division (Alternate)*—Aqueduct features from Tehachapi Afterbay to Castaic Reservoir; Oso Pumping Plant would require an installation of 28,000 kilowatts for a static lift of 233 feet; Pyramid Power Plant would develop 65,000 kilowatts under a static head of 774 feet; Castaic Power Plant would develop 82,000 kilowatts under a static head of 1,040 feet; Apple Canyon Reservoir of 3,000 acre-feet would be created by a dam 213 feet high; Pyramid Dam on Peru Creek would be 342 feet high creating a reservoir of 143,000 acre-feet; *Summary (Alternate)*—The pumping plants would develop approximately the same 5,748 feet of static head of which 4,721 feet of static head would be regained by power plants developing 322,000 kilowatts.

(C) This permit is also subject to the terms and conditions set forth in Form P–1, entitled "Terms and Conditions of Preminary Permit" (16 FPC 1303–1305) which terms and conditions, designated as Articles 1 through 8, are attached hereto and made a part hereof; and further subject to the following special conditions set forth herein as additional articles:

Article 9. The Permittee shall submit at the close of each six month period, from the effective date of the preliminary permit, to the Regional Engineer, Federal Power Commission, San Francisco, California, having supervision over the project, or to such other officer as the Commission may designate, accurate statements of the work accomplished during the period, and of the work contemplated under the preliminary permit for the ensuing period.

Article 10. The Permittee shall, during the period of project planning, cooperate with the U.S. Fish and Wildlife Service, the California Department of Fish and Game, and the U.S. Forest Service for the purpose of planning and designing adequate conservation measures: (1) to prevent loss of or damage to existing fish and wildlife resources, (2) to mitigate and compensate for the loss of or damage to those resources, and (3) to develop and improve those resources where practicable.

Article 11. The Permittee shall, prior to undertaking any investigation work under this preliminary permit on National Forest lands, consult with the Regional Forester at San Francisco, California, as to reasonable requirements relative to operations, field surveys, and explorations, and shall abide by such requirements; and shall cooperate with the Forest Service, Department of Agriculture, during the period of this permit to develop a plan for alleviation of damage to, and achieving maximum utilization of National Forest resources insofar as they are affected by the proposed project.

Article 12. The Permittee shall, during the period of project planning, consult with State of California, Department of Health, to determine the appropriate prevention and control measures to be given man-made aquatic habitats favorable to the production of mosquitoes and other insects.

Article 13. The Permittee shall, during the early period of project planning consult with Federal, State, and local agencies having an interest in outdoor recreation on project lands and waters, in the preparation of an "Exhibit R" required for the filing of an application for license pursuant to Section 4.41 of the Commission Regulations under the Federal Power Act.

Article 14. The Permittee shall, for the purpose of assuring the cooperation required by the terms of the permit, designate a liaison officer to act for the Permittee in keeping the several agencies specified in this permit currently informed, and such liaison officer shall communicate with such agencies within 60 days from the date of issuance of this permit.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this preliminary permit. In acknowledgment of the acceptance of this preliminary permit, it shall be signed for the permittee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

AMERICAN CAN COMPANY, PROJECT NO. 2212

ORDER DETERMINING ACTUAL LEGITIMATE ORIGINAL PROJECT COST AND NET CHANGE THEREIN; ACCRUED DEPRECIATION; NET INVESTMENT; AND PRESCRIBING ACCOUNTING THEREFOR

(Issued July 17, 1964)

American Can Company, Licensee for Project No. 2212,[1] on November 28, 1960, filed its initial statement, pursuant to Section 4.20 of the Commission's Regulations under the Federal Power Act, claiming for the existing Rothschild Project, as of August 1, 1943, the effective date of the license, an actual legitimate original cost of $1,264,577.96, and an applicable reserve for accrued depreciation in the amount of $794,861.83, resulting in a claimed net investment of $469,716.13.[2] In addition, Licensee's books and records show for the period August 1, 1943, through December 31, 1960, a net increase in project cost of $155,234.47, resulting in a total claimed or recorded actual legitimate original cost of the project as of December 31, 1960, of $1,419,812.43. The recorded net increase of $155,234.47 in the cost of the project for the period August 1, 1943, through December 31, 1960, results from recorded project gross additions of $196,379.83 and gross retirements of $41,145.36, and is more specifically shown in the attached Schedule I.

The Commission's staff made a field examination of books, records and other data of Licensee for the purpose of ascertaining the correctness of the claimed or recorded project costs and amounts of accrued depreciation applicable to in-service project properties for the above-mentioned period.

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[1] The project is located on the Wisconsin River, a navigable waterway of the United States, and its tributary, Rib River, in the region of Wausau, Schofield, and Rothschild, in Marathon County, Wisconsin, and is known as the Rothschild Project. The license (issued pursuant to Section 4(e) of the Federal Power Act) authorizing the operation and maintenance of the constructed project is by its terms effective for a period of 50 years, commencing August 1, 1943, and was issued to the American Can Company. Licensee acquired the property comprising Project No. 2212 from Marathon Corporation, of Menasha, Wisconsin, the original applicant, and thereupon amended the latter company's application for license.

[2] Article 13 of the license provides for Commission determination of the actual legitimate original project cost and the accrued depreciation applicable to project properties as of the effective date of the license; the difference being the net investment of the Licensee in the project as of that time.

Following that examination, an agreement, subject to Commission approval, was reached between the staff and Licensee's representatives with respect to certain proposed adjustments involving (1) the reclassification of a total of $141,485.23 within the project plant accounts; (2) the elimination of $66,792.28 from the claimed and recorded project cost as of August 1, 1943; (3) the increase of the project reserve for depreciation as of August 1, 1943, as recorded by Licensee, in the net amount of $37,841.99; and (4) the accounting disposition of all amounts involved in the proposed adjustments.

The accounting for the proposed reclassifications within the project plant accounts, which do not affect the total claimed net project cost, is shown by the following composite journal entry:

Account No.	Titles	Debit	Credit
332	Reservoirs, dams and waterways	$125,132.84	
334	Accessory electric equipment	13,669.90	
330	Land and land rights		$40,229.22
331	Structures and improvements		91,410.05
333	Water wheels, turbines and generators		3,360.13
335	Miscellaneous power plant equipment		2,348.29
353	Station equipment		1,455.05

The proposed elimination of the net amount of $66,792.28 from the claimed and recorded project cost as of August 1, 1943, consists of the following items:

Excessive claimed costs related to project lands	($44,446.95)
Exclusion from claimed cost, the cost of nonproject transmission properties	(22,347.33)
Recorded cost not claimed	2.00
Total	(66,792.28)

Licensee and its predecessor did not maintain a separate depreciation reserve applicable to project property, and Licensee made no claim as to project depreciation subsequent to August 1, 1943.[3] Based upon depreciation rates developed by the American Appraisal Company in an inventory and appraisal of project properties in 1941–1942, the staff found Licensee's $794,861.83 claimed and recorded project reserve for accrued depreciation to be deficient, as of the effective date of the license, in the credit amount of $37,841.99. For the period August 1, 1943 through December 31, 1960, Staff recommends and Licensee concurs that provision for project depreciation be established in the net credit amount of $166,622.89, resulting in a total provision for project depreciation of $999,326.71 as of December 31, 1960.[4]

The proposed accounting for all amounts involved in the proposed adjustments and to establish in Licensee's records the recommended cost and accrued depreciation of the Rothschild Project as of December 31, 1960, classified by accounts prescribed in the Commission's Uniform System of Accounts Prescribed for Licensees and Public Utilities, as tentatively agreed to between the staff

[3] During the period from August 1, 1943, through December 31, 1960, Licensee or its predecessor did not record upon their books of account separate entries in a depreciation reserve account for Project No. 2212.

[4] The depreciation rates recommended by the American Appraisal Company were reviewed by the Staff and found to be within the range of rates compiled by the Commission from reporting utilities and licensees for hydroelectric properties. These rates were consistently applied to existing property costs as of August 1, 1943 and thereafter.

and Licensee's representatives, is shown by the following composite journal entry:

(1) Account No.	(2) Titles	(3) Debit	(4) Credit
	(A)		
101	Project electric plant in service	$1,353,020.15	
330	Land and land rights	51,698.21	
331	Structures and improvements	12,752.03	
332	Reservoirs, dams and waterways	1,078,097.12	
333	Water wheels, turbines, and generators	143,340.09	
334	Accessory electric equipment	65,775.18	
335	Miscellaneous power plant equipment	1,357.52	
190	Land		$91,927.43
200-342-37	Buildings, prior to 1937		977,745.02
200-342-53	Buildings, since 1937		68,707.27
300-342-37	Machinery and equipment, prior to 1937		83,391.49
300-342-53	Machinery and equipment, since 1937		131,248.94
	(B)		
400|342 500|	Reserve for depreciation of buildings, machinery, and equipment-Marathon division	999,326.71	
108	Accumulated provision for depreciation of project electric plant in service, hydraulic production plant		999,326.71

After giving effect to the above adjustments, the staff recommends and Licensee, by letter dated September 11, 1962,[5] concur that the Commission determine (1) the actual legitimate original cost and initial accrued depreciation of the Rothschild Project as of August 1, 1943, to be $1,197,785.68 and $832,703.82, respectively, resulting in a net investment of $365,081.86 as of that date; (2) the net increase or change in the actual legitimate original cost of Project No. 2212 during the period from August 1, 1943, through December 31, 1960, to be $155,234.47, consisting of project gross additions in the amount of $196,379.83 and gross retirements in the amount of $41,145.36; and (3) the actual legitimate original project cost as of December 31, 1960, to be $1,353,020.15, with a reserve for accrued depreciation applicable to in-service project properties of $999,326.71 as of that date; all as more specifically set forth in the attached Schedules I and II.

The Public Service Commission of Wisconsin was advised by letter of this Commission dated October 4, 1961 of the proposed examination of the claimed project costs, accrued depreciation and net investment, all as described above. By letter dated October 9, 1961, that Commission indicated that it had no interest in this matter because the American Can Company was not a utility subject to its jurisdiction.

The Commission finds:

(1) Licensee, by its tentative agreement to the proposed adjustments, including the accounting dispositions, and resulting project costs, depreciation reserves, and resulting net investment, and its letter dated September 11, 1962, and the Wisconsin Public Service Commission, by its letter dated October 9, 1961, have obviated the necessity for notice and opportunity to protest provided by Sections 4.4, 4.5, 4.22, and 4.23 of the Commission's Regulations under the Federal Power Act.

[5] Confirming its agreement to the proposed adjustments, accounting dispositions and resulting project cost and depreciation reserve for Project No. 2212.

(2) The foregoing adjustments, including the accounting dispositions, as proposed by the staff and agreed to by the Licensee, are reasonable and appropriate for the purposes of the Federal Power Act, and, therefore, should be approved and directed as hereinafter provided.

(3) As of the effective date of the license, August 1, 1943, the actual legitimate original cost of the constructed portion of Project No. 2212 is $1,197,785.68; the net increase or change in the actual legitimate original cost of Project No. 2212 during the period from August 1, 1943 through December 31, 1960, is $155,234.47 consisting of project gross additions of $196,379.83 and project retirements of $41,145.36; and the resulting actual legitimate original cost of Project No. 2212, as of December 31, 1960, is $1,353,020.15, classified by primary plant accounts as shown in the attached Schedule I.

(4) As of August 1, 1943, the effective date of the license, the reserve for accrued depreciation applicable to in-service project properties is $832,703.82; the net increase or change in the project reserve for accrued depreciation for the period from August 1, 1943, through December 31, 1960, is $166,622.89; and the reserve for accrued depreciation applicable to in-service project properties as of December 31, 1960, is $999,326.71, all classified by functional groups as shown in the attached Schedule II.

(5) As of August 1, 1943, the effective date of the license, the net investment of the Licensee in Project No. 2212 is $365,081.86.

The Commission orders:

(A) The provisions of Sections 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments, including the accounting dispositions, as proposed by the staff and agreed to by the Licensee, are hereby approved and directed to be made by Licensee.

(C) Licensee, to the extent that it has not already done so, shall (a) establish and maintain control and detailed plant accounts for the constructed portion of Project No. 2212, showing the debit balance of $1,197,785.68 as of August 1, 1943, the debit amount of $155,234.47 as the net increase or change in the project cost of Project No. 2212 for the period from August 1, 1943, through December 31, 1960, and the resulting total debit balance of $1,353,020.15 for Project No. 2212 as of December 31, 1960, all as more specifically shown in the attached Schedule I, classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees; and (b) establish and maintain a reserve account for accrued depreciation applicable to in-service project properties of Project No. 2212, showing the credit balance of $832,703.82 as of August 1, 1943, the credit amount of $166,622.89 as the net increase or change in the reserve for accrued depreciation applicable to project properties for the period from August 1, 1943 through December 31, 1960, and the credit balance of $999,326.71 as of December 31, 1960; all classified by functional groups as shown in the attached Schedule II.

(D) Licensee shall file with the Commission, within 60 days from the issuance of this order, FPC Form No. 7 and three certified copies of its adjusting journal entries showing compliance with this order.

Commissioner O'Connor *not participating.*

SCHEDULE I

AMERICAN CAN COMPANY, LICENSEE, PROJECT NO. 2212 (ROTHSCHILD)

Actual legitimate original cost

Account		Initial cost as of Aug. 1, 1943*			Net additions for the period from Aug. 1, 1943 through Dec. 31, 1960			Allowed cost as of Dec. 31, 1960
No.	Title	Claimed cost	Staff revisions	Allowed	As recorded	Staff revisions	Allowable	
	Hydraulic production plant							
330	Land and land rights	$137,499.41	($84,676.17)	$52,823.24	($1,125.03)		($1,125.03)	$5,169.82
331	Structures and improvements	106,021.73	(92,573.10)	13,448.63	(696.60)		(696.60)	12,752.03
332	Reservoirs, dams and waterways	893,579.00	125,132.84	1,018,711.84	59,385.28		59,385.28	1,078,097.12
333	Water wheels, turbines and generators	97,248.68	(3,358.13)	93,890.55	49,449.54		49,449.54	143,340.09
334	Accessory electric equipment	4,103.55	13,669.90	1,773.45	48,001.73		48,001.73	65,775.18
335	Miscellaneous power plant equipment	3,486.26	(2,348.29)	1,137.97	219.55		219.55	1,357.52
	Total production plant	1,241,938.63	(44,152.95)	1,197,785.68	155,234.47		155,234.47	1,353,020.15
	Transmission plant							
353	Station equipment	22,639.33	(22,639.33)					
	Total project	1,264,577.96	(66,792.28)	1,197,785.68	155,243.47		155,234.47	1,353,020.15

( ) Denotes reduction.
*Effective date of license.

SCHEDULE II

PROJECT NO. 2212 (ROTHSCHILD) AMERICAN CAN COMPANY

ALLOWED RESERVE FOR DEPRECIATION BY PLANT ACCOUNTS AS OF AUGUST 1, 1943, THE EFFECTIVE DATE OF THE LICENSE AND EACH YEAR END THEREAFTER, TO DEC. 31, 1960

	(1) Year end Date	(2) Account 331	(3) Account 332	(4) Account 333	(5) Account 334	(6) Account 335	Total depreciation reserve production plant
1							
2	Aug. 1, 1943	$7,874.03	$733,806.70	$77,536.07	$12,553.96	$933.06	$832,703.82
3	Dec. 31, 1943	7,962.01	737,941.00	78,070.58	12,699.43	940.55	837,613.59
4	1944	8,173.16	747,863.34	79,353.47	13,048.65	958.55	849,397.17
5	1945	8,384.31	757,785.68	80,636.36	13,397.85	976.55	861,180.75
6	1946	8,595.46	767,708.02	81,919.25	13,747.05	994.05	872,963.83
7	1947	8,806.61	777,629.87	83,202.14	14,096.25	1,008.37	884,743.24
8	1948	9,017.76	787,549.17	84,485.03	14,445.45	1,022.64	896,520.05
9	1949	9,228.91	797,461.55	85,766.91	14,783.26	1,036.91	908,277.54
10	1950	9,440.06	807,367.02	86,577.39	15,064.13	1,051.18	919,499.78
11	1951	9,650.79	817,267.51	87,782.62	15,341.32	1,065.45	931,107.69
12	1952	9,854.02	827,143.26	88,662.70	15,599.49	1,079.72	942,339.19
13	1953	10,057.25	836,966.01	89,399.98	15,857.09	1,092.85	953,373.18
14	1954	10,260.48	846,858.17	90,276.73	16,110.99	1,110.50	964,616.87
15	1955	10,463.71	856,623.99	90,228.50	16,364.89	1,138.71	974,819.80
16	1956	10,666.83	857,570.79	90,856.03	16,602.88	1,166.18	976,862.71
17	1957	10,869.32	867,729.85	77,279.28	17,075.85	1,189.05	974,143.35
18	1958	11,071.81	877,916.45	78,139.60	17,820.43	1,211.92	986,160.21
19	1959	10,577.70	887,943.38	78,218.64	11,205.10	722.40	988,667.22
20	1960	10,780.19	898,129.98	79,351.11	10,321.92	743.51	999,326.71
21							
22							
23							
24							

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

AREA RATE PROCEEDING (HUGOTON-ANADARKO AREA), DOCKET NO. AR64–1, ET AL., AND AREA RATE PROCEEDING (TEXAS GULF COAST AREA), DOCKET NO. AR64–2, ET AL.

ORDER UPDATING APPENDICES TO THE ORDER INSTITUTING AREA RATE PROCEEDINGS

(Issued July 17, 1964)

By Order issued on November 27, 1963, 30 FPC 1354, 28 Fed. Reg. 12645, the Commission instituted area rate proceedings in the natural gas producing areas named in the caption above. The attached Appendices, keyed to those of the November 27th order, list respondents and natural gas rate proceedings which are herewith added or deleted from each of the consolidated proceedings. These Appendices also indicate corrections to be made to those of the November 27th order.

Added respondents who desire to receive copies of filings made herein by other parties shall, on or before July 31, 1964, so notify the Secretary of the Commission by filing an original and three copies of a notice naming one representative to be served on their behalf. Thereafter the Secretary of the Commission shall promptly advise all participants in the rate proceedings of all such additional names of representatives to be served by issuing supplements to the Secretary's original service lists issued on March 12, 1964, pursuant to paragraph (B) of the Commission's order of January 30, 1964, herein.

APPENDIX A (SUPPLEMENT)

DOCKET NO. AR64–1, ET AL.

I. *Oklahoma Panhandle Area*

Add the following respondents:

Abercrombie, A. L.
Aladdin Petroleum Corporation
Caulkins Oil Company
Cherry, J. Blair
Consolidated Oil & Gas, Inc.
Davis, Daryl
GMC Oil & Gas Corporation
Jenkins, C. G.
Kewanee Oil Company
O'Hornett, Patrick J.
Owens, Rhea H.
Payne, W. C.
Petroleum International, Inc.
Petroleum Property Management, Inc.
Pickens, W. C.
Portman, William E.
Seneca Oil Company
Spencer Chemical Company
Tamarack Petroleum Company, Inc.
Universoil, Inc.
Van Harlow, William, Jr.
Viersen & Cochran
Warren American Oil Company
Western Oil Fields, Inc.
Peerless Oil & Gas Company

Delete the following respondents:

Anderson, Wendell W.
Brown, James G., & Associates
Briscoe, Powel
Cities Service Production Company
Natural Gasoline Corporation
Parker, George & Charles McCune
Republic Natural Gas Co.
Ridgeway & Morrison
Smith, W. T.
Texoma Production Co.

Correction:

Change Brown, Herman to Brown Estate, Herman.
Change Powers, M. F. to Powers, M. F., Estate of.
Change Tenneco Corp. to Tenneco Oil Company.
Change Viersen, Sam K., Jr. to Viersen, Sam K.

II. *Oklahoma Anadarko Area*

Add the following respondents:

Ames Gathering Company
Anderson, Harold H.
Baker, R. S.
Beard Oil Company
Bond, Roland S.
Calvert, F. A. & H. K., Calvert, Trustee
Cam Gas Company
Coles, Marvin J.
Consolidated Oil & Gas, Inc.
Crescent Oil & Gas Corporation
Earlsboro Oil & Gas Company, A Partnership
El Paso Natural Gas Products Company
GMC Oil & Gas Corporation
Goff Oil Company
Gungoll, Henry H.
Hall-Jones No. 4
Haury, Herman
Hefner Production Company, The
Hunt, H. L.
Kerr-McGee Oil Industries, Inc.
Lammerts, Robert P.
MacDonald Oil Corporation
McCoy, Alex W., Associates, Inc.
Magness Petroleum Company
Mercury Drilling Company
Midland Petrochemical Company
Mineral Mining Company

Add the following respondents—Continued

Northern Natural Gas Producing Company
Petroleum Consultants, Inc.
Petroleum International, Inc.
Reading and Bates Offshore Drilling Company
Ryan, Ray
Sarkeys, Inc.
Shadid Production Company
Simms, Cecil[1]
Smith, Homer L. d/b/a Smith Rodgers No. 1
Tekoil Corporation
Texas Gas Producing Company
Trice Production Company
Woody, E. M.

Delete the following respondents:

Cities Service Petroleum Co.
Colorado Oil & Gas Corp.
Great Western Drilling Co.
Republic Natural Gas Co.
Rowland, D. H.
Tenneco Corp.
Texoma Production Co.

Correction:

Change Brown, Herman to Brown Estate, Herman.
Change Cameron, A. A. to Cameron, A. A. d/b/a Cameron Oil Company.

III. *Texas Railroad Commission District No. 10*

Add the following respondents:

Agey, W. M. d/b/a Agey Drilling Company
Aikman Brothers
Atlantic Refining Company, The
British-American Oil Producing Company
Cooperative Refinery Association
Frontier Savings Stamps, Inc. of Lubbock Texas
Gray, Earl Q.
Gruenerwald, William & Associates, Inc.
H & Y Oil Company
Johnson, Theodore R.
McKnight, William L., d/b/a Arrowhead Exploration Company
Management Service Corp.
Mapco Production Company
Mudge, Jr., E. W.
O'Hornett, Patrick J.
Ross Petroleum, Inc.
Shelton Equipment and Machine Company, Inc.
Sidwell Oil and Gas, Inc.
Sohio Petroleum Company
Staley, Jack C.
Tamarack Petroleum Company, Inc.
Texas Crude Oil Company
Travis, Arnold M.
Van Harlow, William, Jr.
Warren American Oil Company
Whitehall Oil Company, Inc.
Wilcox Oil Company

Delete the following respondents:

Brown, James, G., & Associates
Green, E. L., Jr.
Kirby Production Company
Schafer Oil Corp.
United Producing Co., Inc.
Woodson Oil Co.

Correction:

Change Dubose, Frank F. to Dubose, Frank F.

[1] The named respondent appears d/b/a in docket numbers CI64–144, CI64–145, CI64–146, CI64–147.

IV. *State of Kansas*

Add the following respondents:

Alco Oil and Gas Corp.
Brady, George Austin, et al., d/b/a Brady Compressing Company
Campbell, Pearl G.
Chelsea Oil & Gas, Inc.
Cimarron Exploration, Inc.
Dale, Cloris
Globe Oil & Refining Company, The
Greenwich Oil & Gas, Inc.
Hanks, Roger C.
Hefner Production Company, The
Jabara Lease Committee, Agent for Warren S. Earhart, et al.
Livingston Oil Company
Lonita Oil Corporation, Inc.
Mapco Production Company
Millener, William S.
Monahan, Rex
Neuner, Alice A., Executrix of G. J. Neuner Estate
Osborn-Barrett Petroleum, Inc.
Porter Estate, Frank Martin
Quillen, Leslie A.
Secure Trusts
Stewart Oil Company
Williams, Robert L., d/b/a Imperial Oil Company
Young, Bert

Delete the following respondents:

Artnell Co.
Beymer, J. E.
Cities Service Petroleum Company
Crescent Oil & Gas Corp.
Fairman, Jr., Earl T.
Musgrove Drilling Company
Ogden, Homer E., Exploration
Omega Oil Co.
Republic Natural Gas Co.
United Carbon Co.
United Producing Co.
Van Doren, Catherine
Western Natural Gas Co.

Correction:

Change Excelsio Oil Corp. to Excelsior Oil Corporation.
Change Hamilton, J. F. and Elizabeth Hammer, A. L., et al., d/b/a H. & M. Drilling Company to Hamilton, J. F. and Elizabeth and Hammer, A. L., et al., d/b/a H. & M. Drilling Company.
Change Tenneco Corp. to Tenneco Oil Company.

APPENDIX B (SUPPLEMENT)

DOCKET NO. AR64–1, ET AL.

I. *Texas Railroad Commission District No. 2*

Add the following respondents:

Camino Oil Corporation
Gene A. Carter
Champlin Oil and Refining Co.
Cities Service Oil Company
Concord Oil Co.
E. M. J. Oil Company
Ford, Edmond J. & Harry W. Hamilton
R. H. Goodrich
Terry A. Hornaday
Hunt Oil Company
Lamar Hunt Trust Estate
International Oil & Gas Corporation
George Mitchell & Associates, Inc., Agent
Penrose Production Company, Agent for Neville G. Penrose and J. M. Zachary
Reaves and Myers

Add the following respondents—Continued

Reserve Oil and Gas Company
Shoreline Petroleum Corporation
Southwest Petroleum Management Corporation
Texas Gas Producing Company
Tomco Oil Company
J. C. Walter, Jr., and Lamar W. Davis, Jr.
Warren Petroleum Corp.
Frank B. Waters

Delete the following respondents:

A & R Pipe Company
Appell, W. H.
Arnold Well Service
Arnold Well Service, Incorporated
Ashland Oil & Refining Co.
Bailey, Lenore M.
Blohm, George L.
Brown, E. W., Jr.
Cities Service Petroleum Company
Cosden Petroleum Corporation
Hunt, H. L.
Kingsley and Milliken
Kirby Petroleum Company
Kirkwood and Company
LAB Oil Company
Lewis, Van M.
Lively, H. B.
May Oil Company
Miller, Wynn D.
Musselman, George A.
National Fuels Corp.
Parker Petroleum Company, Inc.
Neville G. Penrose, Inc.
Plummer, Albert C.
Pratt-Hewitt Oil Corporation
Pulaski, L.
Ray, Clara W.
Refugio Enterprises, Inc.
Rudco Oil and Gas Company
Texon Gas Company
Transcontinental Production Co.
Warren, Olson L.
Welsh, Nancy L. & James R.
Western Oil Fields, Inc.
Winn, C. C.
Woodfin, Gene M., Trustee for the Jean Curry Glassell Trust
Wymore Oil Company

Correction:

Change Associated Oil & Gas Company to Associated Oil & Gas Co.
Change Clearly Petroleum, Inc. to Cleary Petroleum, Inc.
Change Crescent Oil & Gas Corp. to Crescent Oil and Gas Corporation.
Change Lee Brothers Oil Company to Lee Brothers Oil & Gas Company.
Change M. P. S. Production Co., Inc. to M. P. S. Production Company.
Change Murphy Corporation to Murphy Oil Corporation.
Change Edwin Nielson, Estate to Edwin Nielson.
Change William F. Stevens to Richard M. Stevens.
Change Tex-Star Oil & Gas Corporation to Tex-Star Oil & Gas Corp.
Change Bennett L. Woolley, Jr., Co-Executor to Estate of Bennett L. Woolley.

II. *Texas Railroad Commission District No. 3*

Add the following respondents:

R. L. Chance, Sr.
Coffey, C. W.
Great Circle Gas Company, Inc.
Caroline Hunt Trust Estate
Karsten, Floyd L.
John P. Lowe, Jr.
George Mitchell & Associates, Inc.
Monsanto Chemical Company
Neches Petroleum Corporation
Reserve Oil and Gas Company
Reynolds Mining Corp.
Joseph E. Seagram & Sons, Inc.
Tenneco Oil Company
Tighe & Weatherly

Delete the following respondents:

Adams & Haggarty
Ahern, T. J.
Carlton, Earl, Incorporated
Delta Drilling Company
Ginsburg, Arthur I., Trustee
Ginther, Warren & Company
Theodore Hamm Brewing Company
Highland Oil Co.
Hudson Gas and Oil Corporation
Lewis, Van M.
Owen, K. D.
Pan-Petro., Inc.
Republic National Bank of Dallas Trustee
South Texas Oil & Gas Co.
Stewart & Goucher Drilling Company
The Texas Company
Texas Imperial Oil & Gas Company
Texas Pacific Oil & Gas Company
Vratis, Socs
Welsh, Nancy L. & James R.
Western Natural Gas Company

Correction:

Change Associated Oil and Gas Company to Associated Oil & Gas Co.
Change Crescent Oil & Gas Corp. to Crescent Oil and Gas Corporation.
Change Frost, J. M. to Frost, J. M., Jr.
Change Holiday, Samuel to Holliday, Samuel.
Change Humble Oil and Refining Company to Humble Oil & Refining Company.
Change Means, J. C. to Means, J. C., Jr.
Change George Mitchell & Associates, Inc. to George Mitchell & Associates, Inc., Agent.
Change Quintana Petroleum Corporation to Quintana Petroleum Corporation, Agent for H. R. Cullen.
Change Robinson Oil & Gas Co., of Texas to Robinson Oil & Gas Company of Texas.
Change Joseph E. Seagram Sons, Inc., d/b/a Frankfort Oil Company to Joseph E. Seagram & Sons, Inc., d/b/a Frankfort Oil Company.
Change Standard Oil of Texas, a Division of California Oil Co. to Standard Oil Co. of Texas, a Division of California Oil Company.
Change Chet Waley Well Service Co., Inc. to Chet Whaley Well Service, Inc.
Change Woods Exploration & Producing Company, Incorporated to Woods Exploration & Producing Company, Inc.

III. *Texas Railroad Commission District No. 4*

Add the following respondents:

Alco Oil and Gas Corporation (Operator and Agent for G. W. Breuer, et al.)
Atlantic Oil Corporation
Banquete Gas Company, Division of Crestmont Consolidated Corp.
Ray Barth
Coloma Oil & Gas Corp.
Cooper Petroleum Company
Ralph E. Fair, Inc.
Houston Natural Gas Production Company
Jenny Manufacturing Company
Miller & Fox Minerals Corporation
George Mitchell & Associates, Inc., Agent
Estate of R. Morgan
K. D. Owen d/b/a Owen and Moss
Penrose Production Company, Agent for Neville G. Penrose and J. M. Zachary
Walter P. Purcell
Reserve Oil and Gas Company

Add the following respondents—Continued

Smith, Fankhauser, Voigt & York
South Texas Oil & Gas Company
S. A. Story
Tarpon Management Company, Agent for Jenney Manufacturing Company

Delete the following respondents:

Batex, Inc.
Calder, N. B. and C. E., Jr. d/b/a Horizon Oil & Gas
Calvert & Manley, Inc.
Commonwealth Oil Co.
Cosden Petroleum Company
Cotton, W. L.
Dellinger, J. M.
Eastern States Petroleum Co., Inc.
Goldston, W. L., Estate of
Theodore Hamm Brewing Company
Hydrocarbon Transmission Company
The Juniper Corporation
Kimmey, J. A.
Richard King, Incorporated
Kirkwood, R. L.
Manco Corporation
Morgan, Rand
Mustang Oil Corporation
Negley, William
The Ohio Oil Company
Penrose, Neville G., Inc.
Petkas, J. P.
Phillips Drilling Corp.
Pickett, D. W., Jr.
Pruett, J. P.
The Pure Oil Company
Ransono, W. R., Trustee
Riley, W. J. d/b/a Banquete Gas Co.
San Patricio Oil Corporation
Slick Oil Corp.
Standard Oil of Texas
Tex-Star Oil and Gas Corporation
Texaco Gulf Products Co.
Texam Oil Corporation
Thompson, Robert B.
Trice Production Company
Valley Gas Production, Inc.
Welsh, John L., Jr.
Western Natural Gas Company

Correction:

Change American Petrofina Co. of Texas to American Petrofina Company of Texas
Change Associated Oil and Gas Company to Associated Oil & Gas Co.
Change Austral Oil Co., Inc., Agent for Oil Participation, Inc. to Austral Oil Co., Inc.
Change Bright and Schiff to Bright & Schiff.
Change Bushmore Oil & Gas Company to Busmore Oil & Gas Company.
Change Harkins and Company to Harkins & Company
Change Heuhaus, V. F. to Neuhaus, V. F.
Change Humble Oil and Refining Company to Humble Oil & Refining Company.
Change Miller, W. Rhinehart & Fox, H. B. to W. Rhinehart Miller & Hewitt B. Fox d/b/a Miller & Fox.
Change Moody, W. L., d/b/a Moody Properties to W. L. Moody, III, d/b/a Moody Properties.
Change Pauley Petroleum, Incorporated to Pauley Petroleum, Inc.
Change Producing Properties Incorporated to Producing Properties, Inc.
Change Realtos Oil Company to Realitos Oil Company
Change Standard Oil of Texas, a Division of California to Standard Oil Co. of Texas, a Division of California Oil Company.
Change Texas City Refining to Texas City Refining, Inc.
Change Woods, Exploration & Producing Co., Incorporated to Woods Exploration & Producing Company, Inc.

APPENDIX C (SUPPLEMENT)

DOCKET NO. AR64-1, ET AL.

I. *Oklahoma Panhandle Area*

The following additional rate proceedings, filed under Section 4(e) of the Natural Gas Act, are consolidated with Docket No. AR64-1:

Abercrombie, A. L. (Operator), et al., RI64-557.
Apache Corporation, RI64-346, RI64-539.
Ashland Oil & Refining Company, RI64-372, RI64-552, RI62-178.
Atlantic Refining Company, The, RI64-179, RI64-418, RI64-644, RI64-705.
Berry, Thomas N., & Company (Operator), et al., RI64-647.
Big Chief Drilling Company, RI64-728.
Bradley Producing Corporation, The, RI64-182, RI64-648.
Cabot Corporation (SW), RI64-152, RI64-400.
Caulkins Oil Company, Agent (Operator), et al., RI64-181.
Champlin Oil & Refining Company, RI64-282, RI64-375.
Coe, Ross W., Jr., et al., RI64-435.
Columbian Fuel Corporation, RI62-429, RI64-370.
Consolidated Oil & Gas, Inc., RI61-350.
Continental Oil Company, RI64-178, RI64-553.
Cox, Edwin L., RI60-192, RI63-277, RI64-246, RI64-419, RI64-610, RI64-611, RI64-638, RI64-684.
Fluor Corporation, Ltd., The, G-13771, RI61-261, RI62-209.
Forest Oil Corporation, RI64-712.
General Crude Oil Company, RI64-413.
Graham-Michaelis Drilling Company, RI63-447, RI64-646, RI64-707.
Hamilton, Frederic C. and Ferris F., d/b/a Hamilton Brothers, Ltd., RI64-284.
Hefner Production Company, The, RI64-420.
Humble Oil & Refining Company, RI64-620, RI64-621, RI64-692.
Kerr-McGee Oil Industries, Inc., RI64-412.
Kirby Production Company, et al., RI64-249.
MacDonald, Burns and Norris No. 2, RI64-593.
Mayflo Oil Company, RI62-407, RI64-701, RI64-702, RI64-754.
Mid-America Minerals, Inc., RI63-409.
Midwest Oil Corporation, RI64-195.
Monsanto Chemical Company, RI64-311.
Nor-Mac-Burns Company, RI64-592.
Pan American Petroleum Corporation, RI63-457, RI64-417.
Panhandle Development Company, Inc. (Operator), et al., RI64-160.
Payne, W. C., RI61-48.
Petroleum, Inc. (Operator), et al., RI64-554, RI64-693.
Phillips Petroleum Company, RI64-713, RI64-714.
Seewald, Hughes, RI64-423.
Seneca Oil Company, RI62-178.
Shamrock Oil and Gas Corporation, The, RI64-409.
Panhandle Petroleum Limited Partnership, RI64-725.
Skelly Oil Company, RI64-310.
Sun Oil Company, RI64-640, RI64-694.
Sunac Petroleum Corporation, RI64-727.
Sunray DX Oil Company, RI63-57, RI63-436, RI64-326, RI64-347, RI64-440, RI64-617.
Superior Oil Company, The, RI64-422, RI64-658.

Taylor, Vernon F., Inc., RI64–571.
Union Oil Company of California, RI64–371, RI64–703.
Western Oil Fields, Inc., RI62–254, RI62–516.
Westhoma Oil Company, RI64–570, RI64–639.
Yucca Petroleum Company (Operator), et al., RI60–229, RI64–376.

Delete the following Section 4(e) proceedings:

Anadarko Production Company, RI62–367.
Cabot Corporation (SW), RI61–531.
Coe, Ross W., Jr., et al., G–18096.
General American Oil Company of Texas, RI62–213.
Mayflo Oil Company, RI62–362.
Pan American Petroleum Corporation, RI62–329.
Sinclair Oil & Gas Company, G–13773, G–14860, G–15029, G–17374, G–18271, G–20282, RI60–286, RI61–290, RI61–353, RI61–460, RI62–179, RI62–345, RI62–443, RI62–492.
Socony Mobil Oil Company, Inc., G–12229, G–13195, G–14615, G–14725, G–17331, G–13062, G–17721, G–17938, RI60–167, RI61–387, RI62–225, RI62–238, RI62–344, RI62–499, G–16896, RI61–422.*
Sohio Petroleum Company, G–12205, G–15399, G–19255, RI60–172, RI60–255, RI61–257, RI61–365, RI61–455, RI62–86, RI62–861, RI62–428, RI62–521, RI63–174.
Tekoil Corporation, RI61–121, RI61–350.
Texaco Inc., RI62–364, RI62–486, RI64–183, G–14248, G–14251, G–14620, G–14935, G–15071, G–15538, G–16796, G–17422, G–17430, G–19949, G–17996, G–18413, G–18564, G–20080, RI60–21, RI60–183, RI60–326, RI60–359, RI61–149, RI61–333, RI61–393, RI61–394, RI61–450, RI61–507, RI62–76, RI62–284, RI62–346, RI62–347, RI62–374, RI62–410, RI62–430, RI62–434, RI63–124, RI63–297, RI63–404, RI63–418.
Union Oil Company of California, RI62–376.
United Producing Company, Inc., RI61–517.

Correction:

Change MacDonald, Burnes and Norris to MacDonald, Burns and Norris No. 2

II. *Oklahoma Anadarko Area*

The following additional rate proceedings, filed under Section 4(e) of the Natural Gas Act, are consolidated with Docket No. AR64–1:

Alliance Oil & Gas Company, RI63–247.
Amerada Petroleum Corporation, G–20552.
Ashland Oil & Refining Company, RI63–443.
Atlantic Refining Company, The, RI63–858.
Caulkins Oil Company, RI64–695.
Continental Oil Company, RI62–192.
Dunigan, E. J., Jr., RI64–586.
Harper Oil Company (Operator), et al., RI63–261, RI63–262.
Hefner Company, The, RI63–19.
Humble Oil & Refining Company, RI63–383, RI63–471.
Hunt, H. L., RI64–706.
Hunt Oil Company, RI64–755.
Little Nick Oil Company, RI63–456.
Mack Oil Company, RI64–18.

*See Appendix C, footnote 1, herein.

Mercury Drilling Company, et al., RI64-390.
Norville Oil Company, RI64-19.
Pan American Petroleum Corporation, RI63-457.
Phillips Petroleum Company (Operator), et al., RI63-356.
Sunray DX Oil Company, RI63-436, RI64-440.
Tekoil Corporation, RI61-121.
Woods Petroleum Corporation, RI64-221.

Delete the following Section 4(e) proceedings:

Sinclair Oil & Gas Company, G-20282.
Socony Mobil Oil Company, Inc., G-19153.[1]
Texaco Inc., G-20080.
Texoma Production Company, G-20552.

III. *Texas Railroad Commission District No. 10*

The following additional rate proceedings, filed under Section 4(e) of the Natural Gas Act, are consolidated with Docket No. AR64-1:

Allied Materials Corporation (Operator), et al., RI64-438.
Apache Corporation, RI64-441, RI64-539.
Ashland Oil & Refining Company, RI64-576.
Bright & Schiff, RI64-180, RI64-344.
Burnett, H. N., RI64-334, RI64-674.
Cabot Corporation (SW), RI64-309.
Humble Oil & Refining Company, RI64-408.
Johnson, Theodore R., RI62-236.
Keating-Parker Drilling Company (Operator), et al., RI64-415.
Nafco Oil and Gas Inc., et al., RI62-460, RI63-451.
Pan American Petroleum Corporation, RI62-329.
Panhandle Petroleum Limited Partnership, RI64-725.
Panhandle Producing Company, RI64-157, RI64-575.
Park, A.M., RI64-756.
Shamrock Oil and Gas Corporation, The, RI64-542.
Sidwell, E. C., et al., RI64-650.
Sigma Exploration Corporation, The, RI64-750.
Sinclair Oil & Gas Company, RI64-645.
Skelly Oil Company, RI64-436.
Sun Oil Company, RI63-448.
Sunac Petroleum Corporation, RI64-724.
Sunray DX Oil Company, RI62-178.
Texaco Inc., RI64-126.
Warren Petroleum Corporation (Operator), et al., RI64-602.
Western Oil Fields, Inc., RI64-48.
Yucca Petroleum Company, RI63-444.

Delete the following Section 4(e) proceedings:

Kirby Production Company, RI63-25.
Pan American Petroleum Corporation, RI62-314.
Phillips Petroleum Company, G-10883, G-11217.
Richome Oil Company (Operator), et al., G-18165.

[1] The deletion of this proceeding is contingent upon the respondent's compliance with the Commission's "Order Amending Order Approving Rate Settlement Proposal, Terminating Proceedings and Prescribing Refunds," issued May 28, 1964, in *Socony Mobil Oil Company, Inc.*, Docket No. G-12193, et al.

Delete the following Section 4(e) proceedings—Continued

Sinclair Oil & Gas Company, RI61–56, RI61–354, RI61–496, RI61–525, RI62–339, RI62–518.

Socony Mobil Oil Company, Inc., RI61–274, RI61–559, RI62–189.[2]

Texaco Inc., G–13735, G–14248, G–17430, G–20433, RI60–21, RI60–446, RI61–309, RI61–333, RI61–337, RI61–529, RI62–229, RI62–252, RI62–284, RI62–294, RI62–347, RI62–486, RI63–199, RI63–407, RI64–10.

Correction:

Change RI62–25 to RI62–5 for Baker & Taylor Drilling Company.

Change RI63–179 to RI63–197 for Nafco Oil and Gas Inc., et al.

IV. *State of Kansas*

The following additional rate proceedings, filed under Section 4(e) of the Natural Gas Act, are consolidated with Docket No. AR64–1:

Abercrombie, A. L. (Operator), et al., RI64–556, RI64–557.

Ashland Oil & Refining Company, RI62–425, RI64–161.

Betty Osborn Bierdenharn, Jewel Osborn, Osborn-Barrett Petroleum, Inc., and W. H. Osborn, Jr. (Operator), et al., as Co-respondents, RI64–153.

Bakke Oil Company, W. E. (Operator), et al., RI64–574.

Bowers Drilling Company, Inc., G–19934.

Brady, Austin, RI64–345.

Brady, Austin, et al., d/b/a Brady Compressing Company, RI64–348.

Campbell, E. W. (Operator), et al., RI64–675, RI64–688.

Campbell, Pearl G., RI64–716, RI64–717.

Champlin Oil & Refining Company, RI64–374.

Chelsea Oil & Gas, Inc., RI64–660.

Cities Service Oil Company, RI61–245, RI64–402, RI64–433.

Columbian Fuel Corporation, RI64–401, RI64–512, RI64–747.

Continental Oil Company, RI64–368.

Cooperative Refinery Association, RI64–416.

Cox, Edwin L., RI64–246.

Draper, Dean A., RI64–373.

Drew, Howard H. & Weldon H. Littell, RI64–709.

Forest Oil Corporation, RI64–285.

General American Oil Company of Texas, RI64–286.

Gillespie, H. M., et al., RI64–159.

Graham-Michaelis Drilling Company (Operator), et al., RI64–511.

Graham Oil Company, William (Operator), et al., RI64–510.

Greenwich Oil & Gas, Inc., RI64–661.

Hamilton, Frederick C. & Ferris F., d/b/a Hamilton Brothers, Ltd., RI64–443.

Hartman, W. L., RI64–446.

Hawley, John B., Jr., RI64–595.

Helmerich & Payne, Inc., RI63–445, RI64–598, RI64–612, RI64–743, RI64–744, RI64–745.

Huber Corporation, J. M., RI62–167, RI64–439.

Humble Oil & Refining Company, RI64–369, RI64–387, RI64–518.

Kane, G. A., RI64–596.

Kansas Natural Gas, Inc., RI64–672, RI64–673.

Kirby Production Company, et al., RI64–283, RI64–729.

Kornfeld, Jay, RI64–572.

Kuhn, Walter (Operator), et al., RI61–60.

Lario Oil & Gas Company, RI64–248.

[2] See Appendix C, footnote 1, herein.

McMahon, C. L., Inc., RI61–31.
Martin, Louis H., RI64–723.
Monahan, Rex, G–17324.
Mull Drilling Co., Inc. (Operator), et al., RI60–128.
National Cooperative Refinery Association, RI64–115.
Northern Pump Company, RI64–594.
Pan American Petroleum Corporation, RI64–46, RI64–411, RI64–536.
Panhandle Development Company, Inc. (Operator), et al., RI64–160.
Pratt County Gas Company, RI64–657.
PWC Oil Company, The (Operator), et al., RI64–312, RI64–414.
Salmon Corporation, RI64–308.
Schermerhorn Oil Corporation (Operator), et al., RI64–437.
Shamrock Oil & Gas Corporation, The, RI64–47.
Sinclair Oil & Gas Company, RI60–213.
Skelly Oil Company, RI64–505.
Stevens County Oil & Gas Company, RI64–704.
Sunray DX Oil Company, RI64–326, RI64–440, RI64–597, RI64–686.
Western Oil Fields, Inc., RI64–48.
Westhoma Oil Company, RI64–570.
White, Edgar W., RI64–708.
White, Robert F. (Operator), et al., RI64–513.

Delete the following Section 4(e) proceedings:

Brookover, Earl C., RI62–338.
Excelsior Oil Corporation, G–17324.
Sinclair Oil & Gas Company, G–20082, RI61–460, RI61–496, RI62–180, RI62–216, RI62–292, RI62–492.
Socony Mobil Oil Company, Inc., G–15451, G–17331, G–18108, G–20300, G–20301, RI60–178, RI60–198, RI61–200, RI61–506, RI61–528, RI62–238, RI61–258, RI63–392.[3]
Texaco Inc., RI63–349, RI64–126, G–15538, G–17422, G–19319, RI61–102, RI61–108, RI61–282, RI62–364, RI63–126, RI63–220.
Western National Gas Company, RI60–213.

Correction:

Change Drew, Howard & Little, Weldon to Drew, Howard T. & Weldon H. Littell.
Change Hartman, W. C. to Hartman, W. L.
Change King-Stevenson Corporation to King-Stevenson Gas and Oil Company, et al.
Change Lindsay, Forest H., et al., d/b/a National Associated Petroleum Company to Lindsay, Forrest H., et al., d/b/a National Associated Petroleum Company.

APPENDIX D (SUPPLEMENT)

DOCKET NO. AR64–1, ET AL.

I. *Texas Railroad Commission District No. 2*

The following additional rate proceedings, filed under Section 4(e) of the Natural Gas Act, are consolidated with Docket No. AR64–2:

The Atlantic Refining Company (Operator), et al., RI64–418, RI64–600.
Dorothy Hewit Blakeney, et al., RI64–327.
Blanco Oil Company, RI64–350.

[3] See Appendix C, footnote 1, herein.

Lexia Buchanan, et al., RI64–378.
Carrl Oil, et al., RI64–649.
Champlin Oil & Refining Company, RI64–375.
Christie, Mitchell & Mitchell Company, RI64–445.
Edwin L. Cox (Operator), et al., RI64–425.
Fitzpatrick Drilling Company (Operator), et al., RI64–616.
Humble Oil & Refining Company, G–17144, RI61–126.
R. O. Mangum (Operator), et al., RI64–653.
Midhurst Oil Corporation, G–17132, RI64–379.
George Mitchell & Associates, Inc., Agent, G–17082, RI63–398, RI63–440.
Noranda Oil Corporation, RI63–419.
Pan American Petroleum Corporation (Operator), et al., RI64–411, RI64–417.
Shoreline Petroleum Corporation, G–14971.
Sinclair Oil & Gas Co., et al., RI64–415.
South Texas Oil & Gas Co., G–17344.
Sun Oil Company, RI64–448.
Sunray DX Oil Co. (Operator), et al., RI64–349.
Tidewater Oil Company (Operator), et al., RI64–721, RI64–726.
H. B. Zachry Co. (Operator), et al., RI63–316.

Delete the following Section 4(e) proceedings:

Christie, Mitchell & Mitchell Co., G–17082, RI63–398, RI63–440.
Crown Central Petroleum Corp., RI64–208.
Falcon Seaboard Drilling Co. (Operator), et al., G–19253.
F. Julius Fohs (Operator), et al., G–17123.
Getty Oil Co., RI63–67.
Houston Natural Gas Production Company, RI63–316.
Humble Oil & Refining Company, G–14927, RI60–146, RI61–348, RI62–313, RI62–389, G–17784, G–18470, RI61–130.
Roger Milliken, et al., RI64–190.
Murchison Bros. & Denius, G–17355.
Albert C. Plummer, G–17077.
Salt Dome Production Co., G–19769, RI61–181, RI62–84.
Sinclair Oil & Gas Co., G–17140, G–17994.
Skinner Corp. (Operator), et al., G–17528, G–17720.
Socony Mobil Oil Co., Inc. (Operator), et al., G–20344, RI63–337, G–17332, G–17334.[1]
Sohio Petroleum Co. (Operator), et al., G–15211.
Sun Oil Co. (Operator), et al., G–15010, G–15011, G–18094, RI60–162, RI61–454, RI62–342.
Sunray DX Oil Co., G–15419, G–15420.
Texaco Inc. (Operator), et al., RI62–434, G–15007.
Texas Gulf Producing Co., RI63–390.
Union Producing Co. (Operator), et al.,[2] RI60–54, RI63–85.

II. *Texas Railroad Commission District No. 5*

The following additional rate proceedings, filed under Section 4(e) of the Natural Gas Act, are consolidated with Docket No. AR64–2:

William M. Aber (Operator), et al., RI64–562.
The Atlantic Refining Company, RI64–424, RI64–600, RI62–464, RI64–179.

[1] See Appendix C, footnote 1, herein.
[2] See "Order Severing and Consolidating Proceedings," *Area Rate Proceeding, et al. (Southern Louisiana Area)*, Docket No. AR61–2, *et al.*, issued April 8, 1964.

George L. Blohm, et al., RI64–514.
Christie, Mitchell & Mitchell Company (Operator), et al., RI64–445, RI64–446, G–16180, G–19928, RI61–219.
Stephen C. Clark, et al., RI64–447.
Dixon Management Corporation (Operator), et al., RI64–663.
Richard M. Finder d/b/a Texkan Oil Company, RI64–718.
Graridge Corporation (Operator), et al., RI64–426.
Humble Oil & Refining Company (Operator), Agent for Henry C. Adams, et al., RI64–227.
H. L. Hunt (Operator), et al., RI64–734.
Hassie Hunt Trust (Operator), et al., RI64–353, RI64–733.
N. B. Hunt, RI64–559.
J. A. Kimmey (Operator), et al., RI64–534.
Lakeland Petroleum Corporation (Operator), et al., RI64–328.
Russell Maguire (Operator), et al., G–19633.
Marathon Oil Company, RI64–549.
J. F. Merrick (Operator), et al., RI64–427.
Midhurst Oil Corporation (Operator), et al., G–17921, RI64–167.
George Mitchell & Associates, Inc., Agent, G–17080, G–17081, G–17082, G–17592, G–17718, G–17728, RI63–23.
Neches Petroleum Corporation, RI63–193.
Pan American Petroleum Corporation (Operator), et al., RI64–351, RI64–352, RI64–411.
Placid Oil Company (Operator), et al., RI64–735.
RCA Investment Corporation (Operator), et al., RI64–315.
Rycade Oil Corporation, RI64–444.
Salt Dome Production Company, G–19769, RI61–181, RI62–84.
San Jacinto Oil & Gas Co. (Operator), et al., RI64–558.
Sinclair Oil & Gas Company, RI64–305.
Sohio Petroleum Co., G–17376.
Southeastern Public Service Company (Operator), et al., G–17357, RI64–613, RI64–676.
Standard Oil Co. of Texas, a Division of California Oil Company, RI64–515.
Sun Oil Company, RI64–448, G–19774.
Sunray DX Oil Company, RI64–428.
Tidewater Oil Company (Operator), et al., RI64–721, RI64–726.

Delete the following Section 4(e) proceedings:

Acco Oil and Gas Company (Operator), et al., G–17270, G–17357.
Adams & Haggarty, et al., RI64–227.
Christie, Mitchell & Mitchell Co., G–17081, G–17592, G–17728, RI63–23.
Stephen C. Clark Estate, et al., G–17080.
Crown Central Petroleum Corporation, RI64–291.
Daugherty and Kidd, G–17122.
Falcon Seaboard Drilling Company (Operator), et al., G–17229.
F. Julius Fohs (Operator), et al., RI61–411.
Gilcrease Oil Company, G–16862.
Claud B. Hamill, G–16860, G–17125, G–17075.
Humble Oil & Refining Company, G–13732, G–16806, G–19747, RI61–132, RI62–82, RI63–137.
NAFCO Oil & Gas, Inc., G–17282.
Pan American Petroleum Corporation (Operator), et al., RI64–125.
Phillips Petroleum Company (Operator), et al., G–20542.
Producing Properties, Inc. (Operator), et al., G–17376.

Delete the following Section 4(e) proceedings—Continued

Sinclair Oil & Gas Company, G–17140, G–17141, G–17142, G–18693.
Slick Oil Corp., G–17132, G–17921.
Socony Mobil Oil Company, Inc. (Operator), et al., G–20211, G–17332, G–17333, G–16857.[3]
Sohio Petroleum Co. (Operator), et al., G–17133, G–11512, G–16111.
South Texas Oil & Gas Co., G–17344.
Texaco Inc. (Operator), et al., G–18518, G–18563, G–18519, G–9161, G–10884, G–13065, G–15999, G–17283.
Texas Gulf Producing Co., G–16177, G–16240, RI60–204.
Texas Imperial Oil & Gas Co., RI63–193.
Socs Vratis, et al., G–17718.

III. *Texas Railroad Commission District No. 4*

The following additional rate proceedings, filed under Section 4(e) of the Natural Gas Act, are consolidated with Docket No. AR64–2:

American Petrofina Company of Texas, RI64–687.
The Atlantic Refining Co., G–19659.
Banquete Gas Company, a Division of Crestmont Consolidated Corp., RI62–388, RI64–7.
Bright & Schiff (Operator), et al., RI64–678.
Coastal States Gas Producing Company (Operator), et al., G–19610.
Continental Oil Company (Operator), et al., G–19666.
Edwin L. Cox, RI64–732.
Richard M. Finder d/b/a Texkan Oil Company, RI64–719, RI64–731.
Graridge Corporation (Operator), et al., RI64–377.
Gulf Oil Corporation (Operator), et al., RI62–514.
Herman F. Heep Estate, et al., RI64–516.
Hill & Wagner (Operator), et al., RI62–535.
George Mitchell & Associates, Inc., Agent, G–20001.
W. L. Moody, III, et al. d/b/a Moody Properties (Operator), et al., RI64–406.
Estate of R. Morgan, G–19879, RI61–3.
Northern Pump Company (Operator), et al., RI64–434.
The Nueces Company, RI62–206.
Pan American Petroleum Corp. (Operator), et al., RI61–183, RI61–123.
Sinclair Oil & Gas Company, RI64–314.
Skelly Oil Company, RI64–361.
Socony Mobil Oil Co., Inc. (Operator), et al., RI64–360.
Standard Oil Co. of Texas, a Division of California Oil Company, RI64–515, RI64–591.
The Superior Oil Co., RI64–535.
Texas City Refining, Inc. (Operator), et al., RI64–362.
Tidewater Oil Company (Operator), et al., RI64–721, RI64–726.
Paul R. Turnbull, RI61–71.

Delete the following Section 4(e) proceedings:

Austral Oil Company, Incorporated, Agent for Oil Participations, Inc., G–19831, RI60–365.
Banquete Gas Co., Inc., RI64–7.
Batex, Inc., G–19656, RI60–364.

[3] See Appendix C, footnote 1, herein.

Delete the following Section 4(e) proceedings—Continued

Christie, Mitchell & Mitchell Co., G–20001.
Delany Oil Co. (Operator), et al., G–20556, RI60–458.
Delhi-Taylor Oil Corp., G–20429.
Dillard & Waltermire Drilling Company, G–19455.
Getty Oil Co., RI63–67.
Claud B. Hamill, G–19428, RI60–267.
W. D. Kennard, RI62–535.
Mayfair Minerals, Inc., G–20430.
Midhurst Oil Corp. (Operator), et al., RI60–468.
Midwest Oil Corp., G–19876.
Rand Morgan, G–19879, RI61–3.
The Nueces Company, RI62–206.
Realitos Oil Co., G–19884, RI61–15.
Rio Bravo Oil Co., G–20060, RI60–330.
Sinclair Oil & Gas Company, G–19826, G–19889, RI60–298.
Skinner Corp. (Operator), et al., G–20442, RI60–423.
H. R. Smith (Operator), et al., RI61–29.
Socony Mobil Oil Co., Inc. (Operator), et al., G–19891, G–19892, RI60–292, RI60–293, RI61–113, RI62–112, G–19325, RI60–264, RI64–226.[4]
Sohio Petroleum Co. (Operator), et al., G–19478, RI60–413, RI60–424.
Sun Oil Co. (Operator), et al., G–16810, G–19774, RI62–115, RI63–112, RI64–232.
Sunray DX Oil Co., G–15420.
Tenneco Corp., RI63–192.
Tenneco Oil Co. (Operator), et al., RI63–191, G–13582.
Texaco Inc. (Operator), et al., RI62–486, G–19897, RI60–180, RI60–233, RI60–268, RI60–366, G–19898, RI60–269.
Texas Gulf Producing Co., G–19899, RI60–437.
Union Producing Co. (Operator), et al., G–16725.
G. H. Vaughn, Jr. and Jack C. Vaughn (Operator), et al., G–19894, RI60–379.
Western Natural Gas Co., et al., G–19828, RI60–263, RI61–142.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

CITY OF CLEVELAND, OHIO v. HOPE NATURAL GAS COMPANY, DOCKET NO. RP64–3

ORDER DISMISSING COMPLAINT

(Issued July 17, 1964)

On July 9, 1963, the City of Cleveland, Ohio (Cleveland), filed complaint against the rates charged by Hope Natural Gas Company (Hope), for gas sold under its FPC Tariff, Original Volume No. 1, as made effective November 1, 1962, and subsequently amended pursuant to the provisions of the Commission's order issued December 7, 1962 in Docket Nos. G–5474, G–12454, G–17220 and RP61–14. The sole basis for Cleveland's complaint is its allegation that it "believes that the rates of Hope are excessive and not the lowest reasonable rates." The complaint then requests that the Commission institute an investigation of Hope's rates and charges under Section 5(a) of the Natural Gas Act. The East Ohio Gas

[4] See Appendix C, footnote 1, herein.

Company, an affiliate of Hope in the Consolidated Gas System, is the sole distributor of natural gas in the City of Cleveland, and purchases from a number of suppliers, including Hope.

On August 16, 1963, Hope filed a motion to dismiss and answer to the complaint, stating, among other things, that Cleveland fails to allege a single fact in compliance with Section 1.6(b) of the Commission's Rules of Practice and Procedure which requires that formal complaints shall be so drawn as to fully and completely advise the Commission and the parties of the facts constituting the grounds of the complaint. In addition, staff investigation of Hope's operations and earnings conducted as part of our continual review of the earnings of natural-gas companies and with relation to the merger application at Docket No. CP63–272 of Hope and its affiliate, New York State Natural Gas Corporation, gives no indication of excessive earnings by Hope which would warrant granting Cleveland's request that we institute an investigation under Section 5 of the Act.

The Commission finds:

Upon basis of the foregoing, the complaint filed herein by the City of Cleveland should be dismissed and this proceeding should be terminated.

The Commission orders:

The complaint filed herein by Cleveland on July 9, 1963, is dismissed and this proceeding hereby is terminated, without prejudice.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

CITY OF CLEVELAND, OHIO v. NEW YORK STATE NATURAL GAS CORPORATION, DOCKET NO. RP64–14

ORDER DISMISSING COMPLAINT

(Issued July 17, 1964)

On December 4, 1963, City of Cleveland, Ohio (Cleveland) filed a complaint against the rates charged by New York State Natural Gas Corporation (New York Natural), for gas sold under its FPC Tariff, Original Volume No. 2, as made effective July 1, 1962, and subsequently amended by our order issued July 20, 1962, in Docket Nos. G–17296, G–19087 and G–20109. Cleveland's complaint is based on its statement that the "City believes that the rates of New York Natural are excessive and not the lowest reasonable rates" and requests the Commission to institute an investigation under Section 5 of the Natural Gas Act.

On January 10, 1964, New York Natural filed a motion to dismiss the complaint and answer thereto. The answer notes, among other things, that natural gas is distributed in Cleveland by East Ohio Gas Company, an affiliate of New York Natural in the Consolidated Gas System; that more than 95 percent of East Ohio's purchases of natural gas from New York Natural are made from the latter company's OSS system under a cost of service formula rate; and that Cleveland's complaint is fatally defective under Section 1.6(b)(2) of the Commission's Rules of Practice and Procedure because it "does not allege a single solitary fact constituting the grounds of its complaint in this proceeding."

At about the same time a staff investigation of New York Natural's operations and earnings was instituted. Following such investigation and conferences with the company, New York Natural on June 1, 1964, in Docket No. RP64–40, filed a

reduction in rates applicable to its General System sales and services under which East Ohio purchases its approximately additional five percent from New York Natural. Due notice of this rate reduction filing was published and no comments or objections thereto were received.

The Commission finds:

Upon consideration of the foregoing facts, Cleveland's request that we institute an investigation under Section 5(a) of the Natural Gas Act of New York Natural's rates and charges should be denied; its complaint herein should be dismissed and this proceeding terminated.

The Commission orders:

The complaint filed by the City of Cleveland on December 4, 1963, is dismissed and this proceeding hereby is terminated without prejudice.

OPINION NO. 435

EAST TENNESSEE NATURAL GAS COMPANY, DOCKET NO. CP64-21

OPINION AND ORDER ADOPTING IN PART AND MODIFYING IN PART THE INITIAL DECISION OF PRESIDING EXAMINER, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, AND DENYING ORAL ARGUMENT

(Issued July 17, 1964)*

Syllabus

1. Commission *concludes* Colonials sales estimate, including residential, is reasonable and on basis thereof, market for East Tennessee project is adequate. Pp. 160, 161.
2. Determining whether a proposed pipeline project is economically feasible is matter of judgment on all the facts – – where extension to existing pipeline is proposed, Commission does not require that revenues must yield return comparable to that allowed on existing system operation. P. 161.
3. As stated in *Southern*, extension of branch lines for purpose of filling in existing service areas is to be encouraged, provided it results in no undue burden on existing customers. P. 161.
4. Certificate conditioned to require that Colonial obtain contracts or precedent agreements covering at least half its estimated interruptible industrial sales, which, with Virginia Commission authorization of its project, will help assure Colonial's feasibility. P. 162.
5. Benefits to public from project will outweigh any possible harm to Coal Interests. P. 162.
6. Commission *rejects* condition requiring Roanoke Gas to pay for last seven miles of East Tennessee's line; in general, seven mile segment seems to serve East Tennessee's pipeline function rather than Roanoke Gas' distribution function. P. 163.
7. Certificate conditioned to require pipeline to report to its resale customers and Commission, annually for five years after commencement of operations,

* Initial decision appears on p. 165. Order issued September 11, 1964 denied rehearing, 32 FPC 734.

all direct costs and expenses of new service and revenues resulting therefrom. P. 163.

8. Commission *issues* certificate of public convenience and necessity in proceeding arising under Section 7, of the Natural Gas Act.

William W. Bedwell, Thomas B. Taylor, Jr., and *W.C. Braden, Jr.* for East Tennessee Natural Gas Company

Stuart B. Campbell, Jr., Daniel J. Kelly, and *Howard H. Baker, Jr.* for Colonial Natural Gas Company

William A. Dickinson and *Wilbur L. Hazlegrove* for Roanoke Gas Company

James L. Bomar for Chattanooga Gas Company; Knoxville Utilities Board; United Cities Gas Company; Volunteer Natural Gas Company; Cleveland Natural Gas Company; Athens Utility Board; Citizens Gas Utility District; Cookesville Gas Department; Elk River Public Utility District of Maury County; Gallatin Natural Gas System; Harriman Utility Board; Jefferson-Cocke Utility District; Lenoir City Utilities Board; Lewisburg Gas Department; Livingston Gas Department; Loudon Utilities Company; Middle Tennessee Utility District; Oak Ridge Utility District; City of Rockwood Natural Gas Company; Sevier County Utility District; City of Sweetwater; and Unicoi Natural Gas Utility District

Daniel L. Bell, Jr., Martin F. Armstrong, Jr., and *John M. Hill* for Atlantic Seaboard Corporation

John A. McGrath and *Thomas K. Williams* for Fuels Research Council, National Coal Association, and United Mine Workers of America

R.E.L. Hall for National Coal Association

W.K. Hopkins for United Mine Workers of America

Samuel B. Ross for the Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

WOODWARD, *Commissioner:*

This case involves an application filed by East Tennessee Natural Gas Company (East Tennessee) under Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a proposed pipeline project and certain sales of natural gas. The fundamental question to be decided is whether the project and proposed sales meet the statutory requirements. The Presiding Examiner's initial decision issued on April 27, 1964 would grant East Tennessee a certificate subject to certain conditions which are discussed below. Our principal concern lies with issues raised in the exceptions filed in May 18, 1964, by the Coal Interests,[1] East Tennessee, and Roanoke Gas Company. Reply exceptions were filed by the Coal Interests and East Tennessee on May 28, 1964. The Commission's Staff recommended certification of the project and filed no exceptions.

East Tennessee proposes to construct and operate a 138-mile, 8⅝ths inch pipeline and appurtenant facilities at an estimated cost of $5,139,000, extending from Bristol, Virginia-Tennessee, up the southwestern valley of Virginia to the City of Roanoke. By means of these facilities, East Tennessee proposes to sell natural gas to two Virginia customers: Roanoke Gas Company (Roanoke Gas), the distributing company presently serving Roanoke and environs, which would purchase an estimated 7,789 Mcf on the peak day and 1,595,000 Mcf annually; and Colonial Natural Gas Company (Colonial), a newly organized company not yet in operation, which would purchase an estimated 18,005 Mcf on the peak

[1] Fuels Research Council, Inc., National Coal Association, and United Mine Workers of America.

day and 2,570,191 Mcf annually (all third-year figures at 14.73 psia for resale to 13 communities in the southwest Virginia valley.[2]

Colonial's project would cost an estimated $4,386,000, including taplines from East Tennessee's facilities, and distributing systems in the 13 communities Colonial would serve.

In deciding whether East Tennessee's project meets the requirements of the public convenience and necessity under Section 7(c), the following principal issues must be considered:

(1) Is East Tennessee's market adequate and is its project economically feasible?

(2) In determining the feasibility of East Tennessee's project, should the Commission consider the economic feasibility of Colonial's project?

(3) Should Roanoke Gas be required to pay for the last seven miles of East Tennessee's pipeline leading into Roanoke Gas' service area?

We agree with the Examiner that East Tennessee's project meets the requirements of public convenience and necessity, and that East Tennessee should be granted a certificate. We disagree with some of the Examiner's reasoning and conditions, however, and shall modify his decision accordingly.

Adequacy of East Tennessee's market.—Whether the market for East Tennessee's project is adequate depends upon the reliability of the estimates of Colonial's sales, particularly its residential sales, there being little controversy concerning Roanoke Gas' sales. Colonial estimates its total annual sales in the third year at approximately 2,500,000 Mcf, of which approximately 1,200,000 Mcf would be residential (mainly residential space heating), approximately 1,000,000 Mcf would be industrial, with the balance of approximately 300,000 Mcf being commercial, firm industrial, etc. Colonial's estimates are supported principally by testimony of its witness Ross and Exh. Nos. 1 and 14. They are also supported by East Tennessee and by the Commission's staff, a staff witness having spent a week in the field surveying Colonial's market.

The Examiner held that Colonial's estimates of its residential space heating sales are excessive and should be reduced by about half, to some 576,000 Mcf in the third year. This would reduce East Tennessee's market to Colonial from approximately 2,500,000 Mcf to approximately 2,000,000 Mcf in the third year. The Examiner found Colonial's estimate of attaching some 50 percent of the residential space-heating market to be excessive as a third-year accomplishment. In arriving at his estimate of Colonial's residential space heating sales, the Examiner relied upon his own calculations based upon record data of the residential sales experience of distributing companies in Virginia, rather than the several presentations adduced to support Colonial's estimates. The Examiner accepted Colonial's estimate of 1,000,000 Mcf for interruptible sales, subject to the condition that it obtain contracts or precedent agreements for half of this volume. He also accepted Colonial's estimates of commercial and other sales.

The Coal Interests argue that Colonial and the Examiner over-estimate Colonial's residential and other sales, and that the evidence supports a lower rate of space-heating attachments; that the prices for coal and oil in Colonial's service area would be less than Colonial's rate for natural gas; and that the Examiner's independent estimate is artificial and that, moreover, opportunity never existed to test it on the record.

We conclude that Colonial's estimate of its sales, including residential sales, is reasonable, and that on the basis thereof, the market for East Tennessee's

[2] The 13 communities Colonial would serve are Abingdon, Blacksburg, Cambria, Chilhowie, Dublin, Galax, Glade Spring, Marion, Pulaski, Radford, Rural Retreat, Saltville and Wytheville.

project is adequate. Determining the probable extent of Colonial's sales involves the difficult task of evaluating the conflicting predictions of experts. Although the Coal Interests' evidence was to the effect that Colonial would probably attach only some 25 percent of the residential space-heating market by the third year, in many instances distributing companies have attached 50 percent of that market in the third year, as predicted for Colonial by its witness and by Staff. The record indicates that in Colonial's case much will depend upon how energetic a sales campaign is conducted, and Colonial says that it intends to put forth the requisite effort. The relatively unfavorable experience of companies in East Tennessee, where low cost TVA power is available, and in Tidewater areas, where ocean-transported oil is available, does not necessarily apply to the southwestern valley of Virginia.

Assuming that other fuels have a price advantage over natural gas in some service categories, it appears from the record that there is still an adequate market for Colonial's gas in various categories at the rates proposed, which are basically the rates under which Roanoke Gas has grown and prospered. Colonial's estimate of 1,000,000 Mcf of interruptible sales in the third year appears modest, in view of conditions in the southwestern valley of Virginia which, as distinguished from some other areas in Appalachia lacking the Valley's resources, shows signs of developing into a relatively small but impressive industrial complex with a considerable market for gas for specialized uses. Even if we accept the Examiner's 50 percent reduction in Colonial's estimated space heating residential sales to achieve a margin of safety, the facts are clear that on this basis also, East Tennessee's market would be adequate.

Economic feasibility of East Tennessee's project.—Determining whether a proposed pipeline project is economically feasible is a matter of judgment on all the facts. In the case of a proposed extension to an existing pipeline, we do not require that revenues must yield a return comparable to that allowed on the existing system operation, here in excess of 6 percent per annum. Rather, as we said in the Opinion No. 424, and accompanying order issued April 6, 1964, in *Southern Natural Gas Company*, Docket No. CP63-26, *et al.*, 31 FPC 789 at 796 "* * * the extension of branch lines for the purpose of filling in existing service areas is to be encouraged whenever possible, provided that no undue burden is placed on the existing customers."

On the basis of its full estimated volume of sales to Colonial, East Tennessee's evidence shows that the Virginia extension would earn rates of return in the first three years of 4.45 percent, 8.04 percent and 8.13 percent, respectively. Assuming acceptance of the Examiner's reduction of Colonial's estimated sales to only 2,000,000 Mcf anually in the third year, East Tennessee's Virginia extension would still earn in excess of six percent, even when effect is given to the Coal Interests' proposed adjustment reducing East Tennessee's demand revenues. We agree with the Examiner that there is no merit to the further adjustments claimed by the Coal Interests.

Economic feasibility of Colonial's project.—The Examiner held that the economic feasibility of Colonial's project is not in issue in this proceeding since Colonial is not subject to our jurisdiction but to the jurisdiction of the Virginia Corporation Commission. We further thought that the Virginia Commission's review and authorization of Colonial's project would sufficiently assure its feasibility. Accordingly, the Examiner would attach a condition to East Tennessee's certificate requiring Colonial to obtain Virginia Commission authorization of its project.

The Coal Interests except to the Examiner's refusal to consider the economic feasibility of Colonial's project. They contend that since East Tennessee's project depends heavily upon Colonial's, we should determine whether Colonial's

project is economically feasible and should not leave this decision to the Virginia Commission.[8] They argue that Colonial's project is completely infeasible because Colonial has overestimated sales and revenues, and has underestimated expenses of construction and operating its system.

The parties have made an extensive record concerning Colonial's feasibility, which is a matter of material concern in this case, and it is appropriate that we state our conclusions respecting this matter.

East Tennessee contends that Colonial would earn rates of return of 6.40 percent, 7.21 percent, and 7.35 percent in the first three years on the basis of market estimates, and that reflecting the Examiner's reduction in residential sales, Colonial would still earn on the order of 7 percent in the third year.

If we accept the Examiner's reduction in estimated residential space heating sales and reduce revenues correspondingly, Colonial's indicated rate of return would be about 3.5 percent, reflecting the new Federal income tax rate and the reduction in East Tennessee's rates effective April 1, 1964. However, this estimated rate of return is quite conservative. Colonial's estimate of interruptible industrial sales, as well as its estimate of commercial and other sales, are relatively modest in view of the potential of its market area. Colonial's estimates of expenses appear reasonable and we perceive no warrant for increasing them. Finally, we are affirming the Examiner's condition requiring Colonial to obtain contracts or precedent agreements covering at least half of its estimated interruptible industrial sales, which, with the Virginia Commission authorization of Colonial's project, will help assure Colonial's feasibility.

Other factors affecting the public convenience and necessity.—East Tennessee's project also serves the public interest by providing Roanoke Gas with a source of supply additional to its present supplier, Atlantic Seaboard. This second supply is particularly desirable in view of the direction of growth of Roanoke Gas' market.

The Coal Interests contend that there is no public need for natural gas in the southwestern Virginia area, for other cheap fuels are plentiful, and industry has been established without natural gas. Further, the Coal Interests contend that East Tennessee's project would have a harmful effect on the fuel economy of the area, since Colonial, in order to salvage its allegedly non-feasible project, would have to make "dump" sales of gas.

These contentions must be rejected. The record shows a sufficient need for natural gas in the southwestern Virginia area, including the City of Roanoke, to meet the statutory standard. Also the facts indicate that the Coal Interests have overestimated the extent of possible harm to their interests from this project. The prospect of "dump" sales by Colonial would seem remote, for Exh. 38, sponsored by the Coal Interests, shows a price for industrial coal of approximately 23 to 30 cents per MMBtu's while the commodity price of gas to Colonial would exceed 30 cents per equivalent MMBtu's. In our judgment, the benefits to the public from the project will outweigh any possible harm to the Coal Interests.

Whether Roanoke Gas should pay for the last seven miles of pipeline.—The Examiner would condition East Tennessee's certificate to require Roanoke Gas to pay the cost, some $232,000, of the terminating seven miles of East Tennessee's line where it extends into Roanoke Gas' service between Salem delivery point and Clearbrook delivery point. The Examiner was of the view that, in essence, this seven-mile segment performs a distribution function for Roanoke Gas rather than a pipeline function for East Tennessee, and therefore should be paid for by Roanoke Gas.

[8] The Virginia Commission advised us by letter dated July 8, 1964 that it has authorized Colonial's project.

Roanoke Gas and East Tennessee except to the Examiner's conditions on numerous grounds.

We conclude that the Examiner's condition requiring Roanoke Gas to pay for the last seven miles of East Tennessee's line should be rejected. In general, it seems that the seven-mile segment serves East Tennessee's pipeline function rather than Roanoke Gas' distribution function. The segment follows a sparsely settled ridge where there is little retail market, and since Roanoke Gas will not be able to take gas except at the two stated delivery points, the segment could not actually be used as a distributing line. Neither could it be used by Roanoke Gas to perform a back-feeding function, and it could be used for only limited load balancing.

Other matters.—The Examiner would attach a condition to East Tennessee's certificate requiring the company to report to its resale customers and to the Commission annually for five years after the commencement of operations all the direct costs and expenses of the new service, and the revenues resulting therefrom. This condition, which was requested by the 26 intervening Tennessee distributing company customers of East Tennessee, is excepted to by East Tennessee, which requests that it be required to report only three years. We conclude that in the light of the questions respecting economic feasibility that have been raised in this case as described hereinabove, the Examiner's five-year requirement is reasonable and is required by the public convenience and necessity.

The Coal Interests except to the Examiner's conditions requiring Colonial to submit a certificate from the Virginia Corporation Commission authorizing Colonial's project, and contracts covering half of Colonial's interruptible industrial sales, to East Tennessee. We think it is reasonable to require that the Virginia Commission certificate and the contracts referred to above should be filed with this Commission.

The Presiding Examiner would impose a condition in effect requiring Roanoke Gas to comply with Atlantic Seaboard's CDS–PR (partial requirements) rate schedule. Since the President of Roanoke Gas made it abundantly clear on the record (Tr. 611–612) that Roanoke Gas will purchase the minimum monthly and minimum annual volumes prescribed by the said CDS–PR rate schedule or by any superseding rate schedule approved by the Commission, this condition is unnecessary.

Oral argument as requested by the Coal Interests is unnecessary, in view of the completeness of the briefs, the Examiner's decision and exceptions filed in this proceeding.

All exceptions, arguments and requests not discussed or granted herein have been considered but are without substantial support in the record or a reasonable basis in law or are immaterial to the proper disposition of this case and should be denied. The Presiding Examiner's initial decision issued herein on April 27, 1964, should be modified as herein set forth and as so modified should, to the extent consistent with this opinion and order, be adopted by the Commission as to the date of issuance of the Opinion and Order, to constitute herewith our decision in this proceeding.

The Commission further finds:

(1) East Tennessee is a "natural-gas company" within the meaning of the Natural Gas Act, as the Commission has heretofore found.

(2) East Tennessee's proposed facilities will be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission, and such facilities and the sales proposed thereby, as more fully described hereinabove and the Examiner's decision and the record

in this case, are subject to the requirements of subsections (c) and (e) of Section 7 of the Act.

(3) Subject to the requirements and conditions of this Opinion and Order, East Tennessee is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Act and the rules, requirements and regulations of the Commission thereunder.

(4) The construction and operation of the facilities proposed by East Tennessee and the sales of natural gas in the volumes specified hereinabove are required by the public convenience and necessity upon the conditions hereinafter prescribed, and a certificate authorizing the same should be issued as hereinafter ordered.

(5) The conditions attached to the certificate issued herein are required by the public convenience and necessity.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued to East Tennessee authorizing the construction and operation of the facilities proposed by East Tennessee, and the sales of natural gas in the volumes specified hereinabove, upon the conditions hereinafter set forth.

(B) The following conditions are attached to the certificate issued East Tennessee and to the exercise of the rights thereunder:

(i) Colonial shall file with the Commission acceptable contracts or precedent agreements with prospective purchasers of interruptible gas service providing for the purchase of at least one-half of the planned sale of 1,026,513 Mcf per year by the second full year of operation.

(ii) East Tennessee shall file with the Commission and furnish to such of its resale customers as request it, supplemental accounting data in scope and form satisfactory to the Commission designed to show separately, (1) the gas plant, depreciation reserve, operating expenses (excluding purchased gas costs as well as indirect operating and administrative and general expenses), depreciation expense, and taxes other than income attributable to the facilities installed in Zone 3; and (2) the operating revenues from customers taking gas in Zone 3; such data to be filed annually for the first five calendar years after commencement of service in Zone 3 and at such times during those five years as may be required to correlate with the test periods used in any future rate proceeding. This requirement is without prejudice to the method to be used in any future proceeding for allocating costs of determining rates.

(iii) Colonial shall file with the Commission a certificate or authorizing license for its proposed operations issued by the State Corporation Commission of Virginia.

(iv) The general terms and conditions set forth in paragraphs (a), (c)(3), (c)(4) and (e) of Section 157.20 of the Commission's Regulations shall attach to the certificate and to the exercise of the rights granted thereunder.

(v) East Tennessee shall file with the Commission in conformity with its Regulations and the record in this case, tariff sheets and service agreements satisfactory to the Commission applicable to the service authorized herein, at least 45 days prior to the commencement of service.

(vi) The results of East Tennessee's operations in the first year in Virginia (Zone 3) may not be utilized as the basis for a rate increase filing under Section 4 of the Natural Gas Act.

(C) Except to the extent herein granted, the exceptions to the Examiner's decision are denied.

(D) The Examiner's decision issued April 27, 1964 in this proceeding, is modified as above set forth and as so modified is, to the extent consistent herewith, adopted as part of this Opinion and Order.

(E) The Coal Interests' request for oral argument is denied.

INITIAL DECISION

OF THE PRESIDING EXAMINER ON AN APPLICATION FOR A CERTIFICATE FOR A PIPELINE EXTENSION

(Issued April 27, 1964)

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ELLIS, *Presiding Examiner:*

I. *Nature of the Case and Questions Presented*

This is a gas pipeline certificate case presented by the East Tennessee Natural Gas Company, whose present line crosses the state of Tennessee and serves at wholesale a great number of communities en route. They plan now to extend their line from Bristol, Virginia-Tennessee to Roanoke, Virginia, a distance of 138 miles, and to sell gas at wholesale to the Roanoke Natural Gas Company (supplementing Roanoke's present supply) and to Colonial Natural Gas Company, a new distributor organized to bring gas service to 13 towns en route. The only real difficulty and contention in the case is the feasibility of Colonial's project, at least so far as that reflects upon the feasibility of East Tennessee's extension, which is the direct issue here. Certain subsidiary questions arose as to the need for a special proviso to protect the market of Roanoke's present supplier (Atlantic Seaboard) and with respect to the furnishing of area cost data to East Tennessee's present customers, also a few other minor questions.

Position of the parties: A number of divergent interests have intervened and the various recommendations are summarized as follows:

East Tennessee Natural Gas Company is the applicant for the pipeline extension, has furnished the usual engineering and fiscal data to support its project, and has also independently reviewed and approved Colonial's intrastate project.

The two proposed customers, Roanoke and Colonial, appeared as interveners in support of East Tennessee's application and presented their separate proofs of feasibility and need for their proposed projects.

Twenty-six Tennessee distributors jointly intervened, not to support or oppose the project but to exact a certain condition pertaining to accounting and reporting. Atlantic Seaboard, the present supplier of Roanoke, intervened not to oppose the project but to call for a condition on the certificate with the aim of preserving the load factor of its present market with Roanoke.

The Commission's Staff made its own independent study of the application and made a field trip in the area, with the result that the Staff recommends the issue of the certificate with certain minor conditions which are not in controversy.

Claiming that Colonial's project (and, therefore, East Tennessee's) is manifestly and totally infeasible, the Fuels Research Council, Incorporated, the National Coal Association, and the United Mineworkers of America have jointly intervened and presented their own expert witness and independent cost studies on the Colonial project. Just shortly before the hearing these interveners also filed a motion to dismiss, claiming that certain data required by FPC Regulation § 157.14 was not furnished in complete form with the application. There is also a reference to § 156, but this pertains to Section 7(a) orders, a type of proceeding which is not here involved. So far as the motion refers to any requirements of the Regulations which are a responsibility of the applicant, the claimed deficiency (if any such there was) has been removed by the ample proofs, exhibits and data which were contained with the testimony served in advance, the exhibits therewith, and the other matters presented at the hearing. Accordingly, the motion to dismiss has become moot and is denied (25 FPC 1234, 1241).

II. *Procedural Record and Time Schedule Required*

This proceeding developed according to the following schedule:

1963

July 23: East Tennessee applies for a certificate of public convenience and necessity for the extension of its line.

August 30: Application supplemented, together with prepared direct testimony and exhibits.

September 26: FPC's notice published of the application filed.

November 4: East Tennessee files revised version of prepared testimony and exhibits.

December 3: FPC grants intervention to the Tennessee cities, Atlantic Seaboard Corporation, Roanoke, Colonial, and Fuels Research Council, Inc., United Mineworkers of America and National Coal Association.

December 9: FPC's notice of hearing issued.

1964

January 6–24: 14 days of hearing held, with one day recess.

February 10–March 11: A total of 10 briefs were filed by the several parties and interveners.

The parties are scheduling their operations to begin October 1, 1964, with the obviously desirable objective that the installation can be completed and the

customer connections installed in time to permit conversions to gas heating equipment and the use of gas by the consumers during the coming heating season. But the time schedule pertains mostly to Roanoke, whose management testified several times that it is imperative that Roanoke receive an additional gas supply for this coming winter of 1964–65, since 900 new customers are being added to their lines this year and their lateral supply lines leading in from the Atlantic Seaboard pipeline 28 miles away are taxed to capacity (6T734, Exhibit 19, page 4, Exhibit 20, page 4). However this admonition of urgency and immediacy is something less than demonstrated by the full record since their exhibit shows that Roanoke plans to purchase from East Tennessee only 1,720 Mcf of gas on its peak day next winter, and this amount is only a trifle more than its excess, *unused* peak-shaving capacity.[1] Be that as it may, the time schedule proposed is a pressing one since, after the FPC certificate issues, there still remain the matter of procuring the state certificate for Colonial, the sale of stock by Colonial, and the arrangement of financing by both East Tennessee and Colonial, before the work on the complete project can get under way.

III. *The Three Projects Described*

(A) *The East Tennessee extension*

The only construction project for which this Federal permit is directly requested is the program of East Tennessee to extend its present line from its terminus as Bristol, Tennessee-Virginia northeastwardly 138 miles to Roanoke, Virginia. The application for a certificate covers the construction of this line, to be of 8⅝ inch pipe, and the 11 taps and 15 meter stations to serve the 13 towns included in Colonial's project and three delivery points for Roanoke. Also, the application covers two new compressor stations along the line which will make the total investment come to $5,139,000.[2] Finally, the application covers permission to make the proposed sales to Colonial for the 13 towns en route and to Roanoke. While specific quantities are listed for the first, second and third years, East Tennessee wants its certificate to be "open end", *i.e.*, to cover the "requirements" of its two customers as they may develop in the indefinite future. (Initial Brief, page 4.) The Staff at page 35 say this will not do, in view of the size of the East Tennessee line and especially since the Roanoke sale is supplementary to another supply. In order to facilitate more responsible regulation, the certificate herewith authorizes sales in the quantities approximately predicted, without prejudice to any requested amendment of the certificate to meet new conditions as they arise. East Tennessee says all its previous certificates have covered their customers' "requirements", hence they want the same authority here, but since one of the two new customers will continue to get most of its requirements from another line, that would not literally be possible.

East Tennessee expects to seek financing for seven-eighths of the new investment, but has reason to expect to pay only five percent for it (Exhibit 11, schedule 1, Exhibit 26, page 2). A supply of gas is manifestly available through East Tennessee's contract already on file with its affiliate, the Tennessee Gas

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[1] The same Exhibit 3 shows peak-shaving will be utilized on next winter's peak day to the extent of 6,480 Mcf, while Exhibit 9, Schedule 7 says Roanoke's peak-shaving facilities are estimated at 8,000 Mcf per day, or a difference available of 1,520 Mcf. Alternatively, their witness says at 6T792 the capacity is "close to 8.5 million" (meaning 8,500 Mcf), so there is 2,000 capacity available if the 1,720 purchase from East Tennessee does not arrive next winter.

[2] They are to be of 1,980 and 1,320 horsepower, respectively, and to cost $914,000 together, see Exhibit 6 and Exhibit 22, pages 5–8.

Transmission Company, a sale which is said already to have been authorized by the Commission (Exs. 4, 5, and 9T1301, 1303).

There is no doubt of the FPC jurisdiction since the proposal calls for the transportation and sale of gas in interstate commerce and the construction and operation of facilities therefor, all of which are within the purview of Section 1 and Section 7 of the Natural Gas Act. Note that the only sales covered by this application and to be made from the new pipeline extension are the sales for resale to be made to Colonial and Roanoke. East Tennessee does not contemplate or ask for any certificate authority related to any direct sales in Virginia for consumption by the buyer; indeed there are local excise tax reasons which have impelled the management to advise the forum that there is no program in view for any direct sales by East Tennessee within the borders of Virginia.

The quantities of gas to be sold under this proposal are set forth as follows on page 4 of the application:

To Colonial Natural Gas Company.	2, 570, 191 Mcf/annum	18, 005 Mcf/day
To Roanoke Gas Company----	1, 595, 000 Mcf/annum	7, 789 Mcf/day
Total----------	4, 165, 191 Mcf/annum	25, 794 Mcf/day

The peak day total, 25,794, will comprise 15.5 percent of East Tennessee's total wholesale sales and 13 percent of its total system peak firm sales (Exhibit 9, Schedule 2). The annual totals are about the same, 17.3 and 12.5 percent.[3] As of now, the two new customers do not expect to purchase any gas from East Tennessee on the latter's interruptible tariff. On the other hand, the Virginia customers do expect to sell a substantial quantity on an interruptible basis—that is, "valley gas" which has been taken under the regular tariff schedules and for which the demand charges have been paid.

While there is evidence on it, none is believed to be required to demonstrate public need, since the towns and cities en route between Bristol and Roanoke do not now have natural gas service. It should go without saying, to the extent that any demonstration would be supererogation, that these populated areas need and should have natural gas service and that many of their residents and business houses will buy gas when it is made available to them at comparable rates. (2 FPC 29, 56.) Also, since it has long since been known and published[4] that most gas is sold for industrial use, it can be taken as self-evident that the availability of gas would be useful to industry and to potential industry. What is true and obvious everywhere need not be made the matter of extensive or specific proof here.

The feasibility issue, and particularly the extent of the line within the Roanoke area, are considered below, under heading IV.

(B) *Colonial's plan to serve 13 towns en route*

Colonial Natural Gas Company is a recently organized Virginia corporation which plans to construct distribution systems in 13 towns scattered along the route between Bristol and Roanoke,[5] and to serve gas to their residents through 11 separate connections off the East Tennessee new line. They have received franchises from all of the towns, and they expect presently to apply for a state

[3] These figures do not count in the company's present interruptible sales from a special tariff, which are made at a number of points in Tennessee and whose total equals two-thirds of the company's total firm sales for the third year.

[4] *Minerals Yearbook*, U.S. Bureau of Mines, 1961.

[5] The thirteen towns are: Abingdon, Blacksburg, Cambria, Chilhowie, Dublin, Galax, Glade Spring(s), Marion, Pulaski, Radford, Rural Retreat, Saltville, Wytheville.

corporation commission authorization also. They plan to construct distribution systems throughout the towns and to build the "tap lines" to them from the East Tennessee line, which will be from one-half mile to 24 miles in length and from two and one-half inches to eight and one-half inches in size (Exhibit 14, pages 5–7). They plan on a total project cost, including pipe installed, right-of-way, valves and meters, and a small inventory of movable equipment and supplies, of $4,385,800, which comes to an average of $386 for each of the 11,354 customers expected to be attached.[8]

To raise this capital they have made a small initial sale of stock to the amount of $200,000, one-fifth of it paid in. They plan to sell $1,200,000 more in equity common stock and to raise the balance through a two-million-dollar issue of mortgage bonds at 5¾ percent and a $600,000 debenture at six percent. At the beginning of the second year, they will issue an additional mortgage for $400,000 at 5½. The program is to retire the debt by 20 equal annual payments, and for this program adequate financial evidence was brought in satisfactorily to demonstrate that the financing plan is sound, practicable and feasible (Exhibits 14 and 15).

However, Colonial's plan was severely attacked by the coal Interveners on the ground of feasibility, mostly to the point that its market estimates are too high and lesser to the point that its capital costs are too low. These questions are sufficiently treated below.

It can be taken as established—if the self-evident need be evidenced at all—that since the 13 towns do not now have natural gas service, at least some of the residents and business establishments and industries will want (if not require) natural gas service and that in the public interest it should be made available to them as a public convenience and necessity, in the language of Section 7 of the Natural Gas Act, provided there is met the basic standard of feasibility, not of Colonial, but of East Tennessee, the Applicant, whose project is the one covered by the Federal license and to which the Federal statutory standard applies. The primary responsibility for a certificate covering the feasibility of Colonial's distribution system is a matter for the state commission (see part V–C, below).

(C) *A supplementary supply is planned for Roanoke*

Roanoke Gas Company is the local public service corporation which now distributes natural gas in the city of Roanoke and various surrounding areas. They hold a state certificate which outlines Roanoke's service area to include some distance to the south and west, to the town of Shawsville, 18 miles from the city. (The Colonial project expects to have its potential service area reach up to that point.) Roanoke's sole present supplier of natural gas is the Atlantic Seaboard Corporation, whose gas reached them in 1950. Roanoke receives Seaboard gas at a station at Gala, 28 miles north of the city, and brings it to the populated area through an eight-inch main which has a 12-inch loop for 18 miles of the distance. Roanoke buys nearly 4,000,000 Mcf per year from Atlantic Seaboard, with a peak day maximum of 18,500, and even after East Tennessee's third year, the projections are that Seaboard will still supply 70 percent of Roanoke's need.

Without East Tennessee, it would not be impossible for Roanoke to arrange for its increased needs through its present supplier and the present delivery point at Gala north of the city. But the point is, this would require extensive construction and still would not bring the supply to the south and west side

[8] Exhibit 1, Schedules 2, 3, and 5. These are the total figures including the construction period and the first three years of operation.

of its service area, where the new growth is expected and a number of industrial sites are available. An increased Seaboard supply would require a capital outlay of about $2,000,000 in order to enlarge the lateral facility from the Seaboard line and "to encircle the westerly and southwesterly sections of the city and county of Roanoke and to integrate the loop line, as extended, into the distribution system in place." (Brief, page 6; Ex. 20, p. 3). This is about $1,600,000 more than will be required to make the two connections planned with East Tennessee, which will come in to the area from the southwest (6T822). The principal advantages of the program, so far as Roanoke is concerned appear to be: to receive the assurance of a second source of supply, to receive an increased supply by an installation which saves four-fifths of the capital costs, and the better to balance its system by bringing the new supply into the southwest side of its rather extensive market area, which is now farthest from their present sources.

To meet the needs of the 160,000 persons in their area, over 2,000 commercial establishments and a number of important industries, including the Norfolk and Western Railway, Roanoke's total program is to continue and slightly to increase their purchases from Atlantic Seaboard and at the same time, after investing $415,000 for loops and connections, purchase from the East Tennessee line up to 7,789 Mcf on a peak day at one, two, or three delivery points. That is the third year figure, for which the corresponding annual quantity is expected to be 1,595,000. Assuming the market develops (this subject is covered in the sections which follow) and assuming a sustained purchase program from Seaboard (see Part V below), there can be no doubt that the assurance of a second supply to Roanoke is in the public interest and that the sale would otherwise comport with the standards of public convenience and necessity.[7]

IV. *Feasibility of East Tennessee's Project*

It being clear, as stated, that a sufficient gas supply is available to East Tennessee and the capacity to carry it to the point of beginning of the project at Bristol (Exhibit 7), also that East Tennessee has the means of acquiring the capital financing needed, and that the new line has the capacity to carry the proposed amounts to the sales points, it remains to consider, in order to apply the public convenience and necessity test, whether the markets relied upon are sufficiently demonstrated and whether in other respects the project is economically feasible. Since, to some extent, the feasibility may be affected by that of their two customers, and since East Tennessee's markets are entirely dependent upon theirs, the projections for Roanoke and Colonial are first considered.

(A) *Roanoke's market is proved and established*

The plan is to sell to Roanoke 7,789 Mcf on the peak day in the third year and a total of 1,595,000 Mcf during that year, meaning the 12 months beginning December 1, 1966 (Exhibit 9, 9T1146).

Roanoke's market projection (Exhibit 3, Schedule 2) shows a total of 20,387 customers now on the rolls, increasing by 900 this year, a thousand next year, and 1,200 each year thereafter through 1967. The total, 25,718, indicates a very modest ratio, one to eight, compared to the area population of 160,000. Ninety percent of the customers will be residential, the rest commercial except for possibly 47 interruptible industrial purchasers.

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[7] It was shown that the slightly higher cost of East Tennessee gas at the proposed rates, over the present Atlantic Seaboard rates, is more than offset by the carrying charges for the excess capital investment which would be required to connect with Seaboard for an expanded supply.

It is unusual that Roanoke has no clear figure on heating saturation, meaning the percentage of residential customers using gas for space heating. According to the figures in the exhibits cited, they expect the average residential customer to take .95 Mcf on the peak day and about 108 Mcf during the year (counting all domestic uses), which is slightly more than their actual experience of last year but explained in part by their experience that, in the areas of new construction, seven out of eight of the new homes sign up for gas for heating purposes (5T614). Based not upon actual figures but upon inference from the quantity metered to each residential customer, Roanoke estimates they now have 76 percent saturation—that is, more than three-fourths of their residential customers are residential heating customers (6T753). One actual figure of significance was that the average use per residential customer has more than doubled in the last 10 or 11 years, the latest figure being 90 Mcf per year (6T757).

On the whole, Roanoke's figures are not based on the formulae frequently used but rather are based upon actual experience, plus a projection of the continued growth and an actual listing of the larger users. If there were criticisms of this methodology, these doubts fall entirely in view of Roanoke's record—its market predictions during the past several years have been remarkedly accurate, within less than one-half of one percent. The attorney for their present supplier testified that Roanoke has "the highest degree of accuracy of any of our wholesale customers." (6T789)

Perhaps of equal importance is the evidence that the attachment of the new supply on the south and west side of the city and market area will permit Roanoke to serve areas not presently served and areas in which the city's growth is extending, including the new availability of a service to industry.

Roanoke is already an established going concern with substantial reserves and net income, and there appears no reason to doubt either that the sales predicted will be made or that the program is amply feasible.

With the feasibility clear, and reiterating the obvious benefits of a second source of supply, the saving of three-fourths of the capital expense the increase would cost from its present supplier, and the operational efficiency through bringing the supply into the southwest portion of the service area, it is concluded that the proposal to sell the quantities mentioned to Roanoke meets the test of public convenience and necessity. One question remains as to the sales delivery points, and a related item as to the demand quantity Roanoke has actually signed for; these are treated below under IV–C.

(B) *Colonial's project might prove to be feasible*

It is more fully developed below that the feasibility of Colonial's project is not itself directly required to be determined here.[8] This is not a proceeding under Section 7(a), *i.e.*, it is not the case of a distributor in an adversary proceeding seeking an order for a gas supply from a pipeline which appears in opposition, in which case the precedents are clear that it would be the FPC's responsibility and requirement that the proponent demanding service against the pipeline's recommendation must demonstrate that its project is feasible—see 27 FPC 967, 971, and the cases there cited. Rather, as stated, it is East Tennessee's proposed sale that is solely in issue, and its feasibility depends not at all upon Colonial's feasibility but only upon the reality of the market relied upon.

The point is that whatever the demonstrable and developed market of Colonial, nothing was developed to show that this market would not continue and be available to East Tennessee whether Colonial's project proves feasible or not. Staff Counsel was apt in pointing out that even if there should occur a financial dif-

[8] See Part V(C)(3) to the effect that this determination is a function of the state commission.

ficulty and reorganization of Colonial the new pipes would still be there and the customer connections would still continue. The witness agreed, saying: "All the mains would still be in the ground and in service. The customers would still be connected * * *." (4T561) The same witness (who was the engineer for the Colonial project and who has wide and successful experience in the building and rebuilding of gas projects) testified that to his knowledge no gas system has ever developed financial difficulty other than temporary, the customers have in all cases been protected, in some cases there have been passed dividends to the detriment of stockholders, but he does not "know of any property that has gone beyond the point of having to at worst defer interest payments on their debts."

In that light, Colonial's feasibility is not *per se* directly in issue here; no finding of its feasibility is here made or required to be made. Instead, all that is required is such examination of the Colonial project as will satisfy the forum that an ample market is available to East Tennessee such that the new extension will pay its way, that is, that it will not be a burden on the present customers of East Tennessee's existing line. That this is the true test, the effect on East Tennessee and its customers, is developed and fully restated in the Commission's decision of April 6 of this year, in the case of *Southern Natural*, Opinion No. 424, 31 FPC 789, at p. 796.

This portentious preface to Colonial's case is called for not primarily because of the unprecedented and strenuous opposition by the coal interests, who have introduced their own separate survey and expert testimony to the effect that Colonial's project is not feasible, but by the expressed doubts of the Tennessee cities which intervened to protect their interests and who have commented on the "thin coverage" of the return expected from the new part of East Tennessee's line, at least at first, and upon the optimistic sales predictions put in by Colonial's engineering witness. These indicia of skepticism, plus the numerous doubts and unproven assumptions apparent on the face of Colonial's presentation, do require careful examination of Colonial's case, not to render a pronouncement as to Colonial's feasibility but for the lesser and much simpler function of passing upon East Tennessee's sales predictions and net revenues which can be counted upon. This, under the decision last cited, is the true test to be applied.

(1) *Construction cost differences are not significant:* With the inquiry so narrowed, the first ground of the coal interests' case in opposition, based on the higher cost of construction, can be disposed of quickly. Colonial estimates its first year cost of installation at $3.5 million while the expert witness for the coal interests showed a figure $248,000 in excess of that, to which there is added $223,700 for the additional residential meters to put the estimates on an equal plane, or a total cost differential of $471,700 for the first year, somewhat more after the second and third years. But the differences were largely discredited during the cross-examination when it developed that the coal witness figured a slightly larger pipe size, did not allow for the freight, overstated the cost of valves and used costs that are rather unnecessarily high for surveying, mapping, and excavation. For example, the coal witness estimates $2,500 for each of the 40 miles of lateral tap lines for right-of-way and damages, as compared to $1,500, the rate estimated by the same witness for a similar project in the adjacent area not long ago, on which occasion he testified in favor of the project. (Compare 13T1832 with Exhibit 37, Schedule B, page 1.) The figure used by Colonial's engineer is $2,100 per mile. In any event, even if the construction should be 10 percent or more above the estimates, there is no suggestion this would seriously curtail the market, and Colonial's president specifically testifies they could absorb the difference without a problem (13T1891).

Colonial's figures work out to an investment of $386 per customer, which would be well within the range of reason and prudence if the number of customers predicted could be relied upon—this subject is covered below. The coal witness figures the investment per customer at $538, which would be a little higher than the normally acceptable range, but not without precedent (27 FPC 967, 973); but because of the uncertainty as to the number of customers, this standard or guide is of small service here.

Specifically, this review of construction costs does not pass upon the two or three very expensive lateral or tap lines which are being planned to be built by Colonial alone, without help or contribution of any kind from East Tennessee, since these matters will be subject to the state commission's certificate, as developed below. The particular reference is to the 24-mile lateral to Galax, a town of 5,254 persons expected to develop 1,140 customers and to require as much as 288,780 Mcf during the third year, all for a project cost, including the lateral, of $831,067, or $730 per customer (Ex. 29A, Sch. 2F). Neither is there to be inferred herefrom any sanction for the rather obvious overbuilding or oversizing of the lateral to Saltville, which is 7.2 miles of 8⅝-inch pipe for a total cost or investment of $310,738. If the exhibits are expected to be taken at their face value, all of this is for the service of a population of 2,844 among whom will be found 508 customers who will need 60,360 Mcf in the third year. All of the customers are residential except 11 commercial, and no industrial or interruptible load is said to be available at all. But the engineer furnished the information that the Saltville lateral of 8⅝-inch pipe (leading off the 8⅝-inch line of East Tennessee) has a capacity 21 times its maximum third year requirement (Exhibit 14, page 7). There is a very large industry there but Colonial has neither thought, plan, or hope to sell gas for its major needs, because, so Colonial represents, it will not be able to meet the competitive coal price. Instead, the only explanation for the size of the laterals is there are "the largest known deposits of gypsum and the native clays, and a potential for a tremendous gas industry." (2T170)

For the same reason, no finding or conclusion as to the capability of Colonial to sell the stock as proposed and accomplish the financing is believed to be appropriate or required, but this note is added that there is ample evidence to that effect, as furnished by the same witness who endorses the financing of the East Tennessee proposed investment. (Exhibit 15, page 5.)

(2) *Colonial's market estimates are the issue of the case:* It is re-emphasized that the program here under review is that of East Tennessee, not of Colonial, and the latter is involved only as it affects the former. East Tennessee's program is to deliver as much as 25,794 Mcf on a peak day and a little over 4,000,000, that is, 4,165,191 Mcf during the course of a year. The only customer aside from Roanoke is Colonial, and the sale that can be counted on to Colonial is of course no greater than Colonial can demonstrate it has the capacity to purchase; and that amount, as claimed, is 18,005 Mcf on the peak day and 2,570,191 during the year. This means that two-thirds of East Tennessee's sales are to go to Colonial, and it is the reality and validity of the estimates by both parties that this amount can be sold by Colonial and will therefore be sold by East Tennessee that is the principal issue in the case; it was the subject of several days of cross-examination and is the principal subject of the coal interests' counter case.

The problem is, as Colonial recognizes, that no one can know or demonstrate what Colonial's sales will amount to, that in every one of the presentations made by the expert witnesses on behalf of all parties there is to be found a mass of computations and projections but all of them beginning with certain

entirely undemonstrable and unverifiable assumptions, and that in each case there is submitted for reliance, after all, nothing much more than the empirical or pragmatic results of the several expert judgments which are quite immeasurable. Of the several approaches used by Colonial, East Tennessee, the coal interest, and the Staff, none of them can be received with assurance and certainty.

With that preface, and turning to Colonial's exhibits, the third year sales which are counted on to sustain the project and which East Tennessee counts on to sustain its project, are listed as two and one-half million Mcf during the third year of operation. The interruptible sales are just over one million, or 40 percent, and the only other class exceeding 100,000 is the residential sales of 1,216,796 Mcf 90 percent of it for residential space heating. The residential is 48 percent of the total so that these two classes are 88 percent of the total market claimed, hence the controlling consideration should be given to those two items.

(3) *Interruptible market:* While this is 40 percent of the claimed volume, it is only 23 percent of the claimed revenues. In this respect the present case differs markedly from that considered in the Commission's opinion of April 6 in Southern Natural Gas Company (No. 424), where the principal resale customer showed 80 percent of its sales would be interruptible. The point is that Colonial does not hope to compete for the primary market served by coal, that is, the industrial market (1T91). "Colonial's * * * major objective is to serve the domestic market, and to serve industrial customers only to the extent of balancing its load factor operation which I would recommend be held around the 60 to 70 percent load factor operation, supply interruptible customers from the valley gas generated from its own demand contracts, hold its cost of gas to a minimum and concentrate on the development of the domestic market." (Engineer Ross at 2T236.) Colonial lists only four interruptible customers who are estimated to use more than 10,000 Mcf per month each or 100,000 Mcf per year, and their estimated consumption totals 607,827 (2T234). Colonial does not represent that it has solicited contracts with these customers but presents them more as the type of load they expect or at least hope to get (2T247). Their witness has been "encouraged" by the responsible people in the firms concerned to think they will be connected.

Colonial's average interruptible sales rates will be 58 cents[9] per Mcf (compared to its residential resale average rate of $1.42 per Mcf), which may strongly affect the interruptible market to be envisioned (2T244). In fact, with industrial coal selling in quantity for less than two-thirds of that price, the coal interests would not fear the competition and would not be here in opposition, assuming a feasible project were proved and there were some guarantee the 58-cent price would be maintained (12T1631); but at the same time, with that price unusually high, there is less assurance that the sales can be made at all. Colonial follows Roanoke's rate schedule and last year only 29 percent of Roanoke's sales were in the industrial interruptible class (Exhibit 3). Corresponding figures for the present customers of East Tennessee are not at hand, but some comparison is noted from East Tennessee's market exhibits—the distributors off their line located in Tennessee take one-third, 33 percent, of their needs from East Tennnessee's interruptible tariff.[10] From this it may be inferred

[9] The 58-cent price is a rough average; under the tariff the interruptible usage must get over 7,000 Mcf in in one month before the lowest rate block is reached, which is 44.81 cents (Exhibit 1, page 14).

[10] Neither Colonial nor Roanoke expects to make any gas purchases from the interruptible tariff of East Tennessee.

that about that proportion of the Tennessee distributors' sales are on the interruptible sale basis.

The potential interruptible market relied upon comprises four establishments now using coal or oil whose total needs would amount to 607,827 Mcf, or about 60 percent of Colonial's total interruptible market proposed (2T234). Two of the firms have strongly indicated they will be customers, the other two might be also (4T534). In addition, Exhibit 34 lists 22 other prospects in the area and the total needs of all 26 come to nearly 2,000,000 Mcf, of which Colonial hopes to sell 55 percent. The coal witnesses are properly skeptical that any of these will be sold, but apparently some were conceded since their cost of facility exhibit (Exhibit 37, Schedule B) at one time listed five interruptible meters. Under recent precedents, the distributor would be expected to exhibit some signed agreement to insure a particular sale proposed where its amount comes to 15 percent of the total revenues. None of those on Exhibit 34 would approach even 10 percent of Colonial's revenues, let alone East Tennessee's, but about 20 percent of Colonial's revenues is expected to arise from this source. Since the inquiry here is East Tennessee's market, not Colonial's feasibility, the percentage-of-revenues test is not seen as controlling.

In view of the price expected to be charged and of the fact that no actual commitments at all have been received, it will be appropriate to require as a condition that, before East Tennessee undertakes construction, Colonial shall exhibit signed commitments from one or more customers in this category in such number and amount as to assure that at least half the planned sales of 1,026,513 will indeed be made by the second year, as their Exhibit 1, Sch. 5 disposes. The form and content of such a commitment to be exhibited to East Tennessee may follow that prescribed by the Commission in its decision of April 6 in the case of Southern Natural, which is cited above. With that reservation and condition, the proposed interruptible industrial market may be accepted as adequately established.

(4) *Firm gas market (non-residential)*: In its Exhibit 1 Colonial lists the usual other classes of gas markets, i.e., commercial, large commercial, public authority and firm industrial, for a total of 302 customers, separately classed for heating and other use; but the total firm usage for all these non-residential classes comes to only 276,493 Mcf in the third year, or a little over 10 percent of the total market claimed to exist in the area (3T302). Since that proportion is so small, and the number of customers and their usage does not appear out of line or unusual for a total of 13 towns with a population of about 57,000 in all, it is not necessary to recapitulate the extensive record made in opposition on these classes; it is enough to refer to the exhibit (No. 35) listing many pages of potential commercial customers, which seems adequately to support the expert witness' determination that sales of the order named will in fact be made. For even if these sales are overestimated by as much as one-third, this would affect the total sales by only three percent.

(5) *The residential heating market is over-stated:* Colonial plans to sell 1,099,682 Mcf for residential heating in the third full year of operation, this for service to 11,026 customers. These two numbers are the crux of the case. East Tennessee supports the figures; the FPC Staff witness has some doubts but agrees generally (12T1710). The coal witness concedes less than half the market claimed—some amount below 445,000 Mcf to 4,872 customers (Exhibit 37, Sch. C, page 1, column 4). But none of the various estimates is supported by a convincing exposition, for the reasons stated below.

(i) *Colonial's estimates are not to be taken literally:* For their project, Colonial employed, on East Tennessee's recommendation, an obviously capable and

highly experienced gas engineer, with a great deal of special experience in the field of gas distribution. He spent considerable time in the area and made two forms of residential surveys: (a) an actual count of the dwelling units available on the lines to be built, for a total of 19,062, and (b) a 10 percent sampling of residents' opinion together with a listing of the age and type of heating equipment in use. This led to the conclusion that 50 percent of the homes would be served for gas by the third year (Ex. 14, p. 12). His sales exhibit, Sch. 5, is figured on 11,026 home heating customers.[11] Most importantly, it is Colonial's case that virtually every home customer will use gas for space heating, and many of them for other uses also.

But the house survey announced no gas prices to be charged and sought no commitments, formal or otherwise; instead, it was substantially only a census to record the heating and other equipment in use in the houses covered (2T266). Manifestly, this is not the survey which past decisions have indicated might be required—see 17 FPC 118, 120. On the other hand, later experience seems to suggest that no survey a year or so in advance of the hearing is really effective accurately to foretell who or how many will in fact buy gas two to five years later.

The second problem is that Engineer Ross relies on experience, but can point to no gas system anywhere he has worked on which sells heating gas to 50 percent of the market, as here claimed (4T515–520). Figures from the Tennessee cities now on the line were offered, supposed to show 54.62 percent "saturation".[12] But the figures really establish only that 23 percent of these towns' homes heat with gas (4T566). This is Roanoke's experience also (4T501). The higher figure was evolved by writing off or not counting the areas of those towns which have not been reached by the gas lines (9T1227). That is all very well as far as it goes but is a long way from proving that if the Tennessee towns were fully piped, their customer count would double. Whatever the reasons that have impelled the Tennessee distributors to pipe only half of their streets, there is nothing to show that Colonial, which plans to lay a pipe to virtually every house,[13] will achieve throughout the same 50- or 54-percent saturation that the Tennessee towns have arrived at after 10 years *in* the merely 50 percent of their areas they have seen fit to serve with gas. One can only assume that if the unserved areas in the Tennessee cities were likely to produce customers they would have been piped long ago, and Colonial may well find certain areas of their towns are quite as unlikely also.

The third and greatest problem is that the witness does not present the 50 percent house heating figure as his true estimate of house heaters or even as being true at all; it is only an element in his formula for assessing the total market. This was not disclosed with the application, which was evidently to be taken at face value and which in fact sought a certificate without a full hearing, under the short procedure. When the 50 percent figure was questioned, the witness explained a number of times that "the real integrity of the estimate" is to be found *not* in the number of house heaters certified and sworn to but in

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[11] The extra 1,495 over the 50 percent evidently is to come from new house construction.

[12] Note the word "saturation" is ambiguous. It means the share of the potential market; it is not here used to bear the meaning to which the Commission and the courts have attached so much significance, namely, the proportion of the actual house customers who heat their homes with gas—see 20 FPC 851 and *Michigan Consolidated Gas Company* v. *F.P.C.* (CADC, 1960), 283 F. 2d 204.

[13] A "unique proposal" (Colonial Initial Brief, page 19).

the total gas sales in the number of categories.[14] Such an indirect formula might be acceptable if shown to be reliable by a record of other projects so initiated which proved out by the acid test of realities, but no such proofs were here adduced.

For these three reasons,[15] the home heating estimated relied upon for nearly half of Colonial's market is not accepted.

(ii) *Are East Tennessee's market estimates reliable?* Both the Staff and Colonial make a great deal of the corroboration furnished to Colonial's project by East Tennessee's own technical Staff. It is true that East Tennessee's engineer in charge testified to the results of a study of the area made by East Tennessee beginning in 1958, at which time the company made an extensive survey, calling on all the commercial houses and industrial firms, with results which in his judgment support Colonial's exhibit and show it to be conservative. The residential market claimed was verified by using census and housing figures which developed that the potential residential market is something over 2,000,000 Mcf, of which a gas company should expect to sell 50 to 60 percent, producing a result which is said to tie in closely with Colonial's exhibit.

This concurrence by East Tennessee should be regarded as a most responsible one because it is, after all, East Tennessee that is investing $5 million in the plan to supply to Colonial the gas which Colonial's exhibit claims it can sell. Indeed, the Staff brief at page 24 makes reference to Colonial's nominal prediction that it will sell gas for home heating to 50 percent of the houses and says such an estimate is not a unique phenomenon, listing as proof seven or eight previous East Tennessee projects—under applications filed by East Tennessee with the FPC for a certificate to authorize sales to distributors in the state of Tennessee—in all of which the expert engineering testimony was to the effect that 45 percent to 60 percent of the "units" along the proposed distribution lines would attach for gas heating within three years.

The trouble is that the very East Tennessee projects referred to in the Staff brief and one or two others of note have demonstrated in the light of real conditions and actual events several years later that the predictions and

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[14] By Mr. McGRATH:

Q. That works out in the third year to 58.3 percent of what you say is in the town, the number of houses.

A. You will give me a little latitude on roundoff, I am sure.

* * * * * * *

PRESIDING EXAMINER. In other words, he is going to sell a little more than half the houses.

The WITNESS. No, sir, I am going to sell the equivalent gas load which is now being used by substantially 50 percent of the domestic market.

PRESIDING EXAMINER. Now, wait—come again on that.

Mr. McGRATH. I don't get that, either.

PRESIDING EXAMINER. I thought what you were telling me was that you were going to heat 50 or 60 percent of the houses in Saltville.

The WITNESS. Mr. Examiner, I am estimating the amount of gas that I am going to sell. My method of estimating is the fuel requirements of 50 percent of that market as it exists in 1963. In other words, if you want to say half the houses—actually, I am interested in revenue and Mcf sales, and I have estimated my Mcf sales and revenues on the basis of the heating requirement of 50 percent of the heating market, which if it is not misunderstood could be called, say, half the houses existing there in 1963.

Now, there will be additional houses built during the subsequent years, as illustrated by the growth from 739 in March or April of 1960 up to 854 as of May of 1963. It is a method of estimating market sales. [*Cf.* 3T298–9, 344, 4T492, 574, Colonial Init. Brief, p. 18.]

[15] The witness' further point of reliance upon the unusual age of the present heating equipment in these towns is considered below, under Part IV(B)(5)(iii).

expert testimony filed in support of East Tennessee's applications are most unreliable indeed. Leaving out two new sales just authorized last year, the applications referred to have been compiled in the table below to show the peak firm day and per annum sales which were confidently predicted, sworn to and supported in the applications and testimony or both, and submitted by East Tennessee for several orders issued by the Commission during 1959 to 1962. The Staff says the actual service began in the same year it was authorized by the Commission's order or in some cases in the following year. But the contrast is remarkable between the figures given with assurance in advance, and the actual figures which East Tennessee itself now reports in the present case, that is, Exhibit 9 reporting the actual peak firm day and annual sales which have taken place in fact or which are being made this year. The net result is to show that the predictions three years in advance were two and one-third times the actual sales which later on occurred. There is reason now to endorse the reservation contained in the initial decision in one of the cases to the effect that the engineering report submitted with the case "is not hereby endorsed or approved." (23 FPC 916, 926). These patent and substantial differences on the record are not explained by the generalized statement that—

COMPARISON OF EAST TENNESSEE'S ESTIMATES FOR NEW PROJECTS WITH ACTUAL SALES REPORTED TWO-THREE YEARS LATER

Project proposed by East Tennessee	Percentage of over-estimate	Third year estimates and actual sales (Mcf)			
		Maximum day		Full year	
		As predicted by East Tennessee	As reported by East Tennessee (Ex. 9 filed in 1963)	As predicted by East Tennessee	As reported (Ex. 9 filed in 1963)
Sevier County Utility District, 23 FPC 469 (3/1/60)	215 238	2,568	816	349,634	103,319
Middle Tennessee Utility District, 23 FPC 916, (6/30/60)	153 139	7,599	3,008	725,652	303,621
Town of Livingston, 24 FPC 902 (10/24/60)	130 105	1,448	630	125,304	61 136
Unicoi County Utility District, 29 FPC 297 (2/14/63)	8 191	2,005	1,857	328,398	172,071
Hawkins County Utility District, 26 FPC 44 (7/7/61)	62 134	3,225	1,999	321,409	137,245
First Utility District of Maury County, 26 FPC 262 (8/7/61) 7(a) case uncontested	141 151	1,131	469	112,074	44,705

Our customers by and large have reached the loads which their engineers and their initial survey showed that they would reach.

Of course, we have got some customers that have not reached this potential yet, but it has not affected East Tennessee's financial condition. [8T1053.]

Particularly this does not explain what occurred only last year in the Unicoi project, authorized by an initial decision which became final by the Commission's order of February 14, 1963, granting East Tennessee's application under Section 7(c) to serve the Unicoi District, based on a market showing which predicted 59 percent space heating saturation and a peak firm day sale in the amount of 2,005 Mcf. Five months later, before, of course, there could have been a season's experience with which to test the predictions made, East Tennessee's application was submitted in the present case. The new application now changes the Unicoi prediction from 2,005 Mcf to 1,857 Mcf during the second, third and fourth years of that project. What occurred to cast doubt upon the prediction

and testimony which the Commission relied upon only five months before is not stated.

The Staff brief cites the predictions made in those six or eight cases in corroboration of the 50 percent space heating prediction here made, but the infirmities thus demonstrated in those predictions will require that corroboration to be sought elsewhere.

In any event, even if these discrepancies be subject to satisfactory explanation, it is nevertheless evident that the Tennessee experience is not adaptable to Virginia conditions. It was shown that, primarily because of the low electric rates (4 to 7.5 mills) the Tennessee retail market is for space heating and the attachment of a customer is for that purpose, occasionally for some other uses also. (The Tennessee distributors often keep no detailed records breaking down their sales between heating and nonheating.) However, in Colonial's area even the promotional electric rate is hardly competitive, being about double the gas costs for heating, hence the conditions peculiarly attributable to the low electric rates in the Tennessee valley will not necessarily be recapitulated in the valley of Virginia (4T569, 8T1086, 9T1150, 1172, 1186, 1207).

(iii) *FPC Staff supports the Colonial project and its markets:* Relying strongly on the growth and sales characteristics of the Roanoke distribution system, coupled with the Staff's own field survey of the Colonial market area, and announcing its own formula to predict the attachment of domestic heating customers, the FPC Staff concludes that the residential markets shown by Colonial are sound and that half of the 19,062 dwelling units can be attached as space heating customers within three years, which will be the source of well over half the company's revenues in the third year. The Staff endorses the project and recommends that the Commission's certificate issue. (Brief, page 26.)

The Staff's separate study makes an analysis of the heating equipment now in the homes in the area, based on the Colonial exhibit and the relative ages of the furnaces or other heating equipment. Their table of figures, derived from Exhibit 36, shows that a very few homes in the area heat with electricity (which will not be converted to gas) or else with propane (all of which will be converted). Predominantly, the homes are heated by the conventional fuels, a little over half using fuel oil and 40 percent using coal and wood. The Staff accepts the testimony of the gas engineers in the case to the effect that 10-year-old heating equipment in a home is subject to replacement or, as it is said, induces "strong proclivity toward replacement." Briefly, the Staff points out that one-third of the heating equipment in the homes in the area is already over 10 years old and that another third of the equipment will become 10 years old within another three years. All of these heating units, already or soon to be over 10 years old, are classified by the Staff "as comparable with attachments to new houses." To complete that comparison, there was testimony from the example of Roanoke to the effect that seven out of eight new homes are attaching to the gas lines and installing gas furnaces.

Upon the basis that the 10-year-old units are "susceptible of conversion", that is, to conversion or renewal, and counting that seven out of eight will elect gas rather than other fuels, but allowing another 20 percent discount for "failure to attach the susceptible", the Staff concludes with an estimate of residential attachments in three years of 9,196 (9,108 is what it adds up to), which corresponds approximately with the prediction of Colonial's witness that 50 percent of the 19,062 present units would be atached, i.e., 9,531.[16] Colonial and its wit-

[16] The Staff's figure already includes 700 out of the 1,000 new homes presumed or expected to be built, but Colonial uses the putative new construction to explain its anticipated eventual margain over the 50 percent first counted on, that is, to explain the 11,026 customers instead of 9,531 (3T337).

ness also rely heavily upon this sort of analysis, considering "that 30 percent of the equipment is over 10 years old which is normally, in the industry, considered about the replacement age." (2T271.)

The major premise of the Staff's study is to start with the assumption that, out of all of the furnaces in the 13 towns burning oil and all of the furnaces or other equipment burning coal or wood, a net of seven of every 10 which are 10 years or more old (or become 10 years old) can in fact be counted on to be converted to a gas furnace.[17] This analysis is along scientific lines and has the benefit of objectivity and rationalization provided, but only provided, there is some demonstration of the truth of its basic assumption at the starting point, namely, that out of every 10 coal, oil or wood furnaces or other heating equipment 10 years old, seven will be converted to gas.

The trouble is that the record is quite devoid of the slightest proof of that rather far-reaching assumption; there are no statistics of other towns' experience, nor of oil dealer published experience, nor of furnace equipment dealer published experience, nor any other tangible and credible probative proof that the householders in the valley of Virginia, or anywhere else for that matter, expect (that is, 70 percent of them) that after the tenth season of use of their present equipment they will replace it with gas heat. Perhaps that is so, but it is quite unproved. Note that the Roanoke experience is relied upon, but Roanoke spoke only of its fine sales experience with new homes and made no claim that seven out of 10 of the Roanoke area's oil furnaces are converted to gas on their tenth anniversary.

What is even more significant, the figures used show that 40 percent of the equipment to be converted now burns coal and wood, half of it is over 10 years old and about one-fourth between five and 10 years old. For this group, because of the superiority of gas over coal and wood, the one-out-of-eight discount is not applied; so that the net effect of the table is to assume that four out of five users of coal and wood in the valley will become gas furnace users in the next three years,[18] this notwithstanding the evidence that the gas, about the same or even more expensive than fuel oil, will cost the coal and wood users from 50 to 75 percent more for fuel, apart from the installation cost. This assumption may be quite true; on the other hand, it flies in the face of the fact that fuel oil has been sold freely in the valley for years, still 40 percent of the householders heat with coal and wood and have not seen fit to convert to oil. With the gas as costly as fuel oil and sometimes five percent or so higher, it is not clear how it can be so confidently assumed that these sawyers of wood and passers of coal will now decide to abandon the heating methods they have used for years, perhaps for generations, will incur the cost of changing over to gas equipment and will sign up for the new, convenient but manifestly much more expensive natural gas.[19] Why that is to be assumed to be true is not demonstrated.

This certainty of conversion of older equipment, whether wood, coal, or oil, is the foundation of the Staff's study, indeed also of much of Colonial's own market confidence. It can only be hoped that actual experience will validate these unproven assumptions.

Aside from the foregoing analysis (which, if its assumptions were provable, would be very valuable), the Staff is not in a position independently to verify

[17] That is, based on Roanoke's new house experience, seven out of eight of all the 10-year-old equipment is regarded as "susceptible", subject to a 20 percent discount for failure to attach the susceptible. The net result is to presume that seven out of every 10 furnaces will be converted to gas as soon as they are 10 years old.

[18] Except the few whose equipment is new and are not counted on at all.

[19] The local officials and residents who testified were quite clear that relative cost would be most significant in determining the number of conversions.

Colonial's program of heating 11,026 houses in the valley of Virginia. Their field survey of one week's duration did not include a house-to-house survey. Their witness finds that he cannot "completely endorse" Colonial's premise that all of its domestic customers will be househeating customers but finds it not unreasonable (12T1711). He finds the 50 percent saturation premise a reasonable one, but does not know of any other towns that have attained 50 percent heating; nor has it been possible to test the project by comparison with results attained in other towns in the area. There is an adequate "market in the area that could be attached." (12T1714).

A most conspicuous inadequacy is the entire lack of any compilation of statistics covering the hundreds of other towns in the same or comparable areas which have been certificated in the 22 years since Section 7(c) became a part of the Natural Gas Act and of the actual sales that have been made in those towns, especially in recent years. Neither is there any breakdown of the sales made by distributors generally to show their number of customers by domestic, commercial or other classification, nor of the number of customers attached in relation to the population or to the census of housing (12T1716). The Staff has made the best use available of the tools at hand (as witness page 25 of its brief) by compiling data from the applications filed for similar service in nearby areas. The Staff witness says that, under the approach normally used, "a town over here 10 miles away had this sort of results so we expect this sort of result in this application." (12T1713.) However, to apply this approach plainly would require some available figures of what the results are in this hypothetical town 10 miles away and in many other towns. Without such figures it is hard to see how such comparisons could be made; in fact, the Staff witness states frankly that the present project has not been tested according to this comparative approach normally used, at least "not in the detail that would lead me to make a complete unbiased statement." (12T1713.)

In that state of the record and in view of the doubts raised about the evidence furnished by Colonial, the corroboration relied upon from East Tennessee, and the extent of the verification by the Staff, it cannot be regarded that the residential sales as proposed have been proved.

(iv) *The coal interests' study is far from conclusive:* The several coal interests which intervened in the case made a separate study of the Colonial project, presenting as their own expert witness a veteran gas engineer with over 40 years in the business, much of it directly related to gas distribution systems in small communities and with special experience in the Virginia area where he lives. In previous cases he has sponsored or appeared in support of a number of gas distribution projects. Here he submitted a more or less conventional form of feasibility study on the Colonial Natural Gas Company, which concludes that Colonial's project will lose, that is, incur a net operating income deficit of from $248,700 to $299,400 in each of the first four years. The difference between this study and Colonial's Exhibit 1 lies partly in the higher cost of construction, as noted above, but mainly in the considerable write-down in number of customers in the various classes and the amount of sales to be expected. Thus, no interruptible business is expected at all, and under the heading "Residential—Heating & Combination" there is allowed a fourth year sale of 445,000 Mcf to 4,892 househeating customers (about half of the conceded 9,480 residential customers). With a total annual market allowed of only two-thirds of one million Mcf, instead of two and a half million as claimed by Colonial, it is not surprising that the resulting revenues would fall short of carrying the costs of the project.

The Coal interests' intensely adverse study does not go unnoticed in the briefs filed by Colonial, East Tennessee and the Staff. Much of these responses is unfortunately of the *ad hominem* variety because the witness' answers on cross-examination were not always crisp, succinct, and convincing. However, if there was a certain amount of vagueness and circumlocution, perhaps even some non-objective coloration, this witness had no monopoly of it.

Turning now to the merits, the witness points out first the difference in the typical househeating costs for the competing fuels, the significance of which can hardly be denied (3T365). While a great many figures on this came in from a number of sources, it does appear evident that the average home will be heated by Colonial for about $160 per year, while it could continue to be heated by oil for about $145 to $155, even more if there are some localities with unusually high fuel oil prices. With coal it is somewhat less than $100 per year, depending upon many particular circumstances.

To arrive at his conclusion that 4,872 homes will use natural gas for space heating, Coal's witness uses the same basic data developed by Colonial's engineer. Agreeing with his several colleagues that heating equipment replacement is more logical after 10 years, the coal witness refers to the same data used by the others and, instead of emphasizing the third column showing the furnaces over 10 years old, calls attention to the first column showing an equal number which are under five years old and therefore are not susceptible to conversion. After analyzing the results obtained in other towns in the state, the witness concludes as his best judgment that the househeating sales will reach the figure referred to.

But this study has the same infirmity which infects the others, that is, Colonial's and the Staff's. It depends entirely too much on the unproven assumption that the age of present equipment determines when and whether it will be converted to gas. This could be true but many other factors subsist also to affect that major premise; the syllogism "depends upon the truth of its premises" (Webster). It results that, as in the case of the other studies, the market prediction is primarily a judgment figure, and its evidentiary bases remain to be proved.

There was some further and valid objection that the standards used by the witness are much more conservative than those employed by him in other cases where he appeared to sponsor the project. One reference was to the case of Transcontinental, G–10000, where the present witness appeared on behalf of one of the parties and gave certain market predictions, including 100 percent space heating saturation for the predicted customers. The different standard here may be due to a different ratio of prices between oil and gas, it may be due to other factors, it may be an accumulation of experience; it is not at all necessary to ascribe the difference to the change in motivation.[20]

(v) *Colonial's annual market will reach 2,000,000 Mcf:* Far simpler, and far more credible is the approach which relies upon the actual, developed experience of other Virginia distributors. In the absence of a commanding showing that conditions in the Southwestern valley area are markedly different from

[20] It could be the witness merely wishes to avoid a repetition of what actually occurred In G–10000 with respect to some of the parties' evidence—compare 17 FPC 333, at page 356, which is the finding in the initial decision that the validity and reasonable accuracy of certain market testimony and market predictions in connection with the pipeline project were established beyond doubt, the estimates were conservative and creditable and the evidence uncontroverted. With this there is to be contrasted the Commission's statement made 6 years later, after these very projects came into financial difficulty for lack of sales as predicted, that "in the last analysis, the Commission cannot and does not underwrite the economic survival of a company" (28 FPC 979, 982).

those in the Shenandoah Valley or in the Piedmont and Tidewater areas of Virginia, the market to be expected here can be verified on the basis of what has occurred there. As stated, the Commission's files and the Staff's researches do not provide this data; but enough was supplied with Coal's Exhibit 37, which was said to have been taken directly from the official records on file at the State Corporation Commission at Richmond, as reported to that Commission by the several distribution companies. Schedule H lists nine distribution companies in the state [21] and reports they serve a total of 185,447 residential customers, of whom 57½ percent use gas for their space heating, or a total of 107,131 residential space heaters. Schedule I reports the area population served by the same nine companies as 1,203,700, which figures out at 6.7 population units per residential customer or 11.6 population units per residential heating customer. The population of the 13 towns to be served by Colonial (allowing a small number for two of the communities which did not seem to be of record) totals very close to 58,500. Applying the ratio stated, it appears reasonable to conclude that Colonial can attach 8,731 domestic customers and there can be expected to be included 5,043 domestic customers who will heat their homes with natural gas.

The other two factors in the computation are not in dispute; that is, the need for 24 cubic feet of gas for the average home per degree day deficiency or "*ddd*" as it is called, and a total of 4,690 degree days to be expected in Colonial's area. The result of multiplying those two factors times the 5,043 heating customers is a net annual residential heating sale of 567,640 Mcf, or a little more than half of that claimed by Colonial and one-fourth more than that conceded by Coal. Since Colonial claimed residential heating sales in the third full year at 1,099,682 Mcf, this results in a reduction of their claimed total sales by 532,042 and thus reduces the total market claim of 2,519,802 to a new total for the third full year of 1,987,760. This may be increased slightly to allow for an obvious minimum of new construction in the 13 towns during the next three years. Assuming there cannot fail to be three new houses per town per year, of which, as in the case of Roanoke, seven out of eight will heat with gas, this will produce 109 additional customers whose gas heating needs would come to 12,240 Mcf, making a net total third year market for Colonial at 2,000,000 Mcf instead of the 2,519,802 originally claimed.

It is upon that market, i.e., 2,000,000 Mcf per year to Colonial, and the sale to Roanoke above determined that the project of East Tennessee is to be judged for its feasibility. No other finding, reference or conclusion as to Colonial is here called for, made or required—*i.e.*, if Colonial's sales program is carried out as aggressively and effectively as promised, its full sales may develop and its feasibility ensue, but this eventually is not required to be determined or forecast by the federal commission.

(C) *As limited, East Tennessee's project is feasible and is approved*

There were reviewed in the foregoing the various elements, other than markets and feasibility, tending to establish that East Tennessee's proposal to extend its line to the Roanoke area and make the two sales for resale as proposed meets the accepted tests of public convenience and necessity. With respect to that remaining element, the markets and feasibility, it is settled by numerous decisions that feasibility is to be determined from an incremental study to establish whether the net revenues from the new service (receipts minus purchased gas costs) will exceed the extra operating expenses and will produce a

[21] Excluding two serving also other areas. For the comparative methodology, see 21 FPC 552, 557, 566; 19 FPC 143.

significant and respectable return, if not necessarily a fully adequate one, on the added investment for the pipeline extension.[23]

To meet that test, East Tennessee submitted a compilation of ten tables and schedules (Ex. 12, Schedules 10–18) which compute the operating revenues, charges, operating income and rate of return on the new plant investment. That investment approximates $5,000,000 and the operating income from its use as planned comes to about $390,000 in the second and third years, which produces accordingly an incremental rate of return of 8.04 percent and 8.13 percent. (For the first year, the rate is about half that.)

Assuming its various premises, no particular objection was raised to this computation once it was recognized as purely an incremental study which did not involve or imply at this stage an allocation to the new service in Virginia of its proper share of the operating costs now being incurred in Tennessee. That allocation would be more appropriate when the rates to be charged are the subject of a rate proceeding. The operating revenues were figured on the total annual sales as proposed, or 4,165,191 Mcf, of which five-eighths, or 2,570,191 Mcf was to be sold to Colonial. While the sale in that full amount might possibly transpire, especially in view of the aggressive sales campaign which is part and parcel of Colonial's program, nevertheless it is concluded above that the demonstrated assurance of Colonial's market would seem to be limited to 2,000,000 Mcf.

It becomes necessary accordingly to adjust the feasibility study, (Ex. 12, Schedule 10) to reflect the third year sales to Colonial at the 2,000,000 Mcf referred to. For this purpose, the item for operating revenues is reduced by $193,000 and the item for purchased gas costs by $120,000 (both applying the commodity rate only). This makes $73,000 less net taxable income and reduces state and federal taxes by about $40,000. All of this leaves a new operating income of slightly over $350,000 which is over seven percent of the added investment or rate base. The net result is, even with this possible loss of one-fifth of the sale to Colonial, that East Tennessee's Virginia extension is fully able to "pay its way". It will not burden the present customers of East Tennessee and will continue to give promise of benefitting its present customers, after a reasonable developmental period by absorbing a part of the cost of service on the present line.[24]

One comment appears required upon an apparent discrepancy between the sales to Colonial and to Roanoke. For some reason unexplained, Colonial has been called upon to execute a precedent agreement which specifies (and fixes demand charges upon) contract demand quantities gradually increasing to 18,005 Mcf by the third year,[25] the full amount of the sale to be authorized.

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[23] See the decision of April 6, 1964, in the case of *Southern Natural*, Opinion No. 424; *Northern Natural*, Opinion No. 404 of September 30, 1963, 30 FPC 859; *Minneapolis Gas Co.* v. *F.P.C.* (CADC), 278 F. 2d 870. The test used in the case of *Michigan Wisconsin* for its extensions to Menominee and Baraboo (22 FPC 775, 25 FPC 1234), relating the dollars invested to the annual sales in Mcf, is not helpful here, where the extent of the market to be served is itself very much in issue. *Cf. East Tennessee*, 23 FPC 916, and *Kansas-Nebraska*, 29 FPC 1058.

[24] Before the $33,000 net reduction just computed, this benefit to the present customers of East Tennessee was reported as an annual reduction in the cost of serving them by $104,000 in the third year (10T1360). But all of these computations are subject to the Commission's *caveat* in *Northern Natural*, 22 FPC 523, 525: "In view of the many variables introduced in considering market and revenue estimates for a projected period of three years, any test of feasibility by its very nature can be nothing more than an approximation." *Cf.* 17 FPC 800, 801; 10 FPC 469, 515.

[25] Ex. 9, Sch. 10. The balance of Colonial's need, 1,072 Mcf, if and when its sales develop, will be supplied by peak shaving equipment (Ex. 1, Sch. 6). The figures are adjusted to the pressure base.

But Roanoke is treated differently, since its agreement[25] requires demand charges (by December 1966) for a contract demand of only 5,766 Mcf out of the total sales authorization requested of 7,789. This difference may be counterbalanced by the 48 percent minimum commodity charge which Roanoke assumes responsibility for under the partial requirements tariff applicable to Roanoke on the basis of its alternate supply from another pipeline. Anyway, Roanoke stands ready to raise its agreed quantity when it is needed (Brief, page 4).

(1) *The Roanoke extension.* One question was reserved about the construction program and is included in the elements and circumstances which, compiled and proved, are needed to establish the "public convenience and necessity" of East Tennessee's total program. That question relates to the final seven miles of East Tennessee's new line, which connects Roanoke's two delivery points[26] as first planned, "A" and "B" on the map herewith, which comes from Exhibit 3.

The problem is why, in the public interest, that final seven miles, all within Roanoke's service area, is planned to be built by East Tennessee, instead of by Roanoke. That is, whether the line A—B is actually to serve a pipeline function at all or whether East Tennessee's function is discharged by full delivery at or before point A, the "Salem Delivery", and whether line A—B in practical effect is really to operate as a part of Roanoke's distribution circuits. In the latter event the seven miles would be Roanoke's burden, to be paid for by Roanoke and its ratepayers. As it is, the plan for East Tennessee to build it means, in the long run, that Colonial's ratepayers will pay for two-thirds of it while Roanoke's pay but one-third.[27]

The capital cost in question is $232,305.50, and using Roanoke's figure of 14 percent for the annual depreciation and other expense burden associated with such an investment[28] the resulting abatement of East Tennessee's cost of service would approximate $32,600.

Manifestly, there would be no question here if this final seven miles of East Tennessee's new extension were part of a long-range program to extend their line north or east from Roanoke, at some later date. But that is not the plan. East Tennessee's witness so testified, pointing out there are no attractive markets in prospect to the North, and that the only unserved area to the East is Bedford, which, at 25 miles, would not be justified. Lynchburg, the city beyond, already has two suppliers and when Bedford does acquire service it will doubtless be by Lynchburg Gas Company, which has the franchise (8T1068). The same witness later on reiterated there is no plan to extend beyond Roanoke (12T1737).

This question, though raised at the hearing, is not treated in the briefs. When the question was asked why East Tennessee projects their line not only into Roanoke's area but clear across its southern border to Clearbrook (point B on the map), the only response noted was, "because that is the best way to get into Roanoke's system." (*Cf.* 5T652 and 8T1082). This in the face of the flow diagram (Ex. 7) which shows that three-quarters of the peak firm delivery to Roanoke is to be taken off at point A, the Salem Delivery, while the final seven miles, A—B to Clearbrook, is to carry only the small remainder, 1,947 Mcf, though the line A—B is of the same full size, 8⅝".

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[25] Ex. 9, Sch. 11.

[26] At the hearing the application was amended to include a third delivery point at some unannounced step.

[27] Ex. 12, Sch. 11.

[28] The exact mileage is 7.75 at $28,362 per mile (Ex. 8, Sch. 1), or $219,805.50, plus $12,500 for the metering station at point B (Ex. 8, Sch. 3). For the 14 percent, see 6T819, and compare the use of 15 percent by *Michigan Wisconsin Pipe Line Co.*, 21 FPC 552, 558.

The true purpose of the A—B extension was revealed more by Roanoke than by Tennessee. Five years ago, Roanoke's franchise area was extended ten miles or more westward to Shawsville (apparently off the map to the left). New business, including industry, is opening in the western area between Salem and Shawsville, and Roanoke does not now have the line capacity to serve it (Ex. 19, 5T624, 650). Most significantly, Roanoke would build an 8⅝" line clear to Shawsville if East Tennessee's new line were not to be there to supply the need; the new pipeline will have Roanoke's building of 17 miles of line to connect points on their system (6T713–717). As it was put another way, if East Tennessee's extension did not come in to meet their need as planned, Roanoke would be forced to complete the loop of their large-diameter line around part of Roanoke (5T629). (See also the revelational quotation that appears on page 170, *supra*.)

The combined plan to which East Tennessee agreed already saves Roanoke $1,600,000 of construction—without it Roanoke would invest $2,000,000, including $721,000 for a new supply lateral to the North to meet Atlantic Seaboard's line. Under East Tennessee's plan Roanoke will spend only $415,000.[29] Since East Tennessee's extension A—B is to carry only one-fourth of their sale, it is plain that pipeline interstate transportation is not its prime purpose. Rather, it is evident the extension to be paid for by East Tennessee is primarily to substitute in some part for the $1,279,000 ($2,000,000–$721,000) of loops and distribution circuits which Roanoke would require without it. A reference to the map confirms the conclusion suggested by the testimony that the extension is to serve Roanoke's distribution program, to complete its southern loop, and is not to carry out any proper function of East Tennessee. It will not be a facility "used and useful" in the pipeline program, and its cost should not be shared by East Tennessee's other customers.[30] It follows that the final seven miles of East Tennessee's proposed line, if it is to be paid for by East Tennessee, does not meet the test of public convenience and necessity which the law requires for its licensing.

In that view a condition is required for East Tennessee's certificate to the effect that the A—B line may be certificated to East Tennessee only if Roanoke elects to make a capital contribution to meet its cost of construction. Otherwise, the line will be approved as far as Salem Delivery only.[31] In order that East Tennessee's rates may be reviewed to reflect this small change in the costs (also the cost of purchased gas reduction mentioned at the hearing (Ex. 24) as well as the benefit of the new income tax rates), it is added that East Tennessee's rates, when filed, will be subject to the approval of the Commission.

V. *Conditions To Be Attached to the Certificate*

Two of the interveners and the FPC Staff have, after full participation, concluded that they do not object to the issuance of a certificate to East Tennessee as requested, but each has stipulated that this concurrence is dependent upon the attachment of certain conditions to the certificate to take care of particular problems or doubts. They are in effect provisos under Section 7(e) of the Natural Gas Act, which authorizes the Commission—"to attach to the issuance

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[29] This is to build the two connecting lines shown, viz.: C—B (5.9 miles at 8", for $177,708) and D—A (5.8 miles for $237,062). The latter, a 12" line, is to receive the main supply from East Tennessee's 8⅝" line.

[30] The contrast is noteworthy between this solicitous treatment of Roanoke (a partial requirements customer) and the quite opposite treatment of Colonial, which is entirely dependent on East Tennessee, and is called on to build its eleven laterals all the way up to 24 miles in length without contribution or sharing of any kind by East Tennessee.

[31] Note that even this point is well within Roanoke's service area, by about ten miles.

GRAIG
MOUNTAIN
MOUNTAIN
GECKNER GAP
RIDGE
SANDSTONE
CATAWBA
LEWIS
MOUNTAIN
BRADSHAW
FORT
UTILE BRUNN MOUNTAIN
Kesslers Mill
D
SALEM
EAST TENNESSEE NATURAL
Wabun
Salem Delivery
A
Riverside
TWELVE O'CLOCK KNOB
LONG RIDGE
Lafayette
Kumis
Hemlock Dell
T.M.C.A. Camp
LOST MOUNTAIN
MONTGOMERY

Proposed Construction By
East Tennessee Natural Gas Company and
Roanoke Gas Company in the Roanoke Market Area
(Adapted from Ex. 3 in CP64-21)
D
C
B
Clearbrook Delivery
GAS
COMPANY
Cave Spring
Clearbrook
Starkey
CHESTNUT RIDGE
YELLOW
Dundee
Niagara
PINE MOUNTAIN
Coopers Cove
WINDY Gap
MOUNTAINS
COUNTY
BONSACK
STEWART KNOB
Coyners
READ MOUNTAIN
GREEN RIDGE
BRUSHY
SMITH
Hadley
Kingsdown
Oldfields
HOLLIN

of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require."

(A) *Seaboard seeks to preserve its present market with Roanoke*

(1) *Seaboard's PR tariff is now under judicial review:* A major pipeline, that of the Atlantic Seaboard Corporation, is the present supplier to Roanoke, one of the two distributor customers of East Tennessee's new extension. Seaboard does not demand to share in the increased market of Roanoke, but does feel called upon to seek, on behalf of its other customers, a protection for the continuation of its present market, under which Seaboard delivered to Roanoke 3,790,551 Mcf of gas during 1963 with a peak day delivery of 18,500, at an approximate load factor of 60 percent, under Seaboard's Rate Schedule CDS–1 (Exs. 3 and 31). When Roanoke's second supply from East Tennessee comes into being, Roanoke will expect to convert to Seaboard's Rate Schedule PR–1, which is applicable to distributor companies from the Seaboard line having a second source of supply. So long as that "PR" schedule is in effect, Seaboard would not require a condition or need other action in the present matter; their trouble is that the PR schedule approved by the Commission in 1962 (28 FPC 860) is now under the cloud of a pending judicial review in the United States Court of Appeals for the District of Columbia Circuit, under its Docket No. 17,738, in a review brought by an intervener, the Lynchburg Gas Company. The case has been briefed and argued and is now under submission to the panel of the court. Fearing that the result of this review may be to disallow entirely its PR (or partial requirements) rate schedule, and thereby cancel the protection it affords against the loss of current markets through minimum monthly and annual commodity charges Seaboard here seeks a special condition, to take effect only in that eventuality, as follows:

> This order is conditioned upon Roanoke's taking gas from Atlantic Seaboard at a Contract Demand load factor not less than sixty percent (60%) during any year (twelve months beginning December 1), and not less than thirty percent (30%) during any month from and after commencement of deliveries by East Tennessee to Roanoke; and Roanoke's Contract Demand with Atlantic Seaboard in effect at any time not being reduced by mutual agreement between Roanoke and Atlantic Seaboard; provided that this condition shall not be effective in any period during which Roanoke purchases gas from Atlantic Seaboard under an effective FPC Rate Schedule providing for minimum monthly and minimum annual commodity payments. [Exhibit 31, Page 9, Direct Testimony of John Cornell.]

It will be perceived that under its proviso Seaboard's proposal has no effect and is in limbo so long as its partial requirements rate schedule continues in effect. Reduced from its complications, the net effect of the PR tariffs is to require that the purchaser pay for a minimum commodity volume of 80 percent of its actual load factor purchases during the base period (7T940). The suggested new provision would require continuance of the full, actual historical load factor (with another change thought to off-set that difference).

The point of the problem facing Seaboard is that, under the rate formula which bears the name of this very line, much of the fixed costs of the pipeline—that is, the capital charges incurred and to be recovered annually without regard to the duration of a particular use of the line during the year—are assessed and recouped through the commodity charge normally collectible only for gas actually sold and delivered. Thus, a distributor customer for whose needs (along with others') the line was designed and built would no longer be contributing its share of the capital charges if it so altered its purchase progarm as to take gas only

during and for its peak periods of need, such as during the winter heating season. This possibility does not arise in the case of a distributor customer which, having no other supply, perforce must buy year-around from Seaboard, but the possibility could occur, indeed has occurred in some cases, that the distributor customer which is permitted to attach a second source of supply could manipulate its purchases in such a way as to utilize Seaboard solely as a peaking service during its days and months of greatest need. Necessarily this would result in an increased cost burden for Seaboard's other customers who would in effect be assessed a greater share of the capital or fixed costs of the pipeline.

It is to meet this problem that the Commission considered a number of proposed solutions and evolved the current partial requirements tariff for Seaboard, adopting a formula proposed by a group of interveners in Seaboard's tariff or rate case which appear to be distributors somewhat in the position of Roanoke. The reported decision does not indicate that Roanoke was a party, though it doubtless could have been on application submitted for intervention (28 FPC 860, 861, 865). The Commission's aim, according to the opinion which approved and prescribed the partial requirements tariff "is to protect the many customers dependent upon the Columbia companies from being required to pay the higher rates which may result from the deterioration of some of Columbia's markets."

The fact is that neither of the affected parties has any objection to protection of the Seaboard market at Roanoke to the extent provided by the PR tariff. For all the talk about Roanoke, it is remembered that it is East Tennessee that is the applicant in this case, not Roanoke, and any certificate condition is directed primarily against East Tennessee—that is, a condition under Section 7(e) of the Natural Gas Act can do no more than restrict the sale by East Tennessee which is proposed to be made under the authority of the license to be granted to East Tennessee under that section.

(2) *The theory or principle of protection to Seaboard is not or should not be in question:* East Tennessee's brief dated March 10 states the point quite succinctly:

> Much of Seaboard's brief is devoted to argument in favor of the proposition that a pioneer supplier of gas to a distributor should be protected by certificate condition against subsequent alternate suppliers. East Tennessee does not oppose this argument in principle, [Page 47.]

Likewise, Roanoke, the other party affected, said a number of times at the hearing and in its brief at page 16 that it accepts Seaboard's partial requirements rate schedule and is willing to execute an agreement with Seaboard to buy gas under it. The only objection to the underlying principle of some protection for Seaboard's market comes in the Staff's brief, to the effect that the public interest "would be harmed by adoption of the generalized principle that the volume of a gas market previously held by a sole supplier should be preserved at its past magnitude from the competition of a second source of supply." Insofar as this is contrary to the Commission's decision of 1962, reaffirmed in 1963 and prescribing the joint requirements schedule for the purpose of providing the protection referred to,[2] this objection is inadmissible, quite apart from the analysis

[2] From 28 FPC 860, 862: "We are of the opinion that the Columbia companies have shown that some protection through revised tariffs for partial requirements customers is necessary to prevent the deterioration of Columbia's sales upon which its present rates are based, with a possible increase in its rates to its remaining customers. * * *." Furthermore, the present suggestion seems to be contrary to the assurances given to the Court of Appeals in the case now there pending as shown by the numerous references in the Commission's brief to its adoption of the "principle of not taking action which may substantially impair a certificate once issued." Or "the elimination of the possibility that a second supply may have adverse repercussions on the first supplier's costs and rates" (pages 16 to 30, seriatim).

provided by Seaboard's reply brief claiming the cases the Staff relies upon are in fact authorities to the contrary. Hence it is concluded that the principle which Seaboard seeks is entirely a proper one and requires appropriate recognition The real problems which the proposal gives rise to are the other objections in which all the other parties variously join to the effect that, on its merits, Seaboard's proposal is objectionable because it provides for a great deal more protection than that provided by the partial requirements tariff applicable to other distributor customers in like situation; secondly, that the procedure for adoption of the protection by the medium of a certificate condition is inappropriate, unnecessary and unrealistic on procedural or mechanical grounds; and third, that, as strenuously put by Roanoke, the proposal is basically and fundamentally objectionable, indeed illegal, on jurisdictional grounds. These points are considered below.

(3) *Seaboard's proposal differs from its PR tariff:* Roanoke's objection to the proposed condition seems primarily to be based upon jurisdictional grounds, see below, but its brief of February 7 quite plainly puts the first point that the quoted proposal would require Roanoke to maintain a 60 percent load factor with Atlantic Seaboard (which is about its historical figure) whereas the partial requirements tariff will require only a 48 percent load factor. Roanoke has several times said it is ready to buy under the partial requirements tariff, but for obvious reasons it objects to a condition which seems to be somewhat more onerous. No answer to this at all is found in the reply brief from Seaboard, nor is the answer satisfactory which is found in its initial brief to the effect that if Roanoke's market predictions work out as hopefully expected there will be no problem since the quantities purchased will exceed the minima required under either the tariff or the proposed condition. This point was raised also at the hearing, when the Examiner asked in effect why, if what Seaboard needed is merely assurance of the protection of its PR rate schedule, does it seek here a provision with different terms and different effects, noting the testimony that its annual burden might be greater by as much as $200,000 (7T966). In response, Seaboard's witness mentioned two reasons for proposing a condition different from the PR tariff. The first reason is that "We tried to keep it as simple as we possibly could without working into it the provisions of the industrial redetermination." (Referring to an adjustment provision of the PR tariff which is not included in the present proposal.) It is agreed, upon reading the PR tariff, that simplicity is or should be the aim, but the complications of the arrangement desired are so obvious and so numerous as to prevent its consummation here. Secondly, according to the Seaboard witness, there is one other customer with a special provision more or less like the one now proposed. But that one has a long history of litigation on a special circumstance and hardly needs to be emulated (28 FPC 882).

It is believed the real reason for the special provision proposed, calling for a continuation of the present load factor instead of 80 percent of it, is the witness' statement at 7T968: "It is our contention or our feeling that the load factor requirements should be based on 100 percent of the historical takes." But that is the contention and the feeling which the Commission overruled in its decision of November 27, 1962, the one which is now *sub judice*, and the present certificate case of East Tennessee is not to be the back—or side-door through which Seaboard relitigates the appropriate provision for its insurance against losses due to market changes of its partial requirements customers. It is concluded, accordingly, that the only condition to be considered is a condition stipulating that Roanoke shall indeed purchase under the partial requirements tariff, not under a special and more onerous provision. It is considered below

whether that condition is needed at all and, if so, whether it is jurisdictionally available in this proceeding.

(4) *Is the proposed condition premature, unrealistic and unnecessary?* Seaboard has said a number of times that if there were no pending cloud on the partial requirements tariff there would be no problem, they would not be here, and no condition would be needed or called for. Correspondingly, Roanoke has said a number of times that it fully expects to sign up for gas under the partial requirements rate schedule, when the time comes, and is fully prepared to stand by its terms, for better or for worse. Hence the impression is that too much is being made of this problem both on the part of the party proposing the condition (which already has what it wants) and on the part of the party primarily opposing it (which, aside from its proper objection to the form, is rather put to it to find any real reason to oppose some proper condition to protect its present supplier's market). The Staff quite properly points out that the outcome of the court case is necessarily conjectural; and it does seem unusual, indeed inappropriate, to undertake at this time to fashion some alternate form of protection for Seaboard to take effect if, as and when the protection now prescribed by the Commission's order shall have been negated by the possible court decision which might occur.

Seaboard explains this anomaly by pointing to what has occurred in at least one other case, which causes Seaboard to view with alarm the possibility that, upon the cancellation of its PR tariff following a court decision, Roanoke might then be free to abandon its purchase program from Seaboard, entirely except for periods of peak winter needs and might turn instead to East Tennessee for its sole year-around supply. Of course, this conceivably could happen if East Tennessee's capacity were now in being and its supply adequate to meet any such call *and* if its rates were such as to make this alternate attractive. But the apprehension felt seems to be an extreme of caution indeed when it is considered both that the rates as now proposed call for a higher commodity rate by East Tennessee than the rate being charged by Seaboard, and anyway their line is not built and the line that is being certificated, an eight-inch transmission facility, has not been shown to be even capable of carrying such a load to Roanoke, even if there were a disposition of the parties to do so; nor is it clear that the sale to Roanoke herewith certified could cover such a volume.

On the other hand, Roanoke's objections (if any there should now be) to a condition limited to the present PR tariff seem equally over-apprehensive. Roanoke's President has assured the forum that Roanoke expects to subscribe to the PR tariff and to continue to buy from Seaboard the same quantities as that recently experienced; in fact, its exhibit shows a slight increase. Hence there can hardly be practical objection to a condition simply requiring adherence to the partial requirements tariff which has been promulgated for this very situation. If the result of the court review is to affirm and validate the PR tariff, then the problem is at an end. If otherwise, if the review results in the cancellation of that tariff and the loss of that protection, then the practical effect of the condition herewith is to form a basis for reopening this proceeding, if called upon, in order by amendment of the certificate to make any necessary realignment of Roanoke's jurisdictional purchases from its two suppliers in order to achieve the objectives fairly sought for both under the Natural Gas Act.[25] In other words, the requirement that Roanoke actually sign up under the PR tariff before taking any East Tennessee gas merely calls upon Roanoke

[25] Note the discussion in the *PR* case, 28 FPC 860, about the possibility of providing the needed protection to Columbia (Seaboard) through proper conditions in certificate proceedings involving competing suppliers.

to carry out the program which it has already promised with the proviso that this form of protection for Seaboard may have to be reconsidered or revised or amended if it shall fail the test of the current judicial scrutiny. By the insertion of the PR tariff requirement here as a condition, all parties to the proposed new sale to Roanoke are on notice that Roanoke's entire natural gas supply arrangements might conceivably be subject to reconsideration, in which event all parties here concerned will have their opportunity to appear, propose and oppose.

Something of this sort was suggested to Seaboard at the hearing (7T973), and the only objection by Seaboard seemed to be that during the interim period following the possible annulment of its PR tariff and pending a new hearing to reopen the certificate or establish a new tariff and while that proceeding is coming to a new conclusion, there might be such alteration in Roanoke's purchase program that there would be established a new and substandard historical base with the result that a new minimum purchase requirement would be entirely too minimum and result in possible loss. It is quite true that such a case could, even by proper means, be made to take some time.

It seems rather farfetched in the present context to apprehend the result referred to; anyway Seaboard and the Commission itself would not be as powerless and futile as their fears presuppose. First, a new action by Seaboard might take the form of a revised tariff filing under Section 4 of the Gas Act and (according to the experience of the filing of its present PR tariff) the new provisions could be made effective in just 43 days after it is filed (see 28 FPC 860 at page 861). Second, even if Roanoke should contrive—contrary to their assurances which are fully accepted here—by some fell means to work a quick reversal of its purchase schedule, there would be nothing to prevent the Commission and Seaboard from establishing some new arrangement based not upon any such abnormal purchase period but upon its record of several years past.

Thus it is believed that the only protection really required in the circumstances is to accept Roanoke's assurance that it will sign up under the PR tariff and, as a result of its insertion here as a condition, make it clear that, should the PR tariff no longer avail of its purpose, these proceedings are subject to such further reconsideration as may be necessary to determine what sales by both companies to Roanoke and in what quantities are called for in the public interest and will truly meet the standards of the public convenience and necessity. That is, will serve the interests of both suppliers of Roanoke and of all of the consumers concerned both at Roanoke and up and down the entire lines of both suppliers.

(5) *Is a condition affecting Roanoke jurisdictionally effective?* Both the Commission Staff and Roanoke have joined in the highly technical and legalistic objection to the effect that this proceeding involves the certificate applied for by East Tennessee to license the pipeline and the sales of gas East Tennessee proposes to make; that Roanoke is not a party but is only an intervener for the purpose of supporting that proposal of East Tennessee; and that there would be a serious lack of jurisdiction, indeed of due process, in the issue of an order in such a proceeding undertaking to settle the separate and unrelated state of affairs between intervener Roanoke and another intervener, Atlantic Seaboard. The Staff looks upon that action as the imposition of an injunctive order upon Roanoke without providing "the correct judicial procedure but resulting in a problem of judicial due process." The objection may not be perfectly apprehended, since this is not a court action and the reference to judicial procedure or process is not understood. Roanoke states the objection upon a little broader basis, saying it is a distribution company not subject to the jurisdiction of the Commission and claiming in effect that its appearance in

the case is a special one only, not general, merely to support East Tennessee's request for a certificate and not itself asking for any affirmative relief, order, allocation or otherwise and hence not subject to the Commission's control, citing Section 1 of the Natural Gas Act.

But all of this theory ignores the plain language of the statute cited, which requires the Commission to regulate "the sale in interstate commerce of natural gas for resale"—that is, the proposed transaction between East Tennessee and Roanoke. Although the legal incidence of that regulation is addressed to the seller, necessarily the control of that sale or any other sale affects or limits or controls to that extent both parties to the transaction, both the buyer and the seller, and to that extent regulates the buyer as well as the seller.[24] Since the sale is subject to regulation, Roanoke can lawfully buy only pursuant to that regulation and to that extent it necessarily is subject to the Commission's jurisdiction, which is quite separate, apart and unaffected by the exemption of Roanoke's distribution activities from Federal regulation.

The real point these juridicial objections overlook is that what is asked for is a condition to be attached to East Tennessee's sale. No order or injunction is requested or considered itself directing Roanoke to buy from Atlantic Seaboard or not to buy, or in fact to do anything. Only if Roanoke chooses at its option to go through with the purchase of what East Tennessee proposes to sell does Roanoke find itself in the position of complying with the conditions which the law may find to be required to be attached to that sale.

Thus the point is that the sale by East Tennessee proposed to be made to Roanoke can be certificated only if it meets the test set out in Section 7 of the Natural Gas Act—that is, whether the proposed sale is or will be required by the present or future public convenience and necessity. That same section goes on to authorize the Commission to attach to the exercise of the right granted under the certificate "such reasonable terms and conditions as the public convenience and necessity may require." So the inquiry is whether the sale by East Tennessee to Roanoke would meet the public convenience and necessity test *if* its result were to permit Roanoke to abandon its program of annual purchases from Seaboard. Bearing in mind that the public convenience is much broader than that of East Tennessee and that of Roanoke, but includes all persons affected, it is necessarily regarded and hereby found that the sale by East Tennessee to Roanoke will not meet the test of public convenience and necessity to the extent that it would make it possible for Roanoke by that means to cast off to Seaboard's other customers Roanoke's share of the burden of paying for Atlantic Seaboard's fixed or capital costs. This *nexus* between the certificate to a second supplier and the buyer's program with his first supplier was explained to the court in the Commission's brief in the pending Lynchburg case at page 30 in this succinct form: "With the elimination of the possibility that a second supply may have adverse repercussions on the first supplier's costs and rates, the Commission can more readily certificate multiple suppliers." The error of the jurisdictional objection lies in reading Seaboard's request too literally, as if it were a separate plea for what the Staff calls injunctive relief unrelated to the East Tennessee sale. In truth, the point of Seaboard really is that Tennessee's sale as proposed does not meet the public convenience test because of the widespread harm which that sale could make possible, *i.e.*, the higher costs chargeable to Seaboard's

[24] Thus, from the Commission's brief in Lynchburg, page 16: "Just as the company is restricted to serving only those customers authorized by the Commission, the purchasers can buy only as authorized by the Commission. Being thus restricted to supplies certificated by the Commission, local distribution companies, serving ultimate consumers, are given reasonable assurance of adequate service at just and reasonable rates."

other customers. But Seaboard's proposed condition is offered to help Tennessee qualify its proposal under the public convenience test by avoiding or obviating the adverse effect referred to. A proper condition thus merely amounts to a stipulation or proviso to Tennessee's sale to Roanoke to the general purpose that the new sale supplement Roanoke's former supply and not displace it. With that amendment, eliminating the adverse effect all along Seaboard's line, the proposed sale by East Tennessee can meet the public convenience test the statute requires, but otherwise not.

In that light the legal incidence of the condition is on the proposed seller and affects the buyer only if the buyer proposes to take advantage of the proposed sale. Even if it be regarded in the practical light that it is Roanoke that will be affected and will have to comply, the fact remains that *both* purchases by Roanoke—that is, present purchase from Seaboard and the new one from Tennessee—are fully subject to the Commission's jurisdiction; and where the second sale necessarily may adversely affect the first one, it is hypertechnical indeed, in fact specious, to object on such grounds to whatever revisions or conditions are needed to be attached to the second sale in order to avoid the adverse effects on the first sale.

The result is to require a condition merely to the effect that the sale by East Tennessee is authorized to be made and it will meet the public convenience test only so long as Roanoke subscribes and complies with the partial requirements tariff of Seaboard as it now reads or as it may be amended or replaced. If that condition becomes onerous, inappropriate or ineffective, any of the parties is free to seek an appropriate amendment of the certificate.

(B) *Accounting requirements proposed by the Tennessee cities*

East Tennessee's line crosses the entire state of Tennessee, from west to east, in two segments and presently terminates at Bristol. The 26 distributor utilities serving Chattanooga, Knoxville and other communities en route have jointly intervened not to endorse or oppose the project for the extension of the line into Virginia but merely to assure themselves that the costs attributable to the new service in Virginia are not collected from the present customers in Tennessee. Their brief exhibits certain questions, if not doubts, as to whether the entire project is economically feasible, and they refer to the optimistic approach of the engineering witness for the Colonial project.

However, based upon the management's assurance that the project should produce some benefit to East Tennessee's present customers through an eventual reduction in the cost of service, the Tennessee cities do not oppose the project but ask only for certain special accounting reports with which the Tennessee cities can make their own determination as to whether the new project, after it gets underway, is truly paying its way. The report request is an annual one, to show all the direct costs and expenses connected with the new service and the revenues resulting.

After a certain amount of negotiation during the hearing, the request was agreed to by East Tennessee with only two or three modifications remaining in question. Since the Staff recommends the provision, also East Tennessee accepts it in principle and no parties otherwise criticize or object, its full language is not here stated but will be found in the order appended hereto. The modifications sought are minor and can be disposed of quickly, as follows:

(1) East Tennessee wants assurance that the expenses required to be reported annually to their customers include only the direct charges and not the indirect expenses. That is what the Tennessee cities meant (14T1909), so the verbiage has been added to make that clear, as requested by East Tennessee.

(2) The cities have agreed to settle for an annual report rather than a semiannual one, but they oppose East Tennessee's request to cut down the

reporting period from five years to only three years. East Tennessee points out that three years is the normal test of feasibility and the duration of the Commission's projections of expenses, sales and revenues. But that does not necessarily allay the apprehensions of the Tennessee customers who are, after all, called upon to contribute to the company's revenues about $13,000,000 per year.[35] It should be borne in mind that, under the "cost of service" restitution concept, the parties deal not at all as independent bargainers, rather East Tennessee is roughly in the position of a cost-plus contractor with a direct claim upon the cities and distributors for reimbursement of costs incurred or at least those predicted to be incurred.[36] Hence the cities which are asked to underwrite their costs for East Tennessee are entitled to whatever showing is necessary to satisfy them of their validity; *ergo*, the provision remains at five years.

(C) *Staff's suggested conditions:*

The Staff's brief suggests three further conditions to be attached to the certificate, all of them appearing to be noncontroversial, as follows:

(1) *Rate Level:* Because East Tennessee's revenues show only a very thin coverage during the first year of operation, over its outgo for the same period, the Staff seeks a stipulation to preclude the use of that first year experience as a basis for a rate increase filing. Without objection, such a provision has been drafted and is included in the order herewith.

(2) *Rate design:* The second suggestion seems merely to want recognition that East Tennessee's extension into Virginia has not yet been built so that the design of rates with a separate zone for the Virginia customers, slightly higher than the rates charged up the line, has not been tested by performance data. Assurance is evidently thought to be needed to the effect that the rate design "will be amenable to test and determination on the basis of actual sales, revenues, costs and other performance data after a period of developmental experience." All of this would seem to be obviously true under Sections 4 and 5 of the Natural Gas Act (and the case of Mobile). Also, it was several times agreed at the hearing[37] that the consideration of proposed rates at this stage is limited to their broad effect on the question of public convenience and necessity. No determination of their lawfulness is here undertaken or implied, and if a stipulation is wanted, it is hereby restated that the order herewith does not imply a finding that the proposed rates are just and reasonable or otherwise necessarily lawful and binding; but they will be subject to such considerations as may be called for at the time of their formal filing and from time to time thereafter, as provided in Sections 4 and 5 of the Natural Gas Act. See also page 186, *supra*.

Similarly, Staff's Exhibits 27 and 28 propose certain formal or minor changes in the language of the tariff sheets proposed to be filed covering the new Zone 3 rates for this new area, and East Tennessee has indicated its willingness to incorporate these changes in their tariffs when filed (12T1724).

(3) *State certificate:* Staff's third condition would require "that a local, state authorization be in hand." The reference is not to East Tennessee, for whose proposed sales this certificate is their license, but to Colonial, which proposes to distribute and sell at retail in the 13 communities along the line. Colonial now has received the franchises from all 13 towns covered in its program (1T57, 3T284), but needing also an appropriate certificate from the state corporation commission, Colonial has no objection to the attachment of a condition to the certificate now issued specifying that East Tennessee proceed with its project only after the state commission has issued its certificate (final brief, page 4).

[35] Exhibit 12, Schedule 2, page 3, line 99.

[36] *Cf.* Bonbright, "Principles of Public Utility Rates" (1961), pp. 23, 24, 50, 67, 72, *passim*.

[37] 11 T. 1608, 12 T. 1697, 1703.

This condition is required not for any technical legal reason since (as Roanoke was at pains to point out) the function of local distribution and the physical facilities therefor are not subject to the Federal Commission's jurisdiction or responsibility. This condition, which, as in the case of Roanoke, calls for action not by East Tennessee but by the supporting intervener, Colonial, is required for the same reason that Roanoke's condition is required—that is, further to establish the public convenience and necessity of East Tennessee's proposed sale.[28]

The point is this. It was established that before its certificate issues, the State will require a complete showing of the feasibility of Colonial's program (1T101), in fact they have already received a copy of the engineering study which is here as Exhibit 1. Indeed, it was shown that not only does the state corporation commission at Richmond require the showing of economic feasibility but it has in the past turned down some projects because in their judgment they were not economically feasible (11T1552). Since, under the law, the function of distribution and retail sale is a matter for state regulation, the responsibility for determining feasibility of the program is primarily upon the state commission, which has the advantage of familiarity with local conditions and also performance records of the sales, revenues and heating saturation actually achieved in nearby and comparable towns (see Exhibit 37, Schedule G), a class of data which the FPC Staff does not have available for the use of the Federal Commission (12T1716). Hence, as the perhaps most acceptable and probative determinant of Colonial's feasibility, insofar as that is needed to establish East Tennessee's feasibility, a state corporation certificate will be required to be "in hand" as a condition precedent to East Tennessee's project.[29]

VI. *Findings and Order*

Upon consideration of the whole record, including the application filed, it is further found and concluded that:

(1) East Tennessee Natural Gas Company is a "natural-gas company" within the purview of the Natural Gas Act.

(2) East Tennessee's proposed facilities will be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the requirements of Section 7 of the Natural Gas Act.

(3) Subject to the limitations below, the construction and operation of the facilities and the sales of natural gas proposed by East Tennessee are required by the public convenience and necessity; East Tennessee is able and willing properly to do the acts and to perform the services proposed, and to conform to the Natural Gas Act and the rules and requirements of the Commission pursuant to the law; and a certificate of convenience and necessity should issue as herein ordered and conditioned.

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[28] If there were any real jurisdiction question applicable to Roanoke's case (V(A) above) because it requires Roanoke to readjust its jurisdictional purchase program with Seaboard, how much more would there arise a jurisdictional defect in a condition seeking to control another intervener, Colonial, and to require it to take certain nonjurisdictional action under the state law. That type of condition is not at all uncommon. In fact, there is or should be no jurisdictional question at all in either case so long as the condition operates to qualify East Tennessee's sale under the public convenience test.

[29] Compare the regulations applicable to communities requesting an adverse order against a pipeline for natural gas service, under Section 7(a) of the Natural Gas Act: Where the proposed municipal distributor furnishes a state certificate of convenience and necessity, it is not required to submit with its application the usual three-year study showing annual revenues and sales by classes of service and the corresponding operating expenses (FPC Regulations, Section 156.5(a)(15)(iii)). If the state commission can be relied upon to be responsible for the feasibility question in a controverted case of an order against a pipeline, *a fortiori* that should suffice where the pipeline approves the project and commends its feasibility.

(4) The conditions attached to the certificate here issued are required by the public convenience and necessity.

ACCORDINGLY, IT IS ORDERED, subject to review by the Commission, that:

(A) A certificate of public convenience and necessity is hereby issued to the East Tennessee Natural Gas Company, upon the conditions set forth below, for the construction and operation of the facilities proposed, as described above and in its application, and for the sale of natural gas to the Colonial Natural Gas Company and the Roanoke Gas Company, in the maximum amounts of 18,005 and 7,789 Mcf in any one day, respectively.

(B) The certificate for the construction is subject to the following conditions precedent:

(i) Colonial shall exhibit to East Tennessee acceptable contracts or precedent agreements with prospective purchasers of interruptible gas service providing for the purchase of at least one half of the planned sale of 1,026,513 Mcf per year by the second full year of operation.

(ii) East Tennessee shall file with the Commission, and furnish to such of its resale customers as request it, supplemental accounting data in scope and form satisfactory to the Commission designed to show separately, (1) the gas plant, depreciation reserve, operating expenses (excluding purchased gas costs as well as indirect operating and administrative and general expenses), depreciation expense, and taxes other than income attributable to the facilities installed in Zone 3; and (2) the operating revenues from customers taking gas in Zone 3; such data to be filed annually for the first five calendar years after commencement of service in Zone 3 and at such times during those five years as may be required to correlate with the test periods used in any future rate proceeding. This requirement is without prejudice to the method to be used in any future proceeding for allocating costs or determining rates.

(iii) Colonial shall exhibit to East Tennessee a certificate or authorizing license for its proposed operations issued by the State Corporation Commission of Virginia.

(iv) The general terms and conditions set forth in paragraphs (a), (c)(3), (c)(4) and (e) of Section 157.20 of the Commission's Regulations shall attach to the certificate and to the exercise of the rights granted thereunder.

(v) East Tennessee shall receive from Roanoke Gas Company a contribution in aid of construction in the amount of $232,305.50 (subject to audit and adjustment to the cost incurred for the construction between Salem Delivery and Clearbrook); otherwise, in the alternative, the line authorized to be constructed by East Tennessee is limited to the extension from the Bristol terminus of the present line to, and only to, the point marked "Salem Delivery" in Exhibit 3.

(C) The certificate for the proposed sales is subject to the following conditions precedent:

(vi) East Tennessee's rates for its proposed sales, when filed pursuant to the Regulations under the Natural Gas Act, shall be subject to further order and approval of the Commission.

(vii) The sale to Roanoke Gas Company may begin and may continue only when and while Roanoke subscribes to and complies with the partial requirements tariff of the Atlantic Seaboard Corporation as that tariff now reads or as it may be amended or replaced.

(viii) The results of East Tennessee's operations in Virginia (Zone 3) may not be utilized as the basis for a rate increase filing under Section 4 of the Natural Gas Act.

WILLIAM L. ELLIS,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

IOWA SOUTHERN UTILITIES COMPANY, DOCKET NO. E-7044

SUPPLEMENTAL ORDER AUTHORIZING THE ISSUANCE OF COMMON STOCK

(Issued July 17, 1964)

Iowa Southern Utilities Company (Applicant), incorporated under the laws of the State of Delaware and qualified to do business as a foreign corporation in the State of Iowa, with its principal business office at Centerville, Iowa, filed a supplemental application on May 20, 1964, pursuant to Section 204 of the Federal Power Act, seeking an order authorizing the issuance of additional shares of Common Stock under Applicant's Employee Stock Purchase Plan.

By order issued August 27, 1962, in this docket, the Commission authorized Applicant to issue 10,000 shares of Common Stock, $15 par, pursuant to an Employee Stock Purchase Plan. By order issued July 1, 1963, in Docket No. E-7103, the Commission authorized Applicant to issue up to 1,859,628.2 shares of Common Stock, $10 par, to accomplish a two-for-one split in Applicant's Common Stock and a reduction in the par value from $15 to $10 per share. In its application for the two-for-one split, Applicant did not request any increase in the number of shares for issuance under its Employee Stock Purchase Plan. Immediately prior to the two-for-one split and reduction in par value, the Applicant had issued 459 shares of Common Stock, $15 par, to its employees and had 9,541 shares, $15 par, reserved for the purpose of the Plan. After giving effect to the stock split and to the change in par value and to the sales prior to January 31, 1964, to fully implement the Plan as originally considered, there should remain as of January 31, 1964, 18,205 shares, $10 par, reserved for the purpose of the Plan.

Applicant now requests that the Commission amend its order issued on August 27, 1962, so that the maximum number of shares to be issued under the Plan will be raised to 20,000 shares at $10 par, including those shares authorized in Docket No. E-7103.

Applicant also requests an exemption from the Commission's competitive bidding requirements. On the basis of the present market price of about $25 per share, the entire 20,000 shares of Common Stock, $10 par, for issuance under the Plan would produce proceeds of about $500,000. In accordance with Section 34.1a(a)(3) of the Commission's Regulations under the Federal Power Act, since the proceeds of the Common shares will be less than $1,000,000, and also because of the nature of the issuance, competitive bidding is not required.

Written notice of the application has been given to the Iowa State Commerce Commission and to the Governor of that State. Notice was published in the Federal Register on June 13, 1964 (29 F.R. 7620) stating that any person desiring to be heard or to make any protest with reference to the application should, on or before June 30, 1964, file petitions or protests with the Federal Power Commission, Washington, D.C., 20426. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) The proposed issuance and sale of an additional 10,000 shares of Common Stock, $10 par, for a total of 20,000 shares of Common Stock, $10 par, pursuant to the provisions of the Applicant's Employee Stock Purchase Plan described in the Commission's order of August 27, 1962, will constitute an issuance of securities within the purview of Section 204 of the Federal Power Act.

(2) The proceeds from the sales of the shares of Common Stock for issuance under the Employee Stock Purchase Plan will be less than $1,000,000, and, therefore, the proposed issuance and sale of Common Stock is exempt from the competitive bidding requirements by reason of paragraph 34.1a(a)(3) of the Regulations under the Federal Power Act.

(3) The proposed issuance and sale of Common Stock, as hereinafter authorized will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The proposed issuance and sale of additional shares of Common Stock $10 par value, as described above, under the Employee Stock Purchase Plan not to exceed the total of 20,000 shares including the number of shares heretofore issued under the Plan upon the terms and conditions, and for the purposes specified in the Commission's order of August 27, 1962 in this docket is hereby authorized, and the Commission's order of August 27, 1962 is hereby modified accordingly.

(B) The proposed issuance and sale of the additional shares of Common Stock are hereby exempted from the competitive bidding requirements of Sections 34.1a(b) and (c) of the Commission's Regulations under the Federal Power Act.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations or cost, or any other matter whatsoever which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

NEW YORK STATE NATURAL GAS CORPORATION, DOCKET NO. RP64-40

ORDER ACCEPTING REVISED TARIFF SHEETS FOR FILING, APPROVING AGREEMENT REDUCING RATES, AND MAKING RATES EFFECTIVE

(Issued July 17, 1964)

New York State Natural Gas Corporation (New York Natural) on June 1, 1964, tendered for filing certain revised tariff sheets[1] to its FPC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2 subject to the terms of its proposed Agreement submitted therewith. The proposed changes would reduce rates and charges, effective June 1, 1964, for jurisdictional sales from

[1] Third Revised Volume No. 1: Second Revised Sheets Nos. 20-B and 20-L; Fifth Revised Sheet No. 20-M; Eighth Revised Sheet No. 20; Ninth Revised Sheet No. 17-A; Tenth Revised Sheet Nos. 4, 5, and 8; Eleventh Revised Sheet No. 16; Twelfth Revised Sheet No. 18; Thirteenth Revised Sheet No. 10. Original Volume No. 2: Twelfth Revised Sheet No. 14.

New York Natural's General System in the amount of approximately $1,006,000 annually, as based on its operations, with certain adjustments, for the twelve (12) months ended December 31, 1963.

The above-identified rate filing reflects the reduction in the Federal income tax rate for corporations which became effective January 1, 1964, as well as the reduction which will become effective January 1, 1965; reductions in the rates of suppliers to New York Natural and various smaller reductions in costs.

New York Natural's proposed Agreement for reduction in rates developed from conferences with the Commission staff after an investigation by the staff of the 1963 operations of New York Natural. The reduced rates proposed by New York Natural, to become effective on June 1, 1964, are set forth in Appendix A hereto.

The proposed Agreement in Article III thereof sets out those obligations in the Rate Settlement Agreement in Docket No. G–17296, *et al.*, (1962 Settlement) conditionally approved by Commission order issued July 20, 1962 (28 FPC 191) which are discharged by the instant proposal. All other obligations of the 1962 Settlement not specifically listed in Article III are continuing obligations of New York Natural, except that pursuant to Commission approval granted December 20, 1963, the accounting for underground storage of gas has been changed to an annual last-in-first-out (LIFO) method.

New York Natural's rate reduction proposal is subject to the further following conditions:

(a) That the rate reductions filed by Texas Eastern Transmission Corporation, in Docket No. RP64–36, for effectiveness as of January 1, 1964; the rate reduction of *Tennessee Gas Transmission Company*, in Docket No. G–11980, *et al.*, for effectiveness April 1, 1964; and the rate reduction of *Hope Natural Gas Company*, in Docket No. G–5474, *et al.*, for effectiveness April 1, 1964, shall be accepted and made effective as requested.[2]

(b) That the Commission shall accept the tendered proposal of New York Natural in its entirety.

(c) That neither New York Natural, the Staff, nor any other person shall be bound or prejudiced by any ratemaking principle, or any method of cost-of-service determination, or any allocation underlying or supposed to underlie any of the rates provided for herein.

In addition, the Commission is requested to waive compliance by New York Natural with the requirements of the Commission's Regulations under the Natural Gas Act, particularly Part 154 thereof, to the extent necessary to effectuate all of the provisions of the proposal.

After due notice given, no protests or objections to New York Natural's proposed revised rates have been received.

The Commission finds:

(1) Good cause exists for waiving the requirements of Section 154 of the Commission's Regulations under the Natural Gas Act in order that the above-identified revised tariff sheets may become effective on June 1, 1964, as hereinafter ordered.

(2) The above-identified revised tariff sheets should be accepted for filing. The rates and charges provided for therein, under the terms and conditions

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[2] The rate reductions of Texas Eastern and Tennessee Gas Transmission were accepted by order and by letter respectively on April 24, 1964.

of New York Natural's Agreement, are proper and in the public interest in carrying out the provisions of the Natural Gas Act and should be made effective as hereinafter provided and ordered.

The Commission orders:

(A) The 30-day period of notice required by Section 154 of the Commission's Regulations under the Natural Gas Act is hereby waived with respect to the effective date of the abovel-dentified tariff sheets.

(B) The above-identified revised tariff sheets are accepted for filing to become effective as of June 1, 1964, as proposed by New York Natural, subject to the terms and conditions of this order.

(C) New York Natural shall comply with each of the provisions of the Agreement accompanying its proposal submitted herein on June 1, 1964.

(D) Nothing contained in this order, or in the proposed Agreement submitted by New York Natural on June 1, 1964, shall be construed as relieving New York Natural of the obligations undertaken by it in its Rate Settlement Agreement approved July 20, 1962, in Docket No. G–17296, *et al.*, except the provisions specified in Article III of the instant Agreement and the adoption of the LIFO method of accounting for underground storage of gas approved by the Commission on December 20, 1963.

(E) This order is without prejudice to any findings or orders which have been made or may hereafter be made by the Commission and is without prejudice to any claims or contentions which may be made by the Commission, New York State Natural Gas Corporation, the Commission staff, or any other party affected by this order, in any proceedings now pending or hereafter instituted by or against New York Natural Gas Corporation or any other persons or parties affected by this order.

APPENDIX A

NEW YORK STATE NATURAL GAS CORPORATION

RATES FOR GENERAL SYSTEM SALES AND SERVICES

Rate schedule	Cents per Mcf[1]	
	Present rates	Proposed rates
	Cents	*Cents*
CQ–1:		
Base	39.78	39.53
Excess	42.78	42.53
CQ–2:		
Base	42.28	41.97
Excess	45.48	45.17
CQ–3–A, CR–3–A, CR–3–E and ACR–3:		
First 100,000 Mcf	53.58	52.96
Next 200,000 Mcf	51.68	51.11
Over 300,000 Mcf	49.98	49.46
CR–4	53.98	53.35
CA	53.28	52.68
GSS–1:		
Demand	65.00	63.06
Capacity	0.90	0.87
Injection:		
First 65% of capacity volume	1.90	1.90
All additional	0.80	0.80
Withdrawal:		
First 65% capacity volume	1.90	1.90
All additional	0.80	0.80
Emergency sales	68.28	67.26
OSS:		
Sales from general system:		
Aggregate of 50,000 Mcf per day	68.28	67.26
All additional	53.28	52.68

[1] Mcf at 14.73 psia except sales under OSS Rate Schedule which are at 15.025 psia.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

CITY GAS COMPANY OF NEWTON, N.J., DOCKET NO. CP64-238

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued July 20, 1964)

On April 14, 1964, City Gas Company of Newton, N.J. (Applicant) filed in Docket No. CP64-238 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Tennessee Gas Transmission Company (Tennessee) to establish physical connection of its transmission facilities with the proposed facilities of and to sell natural gas to Applicant for resale and distribution in the Town of Newton, the Borough of Sussex and the Townships of Wantage and Hampton, all in New Jersey, all as more fully set forth in the application.

Applicant proposes to construct and operate approximately 19 miles of 4-inch pipeline from the communities to be served to Tennessee's transmission facilities. In addition Applicant will construct and operate distribution facilities in Sussex, Wantage and Hampton and convert the manufactured gas system in Newton to natural gas.

The application shows the total estimated third year peak day and annual natural gas requirements for the communities to be served to be 1,275 Mcf and 175,400 Mcf, respectively.

The estimated cost of Applicant's project in the first year of operation is shown to be $265,044, which cost will be financed by the issuance of additional common stock and the sale of First Mortgage Bonds.

On May 18, 1964, Tennessee filed an answer to the subject application stating that it does not oppose an order directing it to serve Applicant as requested.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on June 20, 1964, (29 F.R. 7897). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 12, 1947, in Docket No. G-910 (6 FPC 777).

(2) Applicant, City Gas Company of Newton, N. J., is a public utility duly organized and existing under the laws of the State of New Jersey and is authorized to engage in the business of rendering gas service in said State.

(3) It is necessary and desirable in the public interest that Tennessee be directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 1,275 Mcf of natural gas per day to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to receive gas from Tennessee, as proposed, within one year from the date on which this order issues and upon the execution of a service agreement between Applicant

and Tennessee in accordance with the Commission's Regulations under the Natural Gas Act.

(5) The requirement that Tennessee serve Applicant, as proposed, will not place any undue burden upon Tennessee nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Tennessee Gas Transmission Company be and it is hereby directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 1,275 Mcf of natural gas per day to Applicant, all as hereinbefore described and as set forth in the application.

(B) Tennessee shall report to the Commission in writing the date of commencement of service to Applicant.

(C) This order is conditioned upon Applicant being prepared to receive natural gas from Tennessee, as proposed, within one year from the date on which this order issues and upon the execution of a service agreement between Applicant and Tennessee in accordance with the Commission's Regulations under the Natural Gas Act.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

CUMBERLAND AND ALLEGHENY GAS COMPANY, DOCKET NO. CP64-129

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 20, 1964)

On December 4, 1963, Cumberland and Allegheny Gas Company (Applicant) filed in Docket No. CP64-129 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to construct and operate 1160 feet of 4-inch pipeline, together with the necessary measuring and regulating equipment to provide natural gas to the Mullenax Lumber Company (Mullenax) in the City of Parsons, Tucker County, West Virginia, all as more fully set forth in the application on file with the Commission.

The proposed service (industrial sale) will be rendered from Cumberland's existing 12-inch transmission Line No. 8000, which extends through the Black Fork District, Tucker County, West Virginia. Applicant states the service can be rendered without impairing its ability to render adequate service to existing markets and customers. The estimated maximum daily and annual requirements of Mullenax are stated to be 30 Mcf and 5900 Mcf, respectively, and will be subject to curtailment, if necessary, for the protection of service to domestic customers.

The estimated cost of facilities is $8,775, of which $4,640 will be contributed by Mullenax.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 16, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the

application and exhibits submitted in support of the authorization, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Cumberland and Allegheny Gas Company, a West Virginia corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued January 5, 1944, in Docket No. G–387 (4 FPC 472).

(2) The proposed construction and operation of facilities and transportation of natural gas as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and transportation are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and transportation of natural gas as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 3 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

THE MANUFACTURERS LIGHT & HEAT COMPANY, DOCKET NO. CP64–206

FINDINGS AND ORDER AFTER STATUTORY HEARING, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued July 20, 1964)

On March 18, 1964, The Manufacturers Light & Heat Company (Applicant) filed in Docket No. CP64–206 an application pursuant to Section 7(c) of the

Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas transmission facilities and, pursuant to Section 7(b), for permission and approval to abandon by replacement certain other natural gas transmission facilities, all as more fully set forth in the application.

The pipelines proposed to be constructed hereunder consist of (1) 15.2 miles of 20-inch gas transmission pipeline extending from Applicant's Donegal Storage Field Compressor Station in Donegal Township, Washington County, Pennsylvania, in a northwesterly direction to a point of connection with Applicant's 12-inch Line No. 5 in Cross Creek District, Brooke County, West Virginia, and (2) 3.5 miles of 12-inch gas transmission pipeline extending from a point in Grant District, Hancock County, West Virginia, to Chester, West Virginia. The estimated total capital cost is $1,242,000 for the 20-inch line and $223,000 for the 12-inch line which is to be financed through the issuance and sale of promissory notes or common stock to Applicant's parent company, The Columbia Gas System, Inc.

The pipelines proposed to be abandoned by replacement consist of 3.5 miles each of 8-inch Line No. 24, 10-inch Line No. 23 and 12-inch Line No. 25 extending from a point in Grant District, Hancock County, West Virginia, to Chester, West Virginia. Age and deteriorated condition necessitate replacement of these lines.

The construction and operation of the 15.2 miles of 20-inch line are necessary in order to serve the 1964–65 winter requirements of Applicant's market area. Construction of 3.5 miles of 12-inch line is proposed as the initial step of a plan to replace lines and to upgrade the facilities in this area.

Due notice of the subject application has been given by publication in the Federal Register on June 17, 1964 (29 F.R. 7733). No protest, petition to intervene or notice of intervention has been filed herein.

At a hearing held on July 16, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, The Manufacturers Light & Heat Company, a Pennsylvania corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of August 31, 1943, in Docket No. G–496 (3 FPC 1079).

(2) The facilities proposed to be constructed and operated as hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Said construction and operation of the facilities proposed by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

(6) The facilities proposed to be abandoned by Applicant as hereinbefore set forth, as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission, and the abandonment of said facilities by Applicant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(7) The abandonment by Applicant as hereinbefore described is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, The Manufacturers Light & Heat Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months of the date on which this order issues.

(D) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application in this proceeding, be and the same are hereby granted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP64-232

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 20, 1964)

On April 9, 1964, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP64-232 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities consisting of a meter station and connection on Applicant's existing transmission facilities in Rock Island

County, Illinois, and the sale and delivery of natural gas to Illinois Power Company, an existing customer of Applicant, for resale and local distribution in the Villages of Reynolds and Sherrard, and the unincorporated Community of Preemption, Illinois, all as more fully set forth in the application.

Applicant estimates the cost of the proposed facilities to be $9,800 which will be defrayed from funds on hand.

Illinois Power Company proposes to serve the Villages of Reynolds and Sherrard and the unincorporated Community of Preemption from the quantities of natural gas which Applicant has heretofore been authorized to sell and deliver to Illinois Power Company. The sale will be made pursuant to the terms and conditions of Applicant's FPC Gas Tariff and executed service agreements.

Illinois Power Company was granted a certificate of public convenience and necessity by the Illinois Commerce Commission for the proposed service on March 4, 1964.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 16, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 7, 1958, in Docket No. G–9966 (20 FPC 694).

(2) The proposed sale and delivery of natural gas by Applicant to Illinois Power Company, as hereinbefore described, and more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the sale and delivery of natural gas to Illinois Power Company, as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all appli-

cable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations within sixty days of the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP64-253

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 20, 1964)

On April 23, 1964, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP64-253 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities consisting of a meter station and connection on Applicant's existing transmission pipeline in LaSalle County, Illinois, and the sale and delivery of natural gas to Illinois Power Company, an existing customer of Applicant, for resale and local distribution in the Villages of Sheridan, Newark and Millington, and the unincorporated Communities of Norway and Millbrook, Illinois, all as more fully set forth in the application.

Applicant estimates the cost of the proposed facilities to be $15,700, which will be defrayed from funds on hand.

Illinois Power Company proposes to serve the Villages of Sheridan, Newark and Millington and the unincorporated Communities of Norway and Millbrook, Illinois, from the quantities of natural gas which Applicant has heretofore been authorized to sell and deliver to Illinois Power Company. The sale will be made pursuant to the terms and conditions of Applicant's FPC Gas Tariff and executed service agreements.

Illinois Power Company was granted a certificate of public convenience and necessity by the Illinois Commerce Commission for the proposed service on March 26, 1964.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 16, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 7, 1958, in Docket No. G-9966 (20 FPC 694).

(2) The proposed sale and delivery of natural gas by Applicant to Illinois Power Company, as hereinbefore described, and as more fully described in the

application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the sale and delivery of natural gas to Illinois Power Company, as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within sixty days of the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black

PACIFIC GAS & ELECTRIC COMPANY, PROJECT NO. 233

ORDER DETERMINING NET CHANGE IN ACTUAL LEGITIMATE ORIGINAL PROJECT COST AND PRESCRIBING ACCOUNTING THEREFOR

(Issued July 20, 1964)

Pacific Gas & Electric Company, Licensee for Project No. 233,[1] filed a statement with the Commission, pursuant to Section 4.1 of the Commission's Regulations under the Federal Power Act, claiming for Pit Plants Nos. 3, 4 and 5 for the periods from August 1, 1925, May 16, 1927, and January 1, 1946[2] respec-

[1] The project is located on the Pit River in Shasta County California and affects lands of the United States within the Shasta and Lassen National Forests. It is comprised of three developments or plants, Pit Nos. 3, 4 and 5. The license for Project No. 233 authorizing the Pit No. 3 development was issued October 23, 1923, pursuant to Section 4 of the Federal Water Power Act (Fourth Annual Report of the Federal Power Commission, p. 91), for a period of 50 years. The license authorization for the Pit No. 4 development was issued August 3, 1926, pursuant to Section 4 of the Federal Water Power Act (Seventh Annual Report of the Federal Power Commission, p. 59), for a period from August 3, 1926 to October 23, 1973. By order authorizing amendment of license issued June 9, 1942 (3 FPC 730) the license was amended to authorize the construction of Pit No. 5.

[2] Licensee's FPC Form No. 8 as filed for Pit No. 5 covers the period from January 1, 1946, through December 31, 1957. However, only the changes for the period from January 1, 1946, through December 31, 1954, were verified by the staff.

tively through December 31, 1954, a net increase in the original cost of the project in the amount of $656,934.66. That increase consists of gross additions of $708,559.62, gross retirements of $185,814.34 and debit adjustments of $134,189.38. The resulting claimed total actual legitimate original cost of Project No. 233 as of December 31, 1954 is $48,068,969.37.[3]

The Commission staff made a field examination of Licensee's books and records and other data for the purpose of ascertaining the correctness of the aforementioned claimed and recorded project cost changes for the periods noted above.

Following that examination, the staff proposed certain adjustments, and the accounting dispositions therefor, agreed to by the Licensee, subject to Commission approval, involving a reclassification of project costs in the amount of $3,900.32 within the project plant accounts, and a reduction of $50,532.89, in the project claimed cost for the period August 1, 1925 through December 31, 1954; in addition to the credit adjustment of $50,532.89 to the claimed cost, a net credit amount of $18,759.83 is required to adjust the recorded cost to the claimed cost, resulting in a net reduction in the recorded cost of $69,292.72. The resulting total actual legitimate original cost of the project as of December 31, 1954, amounts to $48,018,436.48 as shown in the attached schedules, I and II.

The detailed proposed adjustments to claimed costs are as follows:

Adjustment No.	Description	Debit (credit)
1	Nonproject plant	($30,605.44)
2	Taxes capitalized	(13,268.01)
3	Hydrographic expenses capitalized	(6,569.44)
4	Reclassification between detailed plant accounts	
	Total adjustments	(50,532.89)

The accounting disposition of the amounts involved in the proposed adjustments are shown by the following composite journal entry:

Account No.	Title	Debit (credit)
	Adjustments:	
100.1	Electric plant in service—Project No. 233	($69,292.72)
	Recommended accounting disposition:	
100.1	Electric plant in service—nonproject	44,860.91
110.0	Nonutility property	4,594.36
250.1	Accumulated provision for depreciation of electric plant in service—Project No. 233	1,036.00
271.0	Unappropriated earned surplus	18,801.45
	Total	69,292.72

Staff analysis of Licensee's provisions for project depreciation has not been completed and the staff recommends that the Commission defer for future

[3] By order issued December 7, 1948 (7 FPC 1076), the Commission determined the actual legitimate original cost of the Pit No. 3 plant as of June 30, 1930, exclusive of additions and retirements from August 1, 1925, through June 30, 1930, to be $12,503,274.56; the Pit No. 4 plant as of October 31, 1930, exclusive of additions and retirements from May 16, 1927, through October 31, 1930, to be $1,672,821.77; and by order issued December 3, 1957 (18 FPC 742), determined the actual legitimate original cost of the Pit No. 5 plant as of December 31, 1945, to be $33,235,938.38.

consideration and determination the amount of accrued depreciation applicable to in-service project properties as of December 31, 1954.

Based upon the proposed adjustments, the staff recommends and Licensee concurs, that the Commission determine: (1) the net increase or change in the actual legitimate original cost of Project No. 233 for the period from August 1, 1925 through December 31, 1954 to be $606,401.77, comprised of gross additions of $678,193.33, gross retirements of $185,814.34 and debit adjustments of $114,022.78; and (2) the actual legitimate original cost of the project as of December 31, 1954 to be $48,018,436.48, classified by plants and primary plant accounts as shown in the attached schedule I.

By letter dated June 3, 1963, Licensee confirmed its agreement with respect to the proposed adjustments, accounting dispositions and resulting project costs.

The California Public Utilities Commission by letter of June 14, 1963 advised that it has no objections to the staff recommendations.

The Commission finds:

(1) Licensee by its tentative agreement to the proposed adjustments including the accounting dispositions and resulting project costs and California Public Utilities Commission by its letter dated June 14, 1963 as set forth above, have obviated the necessity for notice and opportunity to protest provided in Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

(2) The foregoing adjustments, including the accounting dispositions as proposed by the staff and agreed to by Licensee, are reasonable and appropriate for the purposes of the Federal Power Act, and, therefore, should be approved and directed as hereinafter provided.

(3) The net increase or change in the actual legitimate original cost of Project No. 233 for the period from August 1, 1925 through December 31, 1954 is $606,401.77, comprised of gross additions of $678,193.33, gross retirements of $185,814.34 and debit adjustments of $114,022.78; and the resulting actual legitimate original cost of the project as of December 31, 1954 is $48,018,436.48, classified by plants and by primary plant accounts as shown in the attached schedule I.

(4) It is necessary and appropriate for the purposes of the Federal Power Act that a determination of the accrued depreciation applicable to in-service project properties of Project No. 233 as of December 31, 1954 be reserved for future Commission consideration as hereinafter provided.

The Commission orders:

(A) The provisions of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments, including the accounting dispositions, as proposed by the staff and agreed to by Licensee, are hereby approved and directed to be made by Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed project plant accounts for Project No. 233 showing the debit amount of $606,401.77 as the net increase or change in the actual legitimate original cost of the project for the period from August 1, 1925 through December 31, 1954 and the total debit balance of $48,018,436.48 as the actual legitimate original cost of the project as of December 31, 1954, all as more specifically shown in the attached schedule I.

(D) The matter of Commission determination of accrued depreciation applicable to in-service project properties of Project No. 233 as of December 31, 1954, is hereby expressly reserved for future Commission consideration and decision.

(E) Licensee shall within 90 days from the issuance of this order file with the Commission certified copies of Licensee's adjusting journal entry showing compliance with this order; three copies of the journal entry to be submitted to the Secretary, Federal Power Commission, Washington, D.C., 20426, and two copies to be submitted to the Regional Accountant, Federal Power Commission, San Francisco, California, 94111.

SCHEDULE I

PROJECT NO. 233 (PIT NOS. 3, 4 AND 5) PACIFIC GAS & ELECTRIC COMPANY

ACTUAL LEGITIMATE ORIGINAL COST AS OF DECEMBER 31, 1954

Account[1]		Allowed cost as of—	Project plant changes			Allowed cost as of Dec. 31, 1954
			As Claimed	Adjustments	As Adjusted	
No.	Title	June 30, 1930[2]	Aug. 1, 1925 through Dec. 31, 1954			
	PIT NO. 3 PLANT					
	Hydraulic production plant:					
320	Land and land rights	$380,382.12	$5,830.15	($329.15)	$5,501.00	$385,883.12
321	Structures and improvements	725,025.40	91,102.84	(662.77)	90,440.07	815,465.47
322	Reservoirs, dams and waterways	8,439,286.96	226,218.25	(13,497.54)	212,720.71	8,651,957.67
323	Water wheels, turbines and generators	1,350,240.13	17,592.26	(4,008.45)	13,583.81	1,363,823.94
324	Accessory electric equipment	315,167.43	(8,888.58)		(8,888.58)	306,278.85
325	Miscellaneous power plant equipment	26,108.51	9,657.16		9,657.16	35,765.67
326	Roads, railroads and bridges	50,654.51	1,495.39	(75.27)	1,420.12	52,074.63
	Total Hydraulic Production Plant	11,286,815.06	343,007.47	(18,573.18)	324,434.29	11,611,249.35
	Transmission plant:					
340	Land and land rights	39,615.15	15,181.09		15,181.09	54,796.24
341	Clearing land and rights of way	82,780.85				82,780.85
342	Structures and improvements		807.39		807.39	807.39
343	Station equipment	740,248.55	44,053.23	(18,937.06)	25,116.17	765,364.72
344	Towers and fixtures	177,351.41	2,797.57		2,797.57	180,148.98
346	Overhead conductors and devices	138,211.38	1,594.70		1,594.70	139,806.08
349	Roads and trails	3,715.25	(01)		(01)	3,715.24
	Total Transmission Plant	1,181,922.59	64,433.97	(18,937.06)	45,496.91	1,227,419.50
	General Plant:					
370	Land and land rights	7,592.70	3,250.83		3,250.83	10,843.53
378	Communication equipment	26,944.21	2,108.41	(5.27)	2,103.14	29,047.35
	Total General Plant	34,536.91	5,359.24	(5.27)	5,353.97	39,890.88
	Total Pit No. 3 Plant	12,503,274.56	412,800.68	(37,515.51)	375,285.17	12,878,559.73
	PIT NO. 4 PLANT	Oct. 31, 1930[1]	May 16, 1927 through Dec. 31, 1954			
	Hydraulic production plant:					
320	Land and land rights	1,179.47				1,179.47
322	Reservoirs, dams and waterways	1,671,642.30	102,829.84	(1,410.92)	101,418.92	1,773,061.22
324	Accessory electric equipment					
325	Miscellaneous power plant equipment		40.69		40.69	40.69
	Total Hydraulic Production Plant	1,622,821.77	102,870.53	(1,410.92)	101,459.61	1,774,281.38
	General plant:					
378	Communication equipment					
	Total Pit No. 4 Plant	1,672,821.77	102,870.53	(1,410.92)	101,459.61	1,774,281.38

See footnotes at end of table.

SCHEDULE I—Continued

PROJECT NO. 233 (PIT NOS. 3, 4 AND 5) PACIFIC GAS & ELECTRIC COMPANY

ACTUAL LEGITIMATE ORIGINAL COST AS OF DECEMBER 31, 1954

Account [1]		Allowed cost as of—	Project plant changes			Allowed cost as of Dec. 31, 1954
			As Claimed	Adjustments	As Adjusted	
No.	Title	June 30, 1930 [2]	Aug. 1, 1925 through Dec. 31, 1954			
	PIT NO. 5 PLANT	Dec. 31, 1945 [3]	Jan. 1, 1946 through Dec. 31, 1954			
	Hydraulic production plant:					
320	Land and land rights	122,291.27	11,233.40	(11,241.25)	(7.85)	122,283.42
321	Structures and improvements	2,330,117.73	50,884.64		50,884.64	2,381,002.37
322	Reservoirs, dams and waterways	23,877,434.23	3,785.03	(365.21)	3,419.82	23,880,854.05
323	Water wheels, turbines and generators	3,759,898.08	25,713.15		25,713.15	3,785,611.23
324	Accessory electric equipment	790,466.78	899.60		899.60	791,366.38
325	Miscellaneous power plant equipment	22,906.80	16,132.62		16,132.62	39,039.42
326	Roads, railroads and bridges	743,643.38	8,350.28		8,350.28	751,993.66
	Total hydraulic production plant	31,646,758.27	116,998.72	(11,606.46)	105,392.26	31,752,150.53
	Transmission plant:					
340	Land and land rights	19,520.56				19,520.56
341	Clearing land and rights of way	75,178.19	3,015.15		3,015.15	78,193.34
343	Station equipment	1,184,430.44	2,938.69		2,938.69	1,187,369.13
344	Towers and fixtures	66,325.25	3,233.72		3,233.72	69,558.97
345	Poles and fixtures	31,041.48	2,476.23		2,476.23	33,517.71
346	Overhead conductors and devices	87,222.24	7,379.91		7,379.91	94,602.15
349	Roads and trails	1,480.50	2,445.95		2,445.95	3,926.45
	Total transmission plant	1,465,198.66	21,489.65		21,489.65	1,486,688.31
	General plant:					
370	Land and land rights	40,611.15				40,611.15
378	Communication equipment	83,370.30	2,775.08		2,775.08	86,145.38
	Total general plant	123,981.45	2,775.08		2,775.08	126,756.53
	Total Pit No. 5 plant	33,235,938.38	141,263.45	(11,606.46)	129,656.99	33,365,595.37
	Total cost of project	47,412,034.71	656,934.66	(50,532.89)	606,401.77	48,018,436.48

( ) Denotes credit.

[1] Account references are to account numbers and titles prescribed in the Commission's Uniform System of Accounts for Public Utilities and Licensees effective prior to Jan. 1, 1961.

[2] Per Commission Order Issued Dec. 7, 1948 (7 FPC 1076) Excluding Additions and Retirements for Pit No. 3 Plant from Aug. 1, 1925 through June 30, 1930 and for Pit. No. 4 Plant from May 16, 1927 through Oct. 31, 1930.

[3] See Commission Order Issued Dec. 3, 1957. (18 FPC 742.)

262-497—67——17

SCHEDULE II

PACIFIC GAS & ELECTRIC COMPANY, PROJECT No. 233 (PIT NOS. 3, 4 AND 5)

SUMMARY OF ADJUSTMENTS TO THE RECORDED AND CLAIMED CHANGES TO THE PROJECT FOR THE RESPECTIVE PERIODS SHOWN BELOW AND ACCOUNTING DISPOSITION THEREOF

Account [1]		Total	1. Adjust recorded cost to claimed cost			Adjustments to claimed changes				
No	Title		Subtotal	Transfers between plants	Non-project plant	Subtotal	No. 1 Non-project plant	No. 2 Taxes capitalized	No. 3 Hydrographic expenses capitalized	No. 4 Reclassification between detailed plant accounts
	PIT NO. 3 PLANT	Aug. 1, 1925 through Dec. 31, 1954								
	Hydraulic production plant:									
320	Land and land rights	($329.15)				($329.15)	($329.15)			
321	Structures and improvements	(662.77)				(662.77)		($662.77)		
322	Reservoirs, dams and waterways	(13,497.54)				(13,497.54)		(10,271.79)	($3,225.75)	
323	Water wheels, turbines and generators	(4,008.45)				(4,008.45)		(664.76)	(3,343.69)	
326	Roads, railroads and bridges	(75.27)				(75.27)		(75.27)		
	Total hydraulic production plant	(18,573.18)				(18,573.18)	(329.15)	(11,674.59)	(6,569.44)	
	Transmission plant:									
343	Station equipment	(18,937.06)				(18,937.06)	(18,759.83)	(177.23)		
	General plant:									
378	Communication equipment	(5.59)	($.32)	($.32)		(5.27)		(5.27)		
	Total Pit No. 3 plant	(37,515.83)	(.32)	(.32)		(37,515.51)	(19,088.98)	(11,857.09)	(6,569.44)	
	PIT NO. 4 PLANT	May 16, 1927 through Dec. 31, 1954								
	Hydraulic production plant:									
322	Reservoirs, dams and waterways	(1,410.92)				(1,410.92)		(1,410.92)		
	General plant:									
378	Communication equipment	.32	.32	.32						
	Total Pit No. 4 Plant	(1,410.60)	.32	.32		(1,410.92)		(1,410.92)		

	PIT NO. 5 PLANT	Jan. 1, 1946 through Dec. 31, 1954							
	Hydraulic production plant:								
320	Land and land rights	(11,241.25)				(11,241.25)	(7,341.25)		($3,900.00)
322	Reservoirs, dams and waterways	(365.21)				(365.21)	(4,265.21)		3,900.00
	Total hydraulic production plant	(11,606.46)				(11,606.46)	(11,606.46)		
	Transmission plant:								
343	Station equipment	(18,759.83)	(18,759.83)		($18,759.83)				
	Total Pit No. 5 Plant	(30,366.29)	(18,759.83)		(18,759.83)	(11,606.46)	(11,606.46)		
	Total adjustments	(69,292.72)	(18,759.83)		(18,759.83)	(50,532.89)	(30,695.44)	(13,268.01)	(6,569.44)
	RECOMMENDED ACCOUNTING DISPOSITION								
100.1	Electric plant in service—nonproject	44,860.91	18,759.83		18,759.83	26,101.08	26,101.08		
110	Other physical property	4,594.36				4,594.36	4,594.36		
250.1	Reserve for depreciation of electric plant in service, Project No. 233	1,036.00				1,036.00		1,036.00	
271	Earned surplus	18,801.45				18,801.45		13,268.01	5,533.44
	Total disposition	69,292.72	[1] 18,759.83		18,759.83	50,532.89	30,695.44	13,268.01	6,569.44
	Total disposition	69,292.72	[1] 18,759.83		18,759.83	50,532.89	30,695.44	13,268.01	6,569.44

( ) Denotes credit $685,528.80

[1] Account references are to account numbers and titles prescribed in the Commission's uniform system of accounts for public utilities and licensees effective prior to Jan. 1, 1961 ..... (666,778.97)

Net recorded changes over claimed changes for period under review. 18,759.83

[2] Total excess of recorded cost over claimed cost at Dec. 31, 1954. Excess recorded cost over approved cost of Pit No. 5 Plant as of Dec. 31, 1945, was eliminated from the plant accounts in Dec. 1957 pursuant to Commission Order Issued Dec. 3, 1957 (18 FPC 742).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

PACIFIC POWER & LIGHT COMPANY, PROJECT NO. 2082

ORDER DETERMINING ACTUAL LEGITIMATE ORIGINAL PROJECT COST, NET CHANGE THEREIN, AND PRESCRIBING ACCOUNTING THEREFOR

(Issued July 20, 1964)

Pacific Power & Light Company, Licensee for the Iron Gate development of Project No. 2082,[1] on February 4, 1963, filed its initial statement, pursuant to Section 4.1 of the Commission's Regulations under the Federal Power Act, claiming for Project No. 2082 (Iron Gate development), as of July 31, 1962, an actual legitimate original cost of $8,437,751.29. In addition, Licensee's books and records show for the period August 1, 1962, through December 31, 1962, a net increase in the development's cost of $44,205.80, resulting in a total claimed or recorded actual legitimate original cost of the Iron Gate development of Project No. 2082 as of December 31, 1962, of $8,481,957.09.[2]

The Commission's staff made a review of the books, records and other data of Licensee for the purpose of ascertaining the correctness of the claimed cost of the Iron Gate development of Project No. 2082 as of July 31, 1962, the correctness of recorded changes in the development's cost to December 31, 1962, and the resulting cost of Iron Gate development of Project No. 2082 as of December 31, 1962.

Following that examination, an agreement, subject to Commission approval, was reached between the staff and Licensee's representatives with respect to certain proposed adjustments involving (1) the elimination of a net amount of $314.44 from the claimed and recorded cost of the development as of July 31, 1962, and the reclassification of a number of items totaling $130,508.16 within development plant accounts as of that date; (2) the reclassification of certain items in the amount of $34,660.47 within development plant accounts for the period from August 1, 1962, through December 31, 1962; and (3) the accounting disposition of all amounts involved in the proposed adjustments.

Based upon the proposed adjustments, the resulting revised actual legitimate original cost of the Iron Gate development of Project No. 2082 as of July 31, 1962, is $8,437,436.85; the net increase or change in the cost of the development for the period from August 1, 1962, through December 31, 1962, is $44,205.80; and the resulting revised actual legitimate original cost of the Iron Gate development of Project No. 2082 is $8,481,642.65 as of December 31, 1962.

The proposed eliminations from claimed initial cost of Iron Gate development as of July 31, 1962, in the net amount of $314.44 are composed of the following items:

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[1] The Iron Gate development or Iron Gate Plant is one of seven hydroelectric developments licensed as Project No. 2082. It is located on the Klamath River in California and Oregon, and affects lands of the United States. The license (issued pursuant to Section 4(e) of the Federal Power Act) for Project No. 2082 was issued originally to The California Oregon Power Company for a period of 50 years commencing March 1, 1956. By order issued June 16, 1961 (25 FPC 1154), the Commission approved the transfer of the license for Project No. 2082 from The California Oregon Power Company to Pacific Power & Light Company. In a separate order issued on that date (25 FPC 1156), the Commission approved the merger of The California Oregon Power Company and Pacific Power & Light Company, with the latter to be the surviving corporation.

[2] Articles 47 and 48 of the license provide for Commission determination of the actual legitimate original cost of the portion of the project completed prior to the effective date of the license and the actual legitimate original cost of the parts of the project to be completed thereafter, together with any additions to or betterments of the project.

Elimination of improper land costs	($7,876.08)
Correction of interest during construction and elimination of credits for power produced during construction	(8,274.75)
Correction of salvage credited to construction equipment	15,746.39
Total	(314.44)

The proposed reclassifications totaling $165,168.63 within the development plant accounts consist of the following amounts by accounts:

Initial project cost

Account No.	Title	Amount, debit or ( ) credit
336	Roads, railroads, and bridges	$130,508.16
330	Land and land rights	(130,508.16)
	Aug. 1, 1962 through Dec. 31, 1962	
336	Roads, railroads and bridges	34,660.47
330	Land and land rights	(34,660.47)

The proposed accounting dispositions of the amounts involved in the adjustments to bring Licensee's claimed or recorded cost of the Iron Gate development as of December 31, 1962, into agreement with the recommended cost of that development tentatively agreed to between the staff and Licensee's representatives are shown by the following composite journal entry:

Account No.	Title	Debit	Credit
101	Electric plant in service—Project No. 2082, Iron Gate Plant		$314.44
183	Preliminary survey and investigation charges		15,746.39
121	Nonutility property	$6,106.90	
216	Unappropriated earned surplus	9,953.93	

Licensee, by letter dated January 6, 1964, confirmed its agreement with respect to the proposed adjustments, including the accounting dispositions and resulting costs of the development.

The California Public Utilities Commission and the Public Utility Commissioner of Oregon were separately advised, by letters of this Commission dated January 15, 1964, of the proposed adjustments, including the accounting dispositions and resulting costs of the development. By their respective letters dated January 21, 1964, and January 24, 1964, the California Public Utilities Commission and the Public Utility Commissioner of Oregon indicated their concurrence with the staff recommendations.

The Commission finds:

(1) Licensee, by its tentative agreement to the proposed adjustments, including the accounting dispositions and the resulting costs of the Iron Gate development of Project No. 2082, and its letter dated January 6, 1964, the California Public Utilities Commission, by its letter dated January 21, 1964, and the Public Utility Commissioner of Oregon, by his letter dated January 24, 1964, have obviated the necessity for notice and opportunity to protest provided in Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

SCHEDULE

PACIFIC POWER & LIGHT COMPANY, PROJECT NO. 2082 (KLAMATH BASIN)—IRON GATE PLANT

ACTUAL LEGITIMATE ORIGINAL COST

Account No.	Title	Initial cost as of July 31, 1962				Recorded changes from Aug. 1, 1962 through Dec. 31, 1962			Allowed cost as of Dec. 31, 1962
		As claimed	Adjustments	Allowed		As recorded	Adjustments	Allowed	
				Before distribution	After distribution				
		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	Hydraulic Production plant:								
330	Land and land rights	$375,156.02	($138,294.24)	$236,861.78	$267,185.69	$35,040.60	($34,660.47)	$380.13	$267,565.82
331	Structures and improvements	663,196.93	739.91	663,936.84	1,116,860.10				1,116,860.10
332	Reservoirs, dams, and waterways	2,684,870.03	7,080.30	2,691,950.33	5,108,766.36	6,462.11		6,462.11	5,115,228.47
333	Water wheels, turbines, and generators	927,570.74	234.60	927,805.34	1,095,917.55	1,114.85		1,114.85	1,097,032.40
334	Accessory electric equipment	131,488.47		131,488.47	156,408.28				156,408.28
335	Miscellaneous power plant equipment	30,325.30		30,325.30	44,839.33				44,839.33
336	Roads, railroads, and bridges	81,867.26	130,599.65	212,466.91	435,954.31	191.23	34,660.47	34,851.70	470,806.01
	Total hydraulic production plant	4,894,474.75	360.22	4,894,834.97	8,225,931.62	42,808.79		42,808.79	8,268,740.41
	Transmission plant:								
350	Land and land rights	338.84		338.84	390.31	391.76		391.76	782.07
351	Clearing land and rights-of-way	2,439.00		2,439.00	3,770.91				3,770.91
353	Station equipment	106,886.99		106,886.99	125,277.06				125,277.06
355	Poles and fixtures	27,715.72		27,715.72	36,895.97				36,895.97
356	Overhead conductors and devices	23,367.37		23,367.37	29,654.82				29,654.82
	Total transmission plant	160,747.92		160,747.92	195,969.07	391.76		391.76	196,380.83

397	General plant: Communication equipment	13,294.84		13,294.84	15,516.16	1,005.25		1,005.25	16,521.41
	Total direct costs	5,068,517.51	360.22	5,068,877.73	8,437,436.85	44,205.80		44,205.80	8,481,642.65
	Indirect construction costs:								
61	Temporary construction facilities	193,192.28	4,053.69	197,245.97					
62	Construction equipment	1,877,742.46	3,517.94	1,881,260.40					
63	Camp and commissary	4,254.04		4,254.04					
64	Labor expenses	24,481.54		24,481.54					
65	Superintendence, timekeepers, clerks, etc.	128,004.68		128,004.68					
66	Insurance, injuries, and damages	4,435.52	28.46	4,463.98					
69	Contractor's fees	192,781.00		192,781.00					
	Total indirect construction costs	2,424,891.52	7,600.09	2,432,491.61					
	Overhead construction costs:								
71	Engineering	567,936.81		567,936.81					
72	Legal expenses	16,716.85		16,716.85					
73	Permits and licenses	16,460.28		16,460.28					
75	Taxes during construction	20,078.78		20,078.78					
76	Administrative and general expenses	29,575.44		29,575.44					
77	Interest during construction	312,699.10	(27,399.75)	285,299.35					
80	Earnings and expenses during construction	(19,125.00)	19,125.00						
	Total overhead construction costs	944,342.26	(8,274.75)	936,067.51					
	Total indirect and overhead construction costs	3,369,233.78	(674.66)	3,368,559.12					
	Total Iron Gate Plant	8,437,751.29	(314.44)	8,437,436.85	8,437,436.85	44,205.80		44,205.80	8,481,642.65

( ) Denotes credit.

(2) The foregoing adjustments, including the accounting dispositions, as proposed by the staff and agreed to by Licensee, are reasonable and appropriate for the purposes of the Federal Power Act, and, therefore, should be approved and directed as hereinafter provided.

(3) The actual legitimate original cost of the Iron Gate development of Project No. 2082 as of July 31, 1962, is $8,437,436.85; the net increase or change in the actual legitimate original cost of the development from August 1, 1962, through December 31, 1962, is $44,205.80; and the resulting actual legitimate original cost of the Iron Gate development of Project No. 2082 as of December 31, 1962, is $8,481,642.65, all classified by primary plant accounts as shown by the attached schedule.

The Commission orders:

(A) The provisions of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments and accounting dispositions, as proposed by the staff and agreed to by the Licensee, are hereby approved and directed to be made by the Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed plant accounts for the Iron Gate development of Project No. 2082, showing the debit balance of $8,437,436.85 as of July 31, 1962; the debit amount of $44,205.80 as the net increase or change in the cost of the development for the period August 1, 1962 through December 31, 1962; and the total debit balance of $8,481,642.65, as the actual legitimate original cost of the Iron Gate development of Project No. 2082 as of December 31, 1962, all as more specifically shown in the attached schedule classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(D) Licensee shall file with the Commission within 90 days from the issuance of this order three certified copies of FPC Form No. 7 showing compliance therewith. Two conformed copies of FPC Form No. 7 are to be sent to the Regional Accountant, Federal Power Commission, San Francisco, California.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black

PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. CI64–1154

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, ACCEPTING FPC GAS RATE SCHEDULE AND SUPPLEMENTS FOR FILING, ACCEPTING NOTICE OF WITHDRAWAL OF SUPPLEMENT TO FPC GAS RATE SCHEDULE, AND REQUIRING REFUNDS

(Issued July 20, 1964)

On March 31, 1964, Pan American Petroleum Corporation (Applicant) filed in Docket No. CI64–1154 an application pursuant to Section 7(c) of the Natural Gas Act authorizing the sale of natural gas in interstate commerce for resale to Trunkline Gas Company (Trunkline) at a price of 20.625 cents per Mcf at 15.025 psia from Applicant's "shallow" rights underlying its leasehold interest in Block 27, offshore Vermilion Parish,[1] Louisiana, all as more fully set forth in the application.

On March 20, 1964, the Commission issued a declaratory order in Docket No. G–15438, *et al.*, in which it was found that Applicant had no certificate authori-

[1] The acreage is within the tax jurisdiction of the State of Louisiana.

zation to make the subject sale from Block 27 although the sale was in fact being made since August 30, 1960, at a rate of 24.05 cents per Mcf at 15.025 psia. The Commission ordered Applicant to file an application pursuant to Section 7 of the Natural Gas Act for the subject sale with the same terms as the settlement proposal of Union Oil Company of California (Union Oil) in Docket No. CI62-806 (except as to refunds) as amended by Supplement No. 5 to Union Oil's FPC Gas Rate Schedule No. 61 (amendment of November 14, 1963). Applicant and Union Oil each own an undivided one-half interest in the subject acreage in Block 27. Applicant was further ordered to provide in its application to refund to Trunkline all amounts above 21.25 cents per Mcf collected from the date of initial delivery through March 31, 1963, and all amounts above 20.625 cents per Mcf collected since that date, together with interest on all amounts refunded computed at a rate of seven percent per annum to accrue through December 31, 1963. These refund requirements are consistent with those in Applicant's settlement of its *Union Texas Petroleum* proceeding dockets. See orders of November 19, 1963 and February 4, 1964, in *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.* The application filed on March 31, 1964, conforms to the requirements of the Commission's order of March 20, 1964.

Concurrently with the subject application Applicant has filed the related gas purchase contract, as supplemented, as an FPC gas rate schedule. Applicant requests that Supplement No. 2 to its FPC Gas Rate Schedule No. 258, pursuant to which the uncertificated sale has been made, be withdrawn.

Trunkline is a natural gas pipeline company subject to the Commission's jurisdiction under the Natural Gas Act and in turn has customers who are natural gas pipeline companies. In view of the Commission's duty to insure that the ultimate consumers of natural gas actually receive all of the benefits of the Commission's rate regulation to which they may be entitled, the Commission will take action here to assure that, within the limits of its jurisdictional reach, the refunds to be ordered actually flow to those parties legally and equitably entitled thereto.

We are not here determining that a pipeline purchaser from Applicant or one down the line in the chain of resales between Applicant and ultimate consumer is never entitled as a matter of law or equity to retain all or part of the refunds received from a supplier. We conclude only that merely because a pipeline may be under no special express requirement to flow refunds through to its customers, and may not previously have passed on to its customers the higher gas costs arising from the heretofore uncertificated sale which is the subject of this order, does not determine that the pipeline customer is entitled to retain such refunds.

Accordingly, Applicant will be required to retain the refunds due Trunkline subject to further orders of the Commission. Also, in further orders of the Commission, Trunkline's pipeline purchasers will be required to submit reports setting forth their intentions with respect to any refunds they may receive, and, if they do not intend to pass such sums on to their customers, setting forth why they believe they are entitled to receive such funds.

Applicant may elect, at its option, to either use these funds in its business and pay 6% interest thereon or to deposit such funds in a special escrow account for the sole benefit of the ultimate owners of such refunds and credit all interest actually earned thereon to the escrow account.

After due notice no notice of intervention or protest to the granting of the application has been received. A petition to intervene was filed and withdrawn by Long Island Lighting Company. No other petition to intervene has been received.

At a hearing held on July 16, 1964, the Commission on its own motion received and made part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Pan American Petroleum Corporation, is engaged in the sale and delivery of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is, therefore a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The sale of natural gas hereinbefore described, as more fully described in the application in this proceeding, is being made in interstate commerce subject to the jurisdiction of the Commission, and such sale by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sale of natural gas by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should be required to make such refunds as hereinafter ordered.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the contract, as supplemented, submitted by Applicant should be accepted for filing as an FPC gas rate schedule and that the notice of withdrawal of Supplement No. 2 to Applicant's FPC Gas Rate Schedule No. 258 should be accepted for filing.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued, upon the terms and conditions of this order, authorizing the sale by Applicant herein of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as hereinbefore described and as more fully described in the application and exhibits in this proceeding.

(B) The certificate granted in paragraph (A) above is not transferable and shall be effective only so long as Applicant continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(C) The grant of the certificate issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Applicant. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase

contract herein involved. Nor shall the grant of the certificate aforesaid for service to the particular customer involved imply approval of all of the terms of the contract, particularly as to the cessation of service upon termination of said contract, as provided by Section 7(b) of the Natural Gas Act.

(D) Within 90 days from the issuance of this order, Applicant shall compute as refunds to Trunkline all amounts above 21.25 cents per Mcf collected from the date of initial delivery through March 31, 1963, and all amounts above 20.625 cents per Mcf collected since that date, together with interest at the rate of seven percent per annum computed on refunds of amounts collected through December 31, 1963.

(E) Applicant shall retain the refunds ordered by paragraph (D) above, subject to further order of the Commission. If Applicant elects to commingle these funds with its general assets and use them for its corporate purposes, it shall pay interest thereon at the rate of 6% per annum on all funds thus available beginning 90 days from the issuance of this order to the date on which they are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission.

(F) If Applicant elects to deposit the refunds due to Trunkline in a special escrow account, Applicant shall tender for filing within 90 days of the issuance of this order an executed Escrow Agreement, conditioned as set out below accompanied by certificate showing service of a copy thereof upon Trunkline. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Applicant and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(1) Applicant, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such Agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable only for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the trust account for the quarterly period.

(G) The contract, as supplemented, submitted by Applicant as an FPC gas rate schedule is accepted for filing as of the date of initial delivery and is designated as follows:

PAN AMERICAN PETROLEUM CORPORATION

Rate schedule	Supplement	Description and date of instrument
303		Contract 6-26-58.
303	1	Amendment 2-18-59.
303	2	Amendment 6-14-60.
303	3	Amendment 11-18-63.
303	4	Letter 3-31-64.
303	5	Letter 4-28-64.

(H) The notice of withdrawal of Supplement No. 2 to Applicant's FPC Gas Rate Schedule No. 258 be and the same is hereby accepted for filing effective 30 days after the date of filing.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

UNITED FUEL GAS COMPANY, DOCKET NO. G-20270; ATLANTIC SEABOARD CORPORATION, DOCKET NO. G-20272

ORDER GRANTING REHEARING FOR THE PURPOSE OF FURTHER CONSIDERATION

(Issued July 20, 1964)

On June 2, 1964, the Commission issued Opinion No. 430 and accompanying order requiring United Fuel Gas Company and the Atlantic Seaboard Corporation to file rates satisfactory to the Commission and to make refunds. Applications for rehearing have been filed by the following parties: The Dayton Power and Light Company on June 29, 1964; Baltimore Gas and Electric Company on June 30, 1964; Commonwealth Natural Gas Corporation on July 1, 1964; The City of Columbus, Ohio, on July 1, 1964; the Independent Natural Gas Association of America on July 2, 1964; United Fuel Gas Company and Atlantic Seaboard Corporation on July 2, 1964; Washington Gas Light Company on July 2, 1964; The United Gas Improvement Company on July 2, 1964; The Manufacturers Light & Heat Company and Cumberland and Allegheny Gas Company on July 2, 1964; The Ohio Fuel Gas Company on July 2, 1964; and Roanoke Gas Company on July 6, 1964.

In light of the complex nature of the questions raised, we deem it appropriate to grant the applications for the purpose of further consideration. Accordingly, ordering paragraphs (B) and (C) of Opinion No. 430, 31 FPC 1342, will be stayed pending decision on rehearing.

The Commission orders:

(A) The applications for rehearing filed by the parties referred to above are hereby granted for purposes of further consideration.

(B) The requirements of ordering paragraphs (B) and (C) of Opinion No. 430 are hereby stayed pending further order of the Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

WISCONSIN POWER & LIGHT COMPANY, DOCKET NO. CP64-229

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE AND DELIVERY OF NATURAL GAS

(Issued July 20, 1964)

Wisconsin Power & Light Company (Applicant) filed in Docket No. CP64-229, an application on April 7, 1964, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) to extend its existing transportation facilities (from its Marshfield-Appleton line), to establish physical connection of such facilities with facilities proposed to be constructed by Applicant, and to sell natural gas to Applicant for distribution in Manawa, Wisconsin, all as more fully set forth in the application.

Applicant proposes to construct and operate a distribution system in the Town of Manawa, Wisconsin, as well as 1.8 miles of 4-inch pipeline extending from Manawa to a city gate measuring and regulating station, at which point connection will be made with the facilities requested to be constructed and operated by Michigan Wisconsin.

Annual and maximum day requirements (Mcf @ 14.73 psia) of Manawa for the initial three-year period are estimated to be as follows:

	First year	Second year	Third year
Annual	21,902	50,559	62,755
Maximum day	181	417	519

The total estimated cost of the transmission and distribution facilities for the project at the end of the third year is $181,778, which cost will be defrayed from cash on hand or proceeds from the sale of securities as may be necessary as part of Applicant's overall construction program.

The Public Service Commission of Wisconsin on March 23, 1964, granted Applicant authorization for the proposed distribution system and related facilities.

On April 24, 1964, Michigan Wisconsin filed an answer to the application and stated therein it had no objection to the entry of an order requiring it to provide the requested service and to construct 2 miles of 4-inch lateral pipeline connecting its system to the proposed facilities of the Applicant.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on June 10, 1964 (29 F.R. 7481. No protest, petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order dated November 30, 1946, in Docket No. G-669 (5 FPC 953).

(2) Applicant, Wisconsin Power & Light Company, a Wisconsin corporation having its principal place of business in Madison, Wisconsin, is a corporation

legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Michigan Wisconsin to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant with Michigan Wisconsin in accordance with the Commission's Regulations, up to 519 Mcf of natural gas on a maximum day and 62,755 Mcf annually for distribution and resale as hereinbefore described.

(4) The requirement that Michigan Wisconsin serve Applicant, as hereinafter ordered, will not (a) place an undue burden upon Michigan Wisconsin, (b) require Michigan Wisconsin to enlarge its transportation facilities or (c) impair Michigan Wisconsin's ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Michigan Wisconsin for distribution in the Town of Manawa, Wisconsin, within one year from the date of the issuance of this order.

The Commission orders:

(A) Michigan Wisconsin Pipe Line Company be and is hereby directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, as hereinbefore described, and to sell and deliver up to 519 Mcf of natural gas on a maximum day and 62,755 Mcf annually to Applicant under a service agreement to be executed by Applicant with Michigan Wisconsin in accordance with the Commission's Regulations, for transportation, distribution and resale as hereinbefore described. Such service shall be rendered pursuant to Michigan Wisconsin's presently filed appropriate rate schedule.

(B) Michigan Wisconsin shall report to the Commission the date of commencement of service to Applicant within 15 days after such service begins.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP64-261

FINDINGS AND ORDER AFTER STATUTORY HEARING, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 21, 1964)

On April 29, 1964, as supplemented on May 4, 1964, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP64-261 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities in Rock Island County, Illinois, in order to sell and deliver natural gas to Iowa-Illinois Gas & Electric Company (Iowa-Illinois), an existing customer, for resale and distribution in the unincorporated communities of Edgington, Taylor Ridge and Illinois City, Illinois, all as more fully set forth in the application, as supplemented.

Specifically, Applicant proposes to construct and operate (1) three tap connections, (2) three meter stations and (3) three 3-inch lateral pipelines each 200 feet in length.

The total estimated peak day and annual natural gas requirements for the three communities are 417 Mcf and 37,486 Mcf, respectively. Applicant states that service to the three communities will be from volumes of natural gas heretofore authorized to be sold by Applicant to Iowa-Illinois.

The total estimated cost of Applicant's proposed facilities is shown to be $54,000, which cost will be financed from funds on hand.

It appears that Iowa-Illinois has received appropriate authorization from the Illinois Commerce Commission.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, as supplemented, has been filed.

At a hearing held on July 16, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G–235 (3 FPC 830).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (1), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Natural Gas Pipeline Company of America, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (1), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP64-237

FINDINGS AND ORDER AFTER STATUTORY HEARING, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 21, 1964)

On April 14, 1964, as amended on June 1, 1964, Transwestern Pipeline Company (Applicant) filed in Docket No. CP64-237 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1964 and the operation of routine field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application and amendment.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with the said system.

The total cost of the facilities covered by this application will not exceed a maximum of $1,000,000, with no single project to exceed a cost of $250,000, which costs are proposed to be financed from funds made available by company operations.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 16, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order accompanying Opinion No. 328 issued August 10, 1959 (22 FPC 391, 402).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 2.58 (c) of the Commission's Rules of Practice and Procedure.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act

and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1964 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $1,000,000, with no single project to exceed a cost of $250,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Transwestern Pipeline Company, to construct during the calendar year 1964, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1964, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $1,000,000, with no single project to exceed a cost of $250,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

ALABAMA POWER COMPANY, PROJECT NO. 2146

ORDER FURTHER AMENDING LICENSE AND APPROVING REVISED EXHIBITS

(Issued July 22, 1964)

Alabama Power Company, licensee for Project No. 2146 (Coosa River Project in Alabama and Georgia) filed with the Commission on September 16, 1963, an application for amendment of license to provide for raising the normal water surface elevation of the Lock 3 reservoir from 505 to 508 feet during the summer months of the year or the non-flood season when surcharge flood control storage is not required.

The proposed Lock 3 changes are the results of continuing studies by the licensee to obtain optimum over-all power benefits from the proposed development, and can be accomplished (1) without significant changes in the concrete structures, (2) by the acquisition of additional lands, and (3) by changing the height of the spillway gates from 26 feet to 29 feet. The estimated increase in capital cost to cover these changes is $431,750, and is based on unit costs which the licensee secured from its most recent contracts. It is estimated that the additional 3 feet of gross head obtained by increasing the maximum power pool elevation from 505 to 508 feet as hereinafter provided, will permit the recovery of practically all the lost or undeveloped head between the Lock 3 development and the upstream Weiss development and will provide, during system peak load conditions, about 7,300 kw of net additional dependable capacity and, during

a normal water year, about 5.0 million kwh of net additional energy, based on an initial and ultimate installation of 72,900 kw (3 units of 24,300 kw each). Based on an estimated value of $27.53 per kw-yr. for dependable capacity and 2.51 mills per kwh for average annual energy, the annual value of the power increase, about $213,500, exceeds the estimated annual costs of about $52,900, by $160,600.

Representatives of the Corps of Engineers and the licensee have held conferences recently to discuss the proposed license amendment to permit raising the pool level of the Lock 3 reservoir, during the summer months, from elevation 505 to 508 feet. As a result of these conferences, it was concluded that a satisfactory regulation plan, not detrimental to downstream flood control and navigation, can be developed with the drawdawn from elevation 508 in advance of floods limited to elevation 505. It was also concluded that lowering the pool below elevation 505 should not be permitted until a satisfactory advance flood evacuation plan to elevation 500 can be developed, and that power pool filling should not begin until April 15 and not reach elevation 508 prior to May 1 of each year. A new article has been developed for inclusion in the amended license and will supersede proposed Exhibit H–Fig. 1 included in the application for amendment of license.

It thus appears feasible to permit the raising of the water surface elevation of the Lock 3 pool during the summer months. In addition the increased elevation should enhance the recreational values of the reservoir and should be an aid to navigation during the low flow months. The Lock 3 powerhouse installation remains the same as before, namely 72,900 kw (3 units of 24,300 kw each).

On August 19, 1963, the licensee filed for Commission approval, revised Exhibit L drawings showing proposed changes and modifications to the Jordan No. 2 development of the Coosa River Project No. 2146 located on the Coosa River in Alabama and Georgia. The application was filed pursuant to the provisions of Article 30 of the license.

Continued subsurface explorations and review of the design of the Jordan No. 2 development by the licensee has resulted in the following proposed described changes which are shown on the revised drawings: (1) relocation of the powerhouse to a site where the rock is at a lower elevation and still suitable for a foundation, thus resulting in less rock excavation; (2) the powerhouse relocation would require the tailrace canal to be realigned to lower ground resulting in less canal excavation and the taking of less cultivatable land; (3) the powerhouse design has been changed from an indoor type to a semi-outdoor type, utilizing a steel spiral scroll case; and (4) the powerhouse intake control gate would be changed from a vertical-lift type to a radial gate type.

The above-described proposed Jordan No. 2 powerhouse design changes would result in an estimated savings in capital costs in the amount of about five percent, or approximately $2,300,000, even though more land will be required for the tailrace canal. Estimated costs were based on unit costs which the licensee secured from its most recent contracts. The increased amount of land required for the tailrace canal was found to be necessary to provide an area to receive the excavation resulting from canal construction and for the future maintenance of the canal itself.

The Secretary of the Army and the Chief of Engineers have advised that the plans of the project structures affecting navigation are satisfactory and have been approved pursuant to Section 4(e) of the Federal Power Act.

It has been called to our attention, partly by the licensee, and partly by others, that free public access to Project No. 2146 pursuant to Article 7 of the license may be rendered largely ineffective because the licensee has not acquired

the necessary interests in sufficient project lands adjacent to the reservoirs to provide the public an effective free access for recreational purposes.

Failure to acquire the necessary interest in sufficient lands initially may result in higher costs and delay the establishment of adequate free access areas. We are, therefore, including a provision in this amendment to provide the Commission with additional information and to assist the licensee in providing the public with free access areas for recreational purposes.

The Commission finds:

(1) Public notice of the application for amendment of license has been given. No protests have been received.

(2) The following described revised Exhibit L drawings, filed with the Commission on September 16, 1963, conform to the Commission's rules and regulations and should be approved as part of the license for the project, and Exhibit L–Revised, Sheets Nos. 7, 7A and 7B (FPC Nos. 2146–173, –174, and –175) now part of the license and which have been superseded, should be eliminated from the license for the project:

Exhibit L	FPC No.	Title, Coosa River development lock 3 dam
Revision No. 1, Sheet No. 7	2146–213	Plan and typical sections.
Revised, Sheet No. 7A	2146–214	Powerhouse transverse section.
Revised, Sheet No. 7B	2146–215	Powerhouse transverse section.

(3) Exhibit M (Revision No. 3) entitled "General description of mechanical, electrical and transmission equipment", filed as part of the application for amendment, conforms to the Commission's rules and regulations and should be approved as part of the license for the project, and Exhibit M (Revision No. 2) now part of the license and which has been superseded, should be eliminated from the license for the project.

(4) The following described revised Exhibit L drawings filed August 19, 1963, conform to the Commission's rules and regulations and should be approved as part of the license for the project, and Exhibit L drawings, Sheets Nos. 25A, 26A, 27A, 28A, and 29A (FPC Nos. 2146–129 through –133), now part of the license and which have been superseded, should be eliminated from the license for the project:

Exhibit L	FPC No.	Title, General design drawings—Coosa River development—Jordan Dam No. 2
Revised, Sheet No. 25A	2146–202	General plan.
Sheet No. 25B	2146–203	Typical sections through intake, tailrace and dike.
Revised, Sheet No. 26A	2146–207	General arrangement of powerhouse.
Revised, Sheet No. 27A	2146–208	Powerhouse section.
Revised, Sheet No. 28A	2146–209	Powerhouse-longitudinal section along center line units.
Revised, Sheet No. 29A	2146–210	Powerhouse plan at elevation 157.0.
Sheet No. 29B	2146–211	Powerhouse plan at elevation 139.5.
Sheet No. 29C	2146–212	Powerhouse plan at elevation 129.5.

The Commission orders:

(A) The license for Project No. 2146 is hereby further amended by adding thereto the following articles:

Article 50. The maximum normal water surface elevations for the Lock 3 development shall be at 505 feet from November 5 through April 15, and at 508 feet from May 1 through October 31 of each year, and the temporary lowering of the water surface elevation below these maximum normal water surface

elevations, in the interests of flood control and navigation, shall be in accordance with such reasonable rules and regulations as may be prescribed by the Secretary of the Army.

Article 51. The Licensee shall, within six months after the issuance of this order, submit to the Commission for approval, a proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

(B) The revised Exhibit L drawings described in finding (2) above are hereby approved as part of the license for Project No. 2146, and the Exhibit L drawings mentioned in the same finding as being superseded are hereby eliminated from the license for the project.

(C) The Exhibit M (Revision No. 3) described in finding (3) above is hereby approved as part of the license for Project No. 2146, and the Exhibit M (Revision No. 2) mentioned in the same finding as being superseded is hereby eliminated from the license for the project.

(D) The revised Exhibit L drawings described in finding (4) above are hereby approved as part of the license for Project No. 2146, and the Exhibit L drawings mentioned in the same finding as being superseded are hereby eliminated from the license for the project.

(E) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

GAFFNEY PIPELINE COMPANY, DOCKET NO. CP64-278

DECLARATION OF EXEMPTION

(Issued July 22, 1964)

On May 18, 1964, Gaffney Pipeline Company (Applicant) filed in Docket No. CP64-278 an application pursuant to Section 1(c) of the Natural Gas Act for exemption from the provisions thereof.

Upon the basis of the application filed, the exhibit appended thereto, and the files of the Commission, it appears that:

(1) Applicant, a wholly-owned subsidiary of United Cities Gas Company, is a South Carolina corporation duly authorized to do business in said State;

(2) Applicant operates 1.3 miles of 4-inch pipeline from a point on the main transmission line of Transcontinental Gas Pipe Line Corporation within the State of South Carolina to Gaffney, South Carolina;

(3) All natural gas received by Applicant from Transcontinental is transported and sold within the State of South Carolina and all of Applicant's related facilities are located within said State; and

(4) The State of South Carolina Public Service Commission has certified to the Federal Power Commission that it has and is exercising regulatory jurisdiction over the rates, services and facilities of Applicant.

Wherefore, the Commission declares, by reason of the foregoing: Gaffney Pipeline Company is exempt from the provisions of the Natural Gas Act and the orders, rules and regulations of the Commission issued thereunder.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

NORTHERN STATES POWER COMPANY, DOCKET NO. E-7168

SUPPLEMENTAL ORDER AUTHORIZING THE ISSUANCE OF PREFERRED STOCK

(Issued July 22, 1964)

By order issued July 9, 1964, *supra*, p. 85, in the above-entitled matter, the Commission authorized Northern States Power Company (Applicant) to issue and sell at competitive bidding 150,000 shares of Cumulative Preferred Stock, par value $100 per share, subject to the provisions, among others, set forth in Paragraph (B) of that order as follows:

(B) The proposed issuance and sale of Preferred Stock at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Preferred Stock and the dividend rate thereon.

Applicant, on July 22, 1964, filed an amendment, pursuant to the requirements of the aforementioned Commission order, in which it states, among other things, that it proposes to accept as representing the lowest annual cost of money to it, the bid of Eastman Dillon, Union Securities & Co., Harriman Ripley & Co., Incorporated, and Kidder, Peabody & Co. Incorporated to purchase the 150,000 shares of the proposed issuance of Preferred Stock for $100.19 per share, with a dividend rate of $4.56 per share.

The Commission finds:

(1) Applicant has satisfactorily complied with the requirements relative to the issuance and sale of Preferred Stock contained in Paragraph (B) of the Commission's order issued July 9, 1964, in the above-entitled docket; and under the bid it proposes to accept for the purchase of the proposed issuance of Preferred Stock, the price per share of Preferred Stock to be received by Applicant and the dividend rate to be paid thereon are reasonable.

(2) The proposed issuance and sale of Preferred Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The price per share of Preferred Stock to be received by Applicant and the dividend rate to be paid thereon by Applicant under the bid referred to above are approved as reasonable.

(B) The proposed issuance and sale of Preferred Stock referred above, upon the terms and conditions, and for the purposes specified in the application, as supplemented by the amendment referred to above, are authorized, subject only to the provisions of Paragraph (A) and of Paragraphs (C), (D) and (E) of the Commission's order issued July 9, 1964, in the above docket.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. G–14721

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 23, 1964)

On January 22, 1964, Cities Service Gas Company (Applicant) filed an application to amend the Commission's order issued October 6, 1958, in Docket No. G–14721 by authorizing Applicant to transport and deliver an additional 125,316 Mcf of natural gas annually, on a direct interruptible basis, to the City of Chanute, Kansas, for the use by the latter in its power plant, all as more fully set forth in the application to amend.

The order of October 6, 1958, 20 FPC 460, authorized Applicant, among other things, to acquire and operate certain facilities and to render direct interruptible natural gas service to the City of Chanute, among other industrial customers.

The herein proposed additional volumes will be used in two new dual fuel engine driven electric generating units to be added to Chanute's existing municipal power plant.

No additional facilities will be required for the proposed service since Applicant will make deliveries at the existing town border connection.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on June 25, 1964 (29 F.R. 8128). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued October 6, 1958, in Docket No. G–14721 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued October 6, 1958, in Docket No. G–14721 be and the same is hereby amended by authorizing Applicant to transport and deliver an additional 125,316 Mcf of natural gas annually, on a direct interruptible basis, to the City of Chanute, Kansas, for use by the latter in its power plant, all as hereinbefore described and as set forth in the application to amend.

(B) The certificate, as amended hereby, is granted on the express condition that the additional volume of gas authorized to be delivered herein shall be subject to any curtailment on interruption required to meet existing or future

contracted maximum delivery obligations of Cities Service for firm resale service to its customers.

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

THE MONTANA POWER COMPANY, PROJECT NOS. 5, 1473, 1869

ORDER DETERMINING NET CHANGE IN ACTUAL LEGITIMATE ORIGINAL PROJECT COST AND PRESCRIBING ACCOUNTING THEREFOR

(Issued July 23, 1964)

The Montana Power Company, Licensee for Project No. 5[1] (Kerr), 1473[2] (Flint Creek), and 1869[3] (Thompson Falls) from time to time filed statements, pursuant to Section 4.1 of the Commission's Regulations under the Federal Power Act, claiming for the periods indicated below the net increases in the actual legitimate original cost indicated:

Project No.	From—	To—	Claimed net increase
5	Jan. 1, 1941	Dec. 31, 1959	$10,060,382.24
1473	July 1, 1938	do	3,561.53
1869	Jan. 1, 1938	do	128,874.41

The claimed net increases in cost would result in claimed total actual legitimate original cost of the projects as of December 31, 1959 in the amounts shown below:

Project No.	Claimed actual legitimate original cost as of Dec. 31, 1959
5	$19,224,134.55
1473	389,237.48
1869	3,979,991.73

The Staff made an examination of licensee's books and records for the purpose of ascertaining the correctness of claimed and recorded net increases in project plant accounts for the periods indicated above. Following that examination, an agreement, subject to Commission approval, was reached between staff and representatives of the licensee with respect to certain proposed adjustments for the periods indicated above and in the amounts indicated on the attached Schedule I together with the accounting dispositions thereof also as indicated on that Schedule.

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[1] By order issued March 31, 1948 (7 FPC 528) the Commission determined the actual legitimate original cost of Project No. 5 (Kerr) as of December 31, 1940, to be $9,163,752.31.

[2] By order issued December 3, 1947 (6 FPC 1052) the Commission determined the actual legitimate original cost of Project No. 1473 (Flint Creek) as of July 1, 1938, to be $385,675.95.

[3] By order issued June 26, 1956 (15 FPC 1596) the Commission determined the actual legitimate original cost and accrued depreciation of Project No. 1869 (Thompson Falls) as of January 1, 1938, to be $3,851,117.32 and $503,571.83, respectively.

Based upon the proposed adjustments, staff recommends and Licensee concurs, that the Commission determine the net increases or changes in project costs, for the period indicated, to be in the amounts shown below together with the resulting actual legitimate original cost of the projects as of December 31, 1959:

Project No.	Period	Net increases	Original cost as of Dec. 31, 1959
5	Jan 1, 1941–Dec. 31, 1959	$9,187,838.77	$18,351,591.08
1473	July 1, 1938–Dec. 31, 1959	3,561.53	389,237.48
1869	Jan. 1, 1938–Dec. 31, 1959	139,250.67	3,990,367.99

These amounts are shown more fully in the attached Schedule II.

Staff analysis of Licensee's provisions for project depreciation as of December 31, 1959, has not been completed, and the staff proposes that the Commission defer for future consideration and determination the amount of accrued depreciation applicable to in-service project properties as of that date.

By letters dated April 12, April 25, and April 15, 1963, Licensee confirmed its agreement with respect to the proposed adjustments, accounting dispositions and resulting project costs.

By letter dated May 6, 1963, the Montana Board of Railroad Commissioners concurred in the proposed adjustments, accounting dispositions and resulting project costs.

The Commission finds:

(1) Licensee, by its tentative agreement to the proposed adjustments, including the accounting dispositions, and the resulting costs and its letters of April 12, 15, and 25, 1963, and the Montana Board of Railroad Commissioners by its letter of May 6, 1963 have obviated the necessity for notice and opportunity to protest provided in Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

(2) The adjustments described above including the accounting dispositions, as proposed by staff and agreed to by Licensee, are reasonable and appropriate for the purposes of the Federal Power Act, and therefore, should be approved and directed as hereinafter provided.

(3) The net increases or changes in the actual legitimate original costs of Project Nos. 5, 1473 and 1869, for the periods indicated below, are in the amounts as shown, together with the resulting actual legitimate original costs of the projects as of December 31, 1959:

Project No.	Period	Net increases	Original cost as of Dec. 31, 1959
5	Jan. 1, 1941–Dec. 31, 1959	$9,187,838.77	$18,351,591.08
1473	July 1, 1938–Dec. 31, 1959	3,561.53	389,237.48
1869	Jan. 1, 1938–Dec. 31, 1959	139,250.67	3,990,367.99

These amounts are more fully shown in the attached Schedule II classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(4) It is necessary and appropriate for the purposes of the Federal Power Act that the determination of the accrued depreciation applicable to in-service project properties of Project Nos. 5, 1473, and 1869 as of December 31, 1959 be reserved for future Commission consideration as hereinafter provided.

The Commission orders:

(A) The provisions of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments, including the accounting dispositions proposed by the Staff and agreed to by the Licensee, are hereby approved and directed to be made by the Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed project plant accounts showing: (1) for Project No. 5 the debit amount of $9,187,838.77 as the net increase or change in the project cost for the period from January 1, 1941 through December 31, 1959, and the total debit balance of $18,351,591.08 as the actual legitimate original cost of the project as of December 31, 1959; (2) for Project No. 1473 the debit amount of $3,561.53 as the net increase or change in the project cost for the period from July 1, 1938 through December 31, 1959, and the total debit balance of $389,237.48 as the actual legitimate original cost of the project as of December 31, 1959; and (3) for Project No. 1869 the debit amount of $139,250.67 as the net increase or change in the project cost for the period from January 1, 1938 through December 31, 1959, and the total debit balance of $3,990,367.99 as the actual legitimate original cost of the project as of December 31, 1959; all as more specifically shown in the attached Schedule II classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(D) The matter of Commission determination of the accrued depreciation applicable to in-service project properties of Project Nos. 5, 1473, and 1869 as of December 31, 1959, is hereby expressly reserved for future Commission consideration and decision.

(E) Licensee shall within 90 days from the issuance of this order, file with the Commission certified copies of Licensee's adjusting journal entry as of December 31, 1959 showing compliance with this order; three copies of that journal entry to be submitted to the Secretary, Federal Power Commission, Washington, D.C., 20426, and two copies thereof to be submitted to the Regional Accountant, Federal Power Commission, San Francisco, California, 94111.

SCHEDULE 1

THE MONTANA POWER COMPANY, LICENSEE

PROJECT NOS. 5, 1473, AND 1869—SUMMARY ACTUAL LEGITIMATE ORIGINAL COST

Project		Allowed cost		Net additions from date of allowed cost to Dec. 31, 1959			Allowed cost as of Dec. 31, 1959
Number	Name	Cost as of	Amount	Claimed	Net adjustment	Allowed	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
5	Kerr	Dec. 31, 1940	$916,375,231	$1,006,038,224	($87,254,347)	$918,783,877	$18,351,591
1473	Flint Creek	July 1, 1938	38,567,595	356,153	0	356,153	38,923,748
1869	Thompson Falls	Jan. 1, 1938	385,111,732	12,887,441	1,037,626	13,925,067	399,036,799
Total (memo only)			1,340,054,558	1,019,281,818	(86,216,721)	933,065,097	2,273,119,655

Accounting Disposition of Adjustments

Particulars	Project Nos.			Memo only, totals
	5	1473	1869	
(1)	(2)	(3)	(4)	(5)
Adjustment to claimed cost of project net changes	($87,254,347)	0	$1,037,626	($86,216,721)
Reconcile claimed cost to recorded cost	545,923		63,675	609,598
Adjustment to recorded cost	(86,708,424)	0	1,101,301	(85,607,123)
Accounting disposition:				
100.1 (101) electric plant in service nonproject	69,618,417		(64,762)	69,553,655
250.1 (108) accrued depreciation:				
Project	10,427,111		(756,539)	9,670,572
Nonproject	1,090,675			1,090,675
110 (121) nonutility property			(25,270)	(25,270)
271 (216) earned surplus	2,963,546		(254,730)	2,708,816
131 (154) materials and supplies	2,608,675			2,608,675

( ) Denotes credit.

SCHEDULE II

PROJECT NO. 5 (KERR) THE MONTANA POWER COMPANY

SUMMARY BY DETAILED PLANT ACCOUNTS OF ALLOWED PROJECT COST AS OF DEC. 31, 1940—CLAIMED CHANGES FOR THE PERIOD FROM JAN. 1, 1941 THROUGH DEC. 31, 1959 WITH ADJUSTMENTS THERETO AND BALANCE ALLOWED AS OF DEC. 31, 1959

Account No.	Account Title	Allowed cost as of Dec. 31, 1940 [1]	Changes from Jan. 1, 1941 through Dec. 31, 1959			Allowed original cost as of Dec. 31, 1959
			As claimed	Adjustments	As adjusted	
	Intangible plant:					
301	Organization	$917.75				$917.75
303	Miscellaneous intangible plant	46,130.52				46,130.52
	Total intangible plant	47,048.27				47,048.27
	Hydraulic production plant:					
330	Land and land rights	334,867.69	402,734.18	(402,661.24)	72.94	334,940.63
331	Structures and improvements	1,067,193.97	1,808,951.87	(85,510.53)	1,723,441.34	2,810,635.31
332	Reservoirs, dams, and waterways	4,558,454.83	2,168,416.01	(29,859.99)	2,138,556.02	6,697,010.85
333	Water wheels, turbines, and generators	1,141,643.51	3,886,411.58	(20,715.02)	3,865,696.56	5,007,340.07
334	Accessory electric equipment	128,384.68	117,360.32	(7.81)	117,352.51	245,737.19
335	Miscellaneous power plant equipment	118,359.19	25,450.51	19,107.01	44,557.52	162,916.71
336	Roads, railroads, and bridges	179,249.74	165,974.06	(34,509.50)	131,464.56	310,714.30
	Total hydraulic production plant	7,548,153.61	8,575,298.53	(554,157.08)	8,021,141.45	15,569,295.06
	Transmission plant:					
340	Land and land rights	100,162.68	32,640.22		32,640.22	132,802.90
341	Clearing land and rights-of-way	54,236.57	63,697.22	(3,346.10)	60,351.12	114,587.69
342	Structures and improvements	66,927.55	(2,204.48)	(4,582.79)	(6,787.27)	60,140.28
343	Station equipment	378,217.65	810,425.06	(296,056.51)	514,368.55	892,586.20
344	Towers and fixtures		343.48	(343.48)		
345	Poles and fixtures	266,658.80	187,310.90	343.48	187,654.38	454,313.18
346	Overhead conductors and devices	680,541.46	349,675.53		349,675.53	1,030,216.99
349	Roads and trails	5,468.41	1,326.79		1,326.79	6,795.20
	Total transmission plant	1,552,213.12	1,443,214.72	(303,985.40)	1,139,229.32	2,691,442.44
	General plant:					
371	Structures and improvements		2,091.71		2,091.71	2,091.71
373	Transportation equipment	1,524.11	(1,524.11)		(1,524.11)	
378	Communication equipment	14,813.20	41,076.39	(6,522.06)	34,554.33	49,367.53
379	Miscellaneous equipment		225.00		225.00	225.00
	Total general plant	16,337.31	41,868.99	(6,522.06)	35,346.93	51,684.24
100.1	Total electric plant in service	9,163,752.31	10,060,382.24	(864,664.54)	9,195,717.70	18,359,470.01
265.2	Contributions in aid of construction, Federal			(7,878.93)	(7,878.93)	(7,878.93)
	Actual legitimate original cost	9,163,752.31	10,060,382.24	(872,543.47)	9,187,838.77	18,351,591.08

[1] By Commission order issued Mar. 31, 1948 (7 FPC 528).
( ) Denotes credit.

NOTE.—Account references are to account numbers and titles prescribed in the Commission's Uniform System of Accounts for Public Utilities and Licensees, effective prior to Jan. 1, 1961.

SCHEDULE II—Continued

No.	Account—(FLINT CREEK) Title	Allowed cost as of July 1, 1938 [1]	Changes from July 1, 1938 through Dec. 31, 1959			Allowed original cost as of Dec. 31, 1959
			As claimed	Adjustments	As adjusted	
	Hydraulic production plant					
320	Land and land rights	$36,425.51				$36,425.51
321	Structures and improvements	30,925.68	($1,859.72)		($1,859.72)	29,065.96
322	Reservoirs, dams, and waterways	253,049.51	3,702.31		3,702.31	256,751.82
323	Water wheels, turbines, and generators	38,819.45				38,819.45
324	Accessory electric equipment	12,749.66				12,749.66
325	Miscellaneous power plant equipment	1,866.12				1,866.12
326	Roads, railroads, and bridges	1,545.00				1,545.00
	Total hydraulic production plant	370,380.93	1,842.59		1,842.59	372,223.52
	Transmission plant					
343	Station equipment	15,295.02	1,718.94		1,718.94	17,013.96
	Total cost of project	385,675.95	3,561.53		3,561.53	389,237.48

[1] By Commission order issued Dec. 3, 1947 (6 FPC 1052).
( ) Denotes credit.

No.	Account—(THOMPSON FALLS) Title	Allowed cost as of Jan. 1, 1938 [1]	Changes from Jan. 1, 1938 through Dec. 31, 1959			Allowed original cost as of Dec. 31, 1959
			As claimed	Adjustments	As adjusted	
	Hydraulic production plant					
320	Land and land rights	$646,812.90	($1,588.16)	$2,800.00	$1,211.84	$648,024.74
321	Structures and improvements	574,759.06	386.91		386.91	575,145.97
322	Reservoirs, dams, and waterways	1,317,812.70	(10,845.67)		(10,845.67)	1,306,967.03
323	Water wheels, turbines, and generators	956,122.92	(984.59)		(984.59)	955,138.33
324	Accessory electric equipment	138,251.44	15,479.48		15,479.48	153,730.92
325	Miscellaneous power plant equipment	5,339.30	8,408.69		8,408.69	13,747.99
326	Roads, railroads, and bridges	6,164.95				6,164.95
	Total hydraulic production plant	3,645,263.27	10,856.66	2,800.00	13,656.66	3,658,919.93
	Transmission plant					
343	Station equipment	[illegible],369.98	108,661.41	8,213.01	116,874.42	321,244.40
	General plant					
378	Communication equipment	1,484.07	9,356.34	(636.75)	8,719.59	10,203.66
	Total cost of project	3,851,117.32	128,874.41	10,376.26	139,250.67	3,990,367.99

[1] By Commission order issued June 26, 1956 (15 FPC 1596).
( ) Denotes credit.

OPINION NO. 437

THE SUPERIOR OIL COMPANY, DOCKET NO. G-6067

OPINION AND ORDER GRANTING MOTION FOR MODIFICATION OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 23, 1964)*

Syllabus

1. Viewing substitution of new acreage in place of that previously certificated as new sale, Commission *holds* it can and must determine initial price conditions required by public convenience and necessity as of date of such substitution. P. 242.
2. Substitution of new acreage, dedicating new reserves to interstate commerce and removing therefrom other reserves previously dedicated, is not mere amendment to contract and certificate carrying with it the price applicable to formerly dedicated acreage. P. 243.
3. *Graridge* is not in point--it involved substitution of different seller with no other change in contract; present case involves change in source of supply. P. 243.
4. Instant case is more nearly analagous to *Hassie Hunt Trust* where Commission held that substitution of new seller and new source of supply constituted new contract rather than mere amendment of old one. P. 243.
5. Fact that in 1958 Superior was allowed an amendment to its certificate similar to that sought here is not persuasive—such amendment was granted without hearing and without objection; such precedents are of little weight where apparently question was not adequately raised and considered. P. 243.
6. On basis of *Union Texas* and evidence here, Commission *finds* in-line price from date of execution of new contract [for substituted acreage] to January 1, 1963, is 18.5 cents per Mcf. P. 243.
7. Commission *rejects* contention that premium should be allowed over and above in-line price for delivery of gas onshore rather than at offshore platform--absent unusual circumstances in-line price will be applied at point of delivery negotiated at arm's-length between parties. P. 243.
8. Fact that producer must transport gas to pipeline in order to make a sale does not justify higher price in an in-line proceeding. P. 243.
9. It is proper that Superior's certificate include same conditions as to moratorium on price increases as are incorporated in producer's certificate in *Union Texas*. Pp. 243, 244.
10. In proceeding under Section 7 of the Natural Gas Act, Commission *modifies* prior certificate order to provide for substitution of reserves.

H. W. Varner and *W. T. Kilbourne, III* for Superior Oil Company.

Charles V. Shannon for American Louisiana Pipe Line Company.

Kent H. Brown and *Morton L. Simons* for Public Service Commission of the State of New York.

David Lichtenstein for the Staff of the Federal Power Commission.

*Initial decision appears on p. 245. Order issued October 8, 1964 denying reconsideration, 32 FPC 951.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

BLACK, *Commissioner:*

The present case arises from a motion to modify a certificate of public convenience and necessity, issued pursuant to Section 7(c) of the Natural Gas Act, by substituting new acreage in place of that previously certificated.

The principal issue before us in this proceeding is whether the Commission should treat such substitutions of new acreage as mere modifications of existing contracts, leaving prices and all other terms and conditions of the contracts as originally established, or whether such a substitution creates a new and different contract of sale, which must be passed upon and conditioned as though it were presented to us for the first time for certification. For the reasons hereinafter discussed, it is our view that such substitutions are to be treated, in all essential attributes, as new sales. We therefore hold that the Commission can and must determine the initial price and other conditions required by the public convenience and necessity as of the date of such substitution in the same manner and under the same conditions as would apply if the parties had themselves treated this as a new sale.

By contract of July 17, 1963, Superior Oil Company (Superior) sold 1⅛ trillion cubic feet of natural gas to American Louisiana Pipe Line Company (Am-La) from acreage in southern Louisiana and the adjacent offshore area. The original contract dedicated five blocks of acreage to this sale, two in southern Louisiana and three offshore thereof. It was certificated by order of this Commission on May 9, 1955, 14 FPC 1246 at the original contract price of 20 cents per Mcf. Subsequently, the contract and certificate were amended to substitute two blocks of offshore acreage for the three offshore blocks previously dedicated. On May 6, 1963, Superior filed a motion to further amend the certificate by substituting a new block of undedicated offshore acreage for the two offshore blocks presently certificated.

After hearing, the presiding examiner permitted the substitution of the new acreage, conditioned upon an initial price of 19.0 cents per Mcf, but left open for our consideration whether a moratorium should be imposed upon price increases pending the determination of an area rate. The matter is now before us on exceptions by Superior and Am-La, who contend that the contract price of 20.0 cents per Mcf should be left undisturbed, and also on exceptions by the Commission staff and the intervener, Public Service Commission of the State of New York (PSC), who contend that the proper initial price is 18.5 cents per Mcf.

It appears from the record that the substitution of the new acreage would be to the benefit of all concerned, including the ultimate consumer and no one has opposed the substitution. We are concerned solely with the initial price and other conditions on which the substitution will be certificated.

Superior and Am-La urge that the contract price of 20 cents per Mcf should apply, as this is merely an amendment to an existing certificate. They point out that no terms of the contract would be changed except for the substitution of the new acreage; the parties would be the same; price, point of delivery, and all other terms would remain unchanged; and much of the acreage now dedicated would remain subject to the contract and certificate. They cite the prior action of the Commission in 1958 in allowing a similar amendment to this very certificate without a hearing and without any redetermination of price, and they cite our recent decision in *Graridge Corporation*, Opinion No. 408, 30 FPC 1156, as further authority for allowing the contract price to stand unchanged.

We think the substitution of new acreage, dedicating new reserves to interstate commerce and removing from interstate commerce other reserves which were previously dedicated, is not a mere amendment to the contract and certificate which should carry with it the price applicable to the formerly dedicated acreage. *Graridge Corporation, supra*, is not in point; that case involved the substitution of a different seller, with no other change in the contract, while the present case involves a change in the source of supply. The present case is more nearly analogous to *Hassie Hunt Trust (Operator), et al.*, Opinion No. 412, 30 FPC 1438, in which we held that the substitution of a new seller and a new source of supply constituted a new contract rather than the mere amendment of an old one. We there determined that the old contract price would not be carried over where new acreage was substituted by a new party, and we determined a new price applicable to the new certification. We think the same principle applies here.

The fact that in 1958 the Commission allowed Superior an amendment to its certificate similar to that sought here is not persuasive. The 1958 amendment was granted without a hearing and without objection. Such precedents are of little weight where, as here, it does not appear that the question was ever adequately raised and considered by the Commission.

Under these circumstances, we must proceed to determine the initial price upon which this certificate will be issued as though this were a new application based upon a contract dated April 1, 1963, the date of agreement between Superior and Am-La to substitute the new acreage for the old. *Hassie Hunt Trust (Operator), et al., supra.* No evidence was presented as to the in-line price for offshore Louisiana in 1963; there was incorporated by reference the evidence as to prices in 1962 and earlier. On the basis of that evidence we have found the in-line price up until January 1, 1963, to be 18.5 cents per Mcf. *Union Texas Petroleum, et al.*, Opinion No. 436, this date, *infra*, p. 254. As we have said in that case, an in-line price, once established, is presumed to continue until substantial evidence is presented that it has changed. There is no such evidence in the record before us. For the purposes of this case, therefore, an in-line price of 18.5 cents per Mcf will be recognized as extending through April 1, 1963.

Superior and Am-La have contended that a premium should be allowed over and above the in-line price by reason of the delivery of the gas onshore, rather than at the offshore platform. This contention must be rejected. Except in unusual circumstances, we shall apply the in-line price to the point of delivery negotiated at arm's-length between the parties. There may be many reasons for differences in delivery points. It is not appropriate to convert a Section 7 in-line price proceeding to a determination of the cost of transportation. An area in-line price is applicable to sales of gas by a producer throughout the area. The presiding examiner was correct in holding that the costs incurred in making onshore delivery need not be considered in the determination of the proper in-line price applicable to these sales. *California Oil Co.* v. *F.P.C.*, 315 F. 2d 652 (CA10, 1963). The fact that it is necessary for a producer to transport its gas to a pipeline in order to make a sale does not justify a higher price for the gas in an in-line proceeding, *Hassie Hunt Trust (Operator), et al., supra; Amerada Petroleum Corporation*, Opinion No. 422, modification denied Opinion No. 422–A, 31 FPC 623 and 1315, respectively.

The question of whether a moratorium on price increases should be included as a condition in Superior's certificate was raised by the presiding examiner and left for determination by the Commission. We think it proper that the

same conditions be incorporated in Superior's certificate as are incorporated in the producers' certificates in the area in-line price proceeding, *Union Texas Petroleum, et al., supra.*

The contract amendments underlying Superior's present motion contained a condition that the substitution of acreage should be void unless this Commission acted upon the proposed modification of the certificate by June 1, 1964. The modified certificate will be conditioned, therefore, upon the filing of an agreement between Superior and Am-La extending the time for the Commission to act until the effective date of this order.

The Commission finds:

(1) Superior Oil Company is engaged in the sale of natural gas in interstate commerce for ultimate public consumption and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sales of natural gas hereinbefore described are to be made in interstate commerce, subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Subject to the requirements of our order herein and the conditions attached to the certificates herein issued, Superior Oil Company is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sales of natural gas by Superior Oil Company, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are and have been required by the public convenience and necessity, and an amended certificate therefor should be issued as hereinafter ordered and conditioned.

(5) The conditions attached to the amended certificate herein issued are required by the public convenience and necessity.

(6) Except as herein granted, the exceptions to the presiding examiner's decision should be denied.

The Commission orders:

(A) The motion of Superior Oil Company to modify its certificate of public convenience and necessity is granted upon the terms and conditions of this order.

(B) The modified certificate is hereby conditioned to prohibit any total initial price, including all reimbursements and charges, greater than 18.5 cents per Mcf at 15.025 psia for any natural gas originating in the Vermilion Area Block 14 Field from the date of issuance of this order and until such price may be lawfully changed in the manner provided for in the Natural Gas Act.

(C) Within 30 days from the date of issuance of this order, Superior Oil Company shall file a supplement to its presently filed rate schedule reflecting the conditioned price as the initial price for gas originating in the Vermilion Area Block 14 Field in lieu of the initial price provided in its contract: provided that the notice provisions of Section 154.94(b) and the detailed submittal provisions of Section 154.94(f) of the Commission's Regulations Under the Natural Gas Act are waived insofar as they apply to the reduction in rate hereby ordered.

(D) The certificate as modified shall contain the express condition that the allowance of the take-or-pay-for provision in the contract in question is subject, so far as natural gas originating in the Vermilion Area Block 14 Field is concerned, to our ultimate disposition with respect to such provisions in the rule-

making proceeding in Docket No. R–199. Upon the establishment, by regulation or policy statement, of a general policy governing such provision in producer contracts, Superior Oil Company shall within 30 days file an amended rate schedule in conformity therewith, acceptable to the Commission. Superior Oil Company shall not be required to file take-or-pay provisions for less than 80 percent of the annual contract quantity. Any changes or modifications to be made in accordance with this paragraph shall be prospective only.

(E) The certificate as modified is further conditioned to provide for a moratorium on the filing of all price increases in excess of 23.55 cents per Mcf at 15.025 psia with respect to natural gas originating in the Vermilion Area Block 14 Field, pending the issuance of a final decision in the Area Rate Proceeding in Docket No. AR61–2, *et al.*, or until July 1, 1967, whichever is earlier.

(F) The certificate as modified shall be conditioned upon Superior Oil Company filing with this Commission, within 30 days of the issuance of this order, an amendment to its agreement with American Louisiana Pipe Line Company providing that the agreement between the two companies for the proposed substitution shall be valid if the Commission shall approve the requested modification of the certificate by the effective date of this order.

(G) The certificate herein issued is not transferable and shall be effective only as long as Superior Oil Company continues the acts and operations hereby authorized in accordance with the provision of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(H) The grant of the certificate herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 of the Regulations thereunder. Such grant is without prejudice to any findings or order which have been or may hereafter be made by the Commission in any proceeding now pending or may hereafter be instituted by or against Superior Oil Company. Further, the action in this proceeding shall not foreclose nor prejudice any further proceedings or objections by the Commission relating to the operation of any price or related provisions in gas purchase contracts here involved.

(I) Except as herein granted, the exceptions to the presiding examiner's decision are hereby denied.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON MOTION TO MODIFY CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY BY SUBSTITUTING RESERVES

(Issued January 15, 1964)

LEVY, *Presiding Examiner:* This proceeding is based upon a motion by the Superior Oil Company (Superior) filed May 6, 1963, for modification of a certificate of public convenience and necessity to substitute undedicated offshore acreage for other unconnected offshore acreage presently dedicated to the purchaser, American Louisiana Pipe Line Company (American) under the terms of a contract dated July 17, 1953, as amended. The original certificate, issued in the above-captioned docket on May 9, 1955, 14 FPC 1246 approved without condition the initial contract price of 20¢ per Mcf, exclusive of tax reimbursement.

On September 18, 1963, the Commission issued an order setting this matter for hearing " * * * to determine whether the proposed amendment authorizing sales from the new acreage should be granted at a rate higher than the existing ceiling price of 19.5¢ per Mcf." The Public Service Commission of New York (PSC) was permitted intervention by order dated October 15, 1963. Hearing was held on October 16 and October 23, 1963. Initial briefs were filed by Superior, American, PSC, and Staff. Reply briefs by Superior and American were filed December 16, 1963.

Background of the Proceeding

The original contract of sale between Superior and American dated July 17, 1953 provided for the sale of 1⅛ trillion cubic feet of gas from some eight separate leases of Superior in five separate fields; Deep Lake, Constance Bayou, Block 149 West Cameron, Block 71 and Block 76, Vermilion Area. Deep Lake and Constance Bayou are onshore in Cameron Parish, Louisiana, and subject to the taxing authority of the state of Louisiana. The latter three fields are offshore.[1]

The 1953 contract provided for the sale and delivery at a central point onshore (now fixed as the tailgate of Superior's Lowry extraction plant) of 1⅛ trillion cubic feet of gas to be produced from Superior's leases in any of the five specified fields. American agreed to pay an initial price of 20¢ per Mcf of gas delivered to its mainline, plus 1.5¢ per Mcf reimbursement of the Louisiana severance tax. The contract permits a 2.5¢ escalation at the end of each five-year period. Deliveries commenced in August 1956 from "onshore" acreage, but Superior has not sought the 2.5¢ escalation permitted by the contract since August 15, 1961. To date all deliveries have been made from the onshore fields.[2]

The daily contract quantity is fixed under the contract on the basis of one million cubic feet of daily contract delivery volume for each eight billion cubic feet of the recoverable reserves, or a daily contract quantity of 166,667 Mcf per day at 15.025 psia. American may take up to 125% of this amount (208,000 Mcf) or as little as 75%, on any day (Item B, p. 12, Tr. 48–49). Following the completion of American's pipeline in August 1956, Superior commenced delivery from the "onshore" Constance Bayou and Deep Lake Fields via a 27-mile pipeline from those fields to a point of connection with American's mainline at Lowry, Louisiana. Superior is authorized to process all gas prior to delivery. Its processing plant at Lowry also handles gas from a number of other fields but the major volumes processed are those dedicated to American from the present "onshore" fields.

On April 15, 1958, Superior and American agreed that Superior's acreage in the then undedicated "offshore" Block 71 Field, West Cameron Area be substituted for the then dedicated acreage in the "offshore" Block 71 and 76 Vermilion Area. Superior's motion on July 2, 1958, to modify the certificate so as to authorize the substitution, was justified on the ground that it would permit the construction of a single pipeline to connect the offshore gas reserve to the onshore point of delivery without reducing the amount of gas available. Otherwise, two separate pipelines would have to be laid from the offshore fields to the same central onshore delivery point. Superior's motion was granted without condition in the absence of protest or objection, by order of the Commission dated August 29, 1958.[3] The Commission's order recited in pertinent part:

> The proposed substitution will eliminate the necessity for Superior to construct about 49.5 miles of pipeline, largely offshore, to the deleted acre-

[1] The terms "onshore" and "offshore" are used in this initial decision solely with reference to the taxing authority of the state of Louisiana, "onshore" being used to cover lands deemed within such authority, and "offshore" being used to cover lands in the Federal Domain not subject to state taxing authority.

[2] 400 billion cubic feet had been produced by July 1, 1963 (Tr. 206–7). Reserves were estimated originally at 1,012 billion cubic feet of recoverable gas.

[3] The released acreage (Vermilion Blocks 71 and 76 Fields) was certified by the Commission on August 10, 1959, 22 FPC 369, for sale at 21.4¢ to Transcontinental Gas Pipe Line Corp. (Docket No. G–16380) without rate condition. After remand, the initial price for this sale was conditioned to 18½¢ per Mcf by the Commission's opinion in *Placid Oil Co.* No. 398, issued July 17, 1963, 30 FPC 283 and 682, now pending on review in the U.S. Ct. of Appeals.

age. The tract proposed to be added will be crossed by a proposed 52 mile line, also largely offshore, to another dedicated tract * * * *The Commission orders:* (a) the Order of the Commission issued on May 9, 1955, in Docket G–6067, granting a certificate of public convenience and necessity to The Superior Oil Company, be and the same here is amended so as to substitute one heretofore undedicated tract of about 22,500 acres, known as Block 7 Field, West Cameron Area, Louisiana, for two presently dedicated tracts aggregating about 9,500 acres known as offshore Block 71 and 76, Vermilion Area, Louisiana * * *

The Present Proposal

On April 1, 1963, Superior and American amended their contract to eliminate Superior's offshore reserves in the West Cameron Area Blocks 71 added in 1958, and 149 (37,500 acres), and to substitute uncommitted acreage in the offshore Vermilion Area Block 14 Field (4,490 acres). The proposed substitution was supported by the testimony of Superior's witness Norman and American's witnesses Ogier and Thompson. They testified that Superior's onshore gas reserves are now depleted to the point where such fields can no longer provide the full volumes to which American is contractually entitled (208,000 Mcf per day) which American requires particularly during winter months. Moreover, Superior is presently suffering a drainage loss in Block 14 Field by reason of the fact that other producers (Union Oil Company of California and Pan American Petroleum Corporation) are selling gas at the platform, from adjacent leases in that field, to Trunkline Gas Company at 22¢ per Mcf. The Block 14 Field is closer to the shore (33 miles) than the Block 149 and 71 Fields (52 miles) and has greater recoverable reserves, approximately 500 billion cubic feet v. 300 billion cubic feet. Accordingly, these witnesses testified that the proposed substitution will permit a saving in offshore pipeline costs of approximately 1.44 million dollars, and reduce the unit gathering cost from 4.77¢ per Mcf to 1.9¢ per Mcf. The total cost of connecting existing offshore reserves (including the cost of production facilities) is alleged to be 5.895¢ per Mcf, as against a total cost of 2.468¢ per Mcf to connect Block 14 reserves. The greater Block 14 reserves will improve Superior's deliverability and insure takes up to 125% of the daily contract quantity when required, although the total contract volume will still be limited to 1½ trillion cubic feet. Moreover, American will get the offshore Block 14 Field gas in the Federal Domain without having to pay Superior 1.5¢ per Mcf as tax reimbursement for onshore gas which American is obligated to do under the contract, a net decrease in American's purchase gas costs of 1.5¢ per Mcf.

The Position of the Parties

Superior contends that its motion to substitute the proposed offshore acreage without condition should be approved as required by the public convenience and necessity because of the many benefits to Superior, American, and the consumer. These include a reduction in gathering cost ($1.44 million) to Superior, a reduction in purchase gas cost (1.5¢ per Mcf) to American, improved deliverability by reason of the greater Block 14 reserves, and alleviation of Block 14 drainage. Superior emphasizes that, other than the proposed substitution of offshore reserves, its 1953 contract with American remains the same in all respects. If the substitution is denied, it could, without further Commission authorization, connect presently dedicated Block 149 and 71 offshore Fields and collect the 20¢ per Mcf contract price previously certified at greater cost to itself, American, and the consumer.

Superior's position is supported by American which argues additionally that the proposed substitution under the 1953 contract does not represent a new sale. Consequently, the 20¢ price per Mcf is not subject to the "in line" test applicable to new sales. In any event, even if the "in line" price is applicable, the deliveries here will be made at American's mainline rather than the offshore platform. The 20¢ price is allegedly justified by reason of the contract provision for onshore mainline delivery by the producer to the pipeline without an additional charge for gathering and transportation.

Staff and PSC do not oppose the proposed substitution of reserves. They argue, however, that the 20¢ per Mcf contract price is 1.5¢ higher than the 18.5¢ level previously determined to be in line for southern Louisiana. Consequently, they urge that the substitution be conditioned at 18.5¢ per Mcf for deliveries from Block 14. Both reject the view that Superior should be allowed any additional increment above 18.5¢ for alleged special features or services not found in the contracts used to establish the in line price. The sole issue presented, therefore, is the price at which the proposed substitution should be authorized.

Discussion

1. All parties agree that the proposed substitution of reserves is in the public interest and should be approved. The alternatives presented, however, restrict the Commission to the 20¢ contract price or the alleged 18.5¢ in line price. Superior and American cite the Commission's recent decision in *Graridge Corporation*,[4] Op. No. 408, Docket No. G–19246 *et al.*, 30 FPC 1156, decided October 31, 1963, for the proposition that the previously certified 20¢ contract price should not be reviewed in this proceeding and that the imposition of any price condition would inhibit the proposed substitution to the detriment of Superior, American, and its customers. A rule applicable to changes in title, however, does not necessarily apply to changes in reserves. A change of ownership where the same sale from the same acreage at the same terms is being made to the same purchaser has no impact on the price levels at which gas is being produced and sold. An authorization to sell from new acreage with reserves substantially in excess of presently dedicated offshore acreage at a price in excess of the 19.5¢ guideline, as well as the 18.5¢ in line, price may have a serious upward impact on the weighted average price at which gas is being sold in southern Louisiana. The distinction, therefore, between a succession-in-interest[5] and a substitution of acreage with greater reserves and greater deliverability is one of substance which renders the rationale of the Graridge decision inapplicable to proposed substitutions of reserves in above ceiling certifications where the reserves substituted exceed in quantity or quality the dedicated acreage which is to be released.

The Commission, as it noted recently in *Tennessee Gas Transmission Co.*, Docket No. CP61–106, Op. No. 413, 30 FPC 1477, issued December 12, 1963. "* * * has an obligation to scrutinize with great care the intial cost of a new gas supply before permitting it to be attached to an interstate pipeline for transportation and sale under the Act" (p. 1480). This applies to the substitution of reserves under old contracts as well as initial prices under new contracts. The proposed substitution of Block 14 gas for sale to American represents in substance a new jurisdictional gas supply.

[4] Where, in an application by the successors-in-interest, the Commission held that prices in previously received final, permanent certificates were not subject to review and reduction because of a transfer of title to the gas producing properties.

[5] An additional distinction lies in the fact that a substitution of acreage requires the agreement of the parties. A change in title may be made *ex parte*, or take place by operation of law.

Nor is the Commission disabled from conditioning the price at which the new Block 14 gas may now be sold to American because the initial 1953 contract price of 20¢ was certified in 1955. Concededly, the Commission's power to condition a certificate is co-extensive with its power to reject or deny the certificate. Similarly, its power to condition the price at which the proposed substitution may be made is as broad as its power to reject or deny the substitution of reserves. The power to condition the certificate includes the power to condition the substitution. All that is required is that the substitution, and the conditions under which it may be authorized, be justified by the public interest, convenience and necessity.

Moreover, the argument that this is not a new sale but a modification of an old contract which precludes examination of the 20¢ contract price misses the point that the substitution agreement of April 1, 1963 is a new agreement in respect of Block 14 reserves. The fact that the old contract is ratified as to all other terms and conditions does not change the fact that the initial price for the sale of Block 14 gas to American was negotiated on April 1, 1963. As noted by the Commission in *Hassie Hunt Trust, et al.*, Op. No. 412, 30 FPC 1438 at 1443–1444, issued December 9, 1963:

> The Commission's decision in *CATCO* holds that "in-lineness" is to be decided as of the time the contracts were made since "it was then the parties agreed on a price." In the four sales here under discussion it appears that on February 15, 1961, new parties agreed to sell gas from a new field under terms of an earlier contract with a different party. It would seem clear that the "meeting of the minds" for the sale of this particular gas took place in February 1961, and the fact that the parties chose to make the sale by ratifying an earlier contract of another party cannot make the agreement retroactive to the earlier contract date or erase events which occurred between May 15, 1959, and February 15, 1961, and which may have led to the decision to use the earlier, high priced contract.

2. The proposed 20¢ rate for sales from the new offshore Block 14 acreage exceeds the current 19.5¢ ceiling price for southern Louisiana sales referred to in the Commission Order in this proceeding of September 18, 1963. It is not in line with other properly [6] certificated rates in the area. Consequently, it cannot be used as a point of reference in determining the public interest price level for the proposed substitution. Staff and PSC maintain that Superior should not be allowed to charge more than 18.5¢ per Mcf for sales from the substituted acreage. The Examiner concludes that the substitution should be authorized at 19¢ for the reasons and subject to the further conditions hereinafter specified.

Staff and PSC rely on the 18.5¢ in line price as determined for this area in the *CATCO*, *United* and *Placid* cases [7] for contracts entered into prior to the Commission's Fourth Amendment to the Statement of General Policy No. 61–1, issued

[6] By this we mean certificates issued in compliance with the principles laid down by the Supreme Court in *CATCO*, 360 U.S. 378, and followed in subsequent cases: *United Gas Improvement Co.* v. *F.P.C.*, 287 F. 2d 159 (CA 10); *United Gas Improvement Co.* v. *F.P.C.*, 283 F. 2d 817 (CA 9), certiorari denied *sub nom. Superior Oil Co.* v. *United Gas Improvement Co.*, 365 U.S. 881; *P.S.C. of New York* v. *F.P.C.*, 287 F. 2d 146 (CADC), certiorari denied *sub nom. Hope Natural Gas Co.* v. *P.S.C. of New York*, 365 U.S. 880, and *Shell Oil Co.* v. *P.S.C. of New York*, 365 U.S. 882; *United Gas Improvement Co.* v. *F.P.C.*, 290 F. 2d 133 (CA 5), certiorari denied *sub nom. Sun Oil Co.* v. *United Gas Improvement Co.*, 368 U.S. 823; *United Gas Improvement Co.* v. *F.P.C.*, 290 F. 2d 147 (CA 5), certiorari denied *sub nom. Superior Oil Co.* v. *United Gas Improvement Co.*, 366 U.S. 965.

[7] *CATCO* (27 FPC 96), *United*, Op. 399, 30 FPC 329, July 17, 1963, *Placid Oil Co.* Op. 398, 30 FPC 283, July 17, 1963.

on October 31, 1961, 26 FPC 661, when it reduced the area price ceiling from 21.25¢ to 19.5¢ per Mcf for initial offshore sales in southern Louisiana not subject to the state tax.

They argue that the 18.5¢ in line price for the period 1954 through 1962[8] should be maintained intact for all subsequent sales without modification or adjustment short of a rate proceeding for so-called premium features, special benefits, or any other reason. Staff concludes that (Staff br. p. 44):

> We submit that there is no other way to effectively hold the line except by adhering to the price of 18.5¢ for Southern Louisiana with an allowance only for a state tax. Any other way would open up a Pandora's box and throw the Commission back to the pre-Catco despair of evaluating a host of premiums (or allegedly unique services) made available to the pipeline versus benefits derived by the producer (liquid extractions, etc.).

PSC states (PSC br. p. 7):

> To the extent the sale has premium features which together with other relevant factors may justify a contract price in excess of the in-line level, this matter may be considered in a subsequent rate case, since the producer remains free to file for his contract level and to collect the higher price, subject to refund, pending the outcome of the rate case. Such a procedure is eminently fair to the producer, and it avoids turning the certificate case into an evidentiary jungle.

Whatever the merits of this argument, it was considered and rejected by the Commission in *Medina Gathering Corporation*[9], Opinion No. 397, 30 FPC 227, issued July 16, 1963, where the Commission determined that the alleged premium features must be evaluated "at the stage of certification" rather than deferred for consideration in a rate proceeding under Section 4 of the Act.

In *CATCO*, *United* and *Placid*, cited *supra*, where the 18.5¢ in line price for southern Louisiana was established, the sale and delivery were made to the pipeline at the offshore platforms. The 18.5¢ in line price was a well-head price. The contract between Superior and American, however, provides that deliveries will be made onshore at American's mainline. Thus, argue Superior and American, while the 18.5¢ per Mcf may be the appropriate in line price for deliveries at the offshore platforms, it is not in line where the producer is obligated to gather and transport the gas from the offshore platforms to the pipeline's mainline onshore. Under the proposed substitution Superior will install a 33-mile 20-inch line from offshore Block 14 to a point of connection with its Constance Bayou line 15 miles south of Lowry (Tr. 53, 100, 117, exhibit 2). American maintains that there has been a 1.75¢ per Mcf differential in contract price where the pipeline rather than the producer agreed to gather the gas in the field and transport it to its main transmission line, 20¢ per Mcf for gas delivered to the

[8] The initial decision of the Hearing Examiner in *Southern Natural Gas Co.*, issued October 24, 1963, 31 FPC 801, finds that the proper price line in the southern Louisiana area in June 1962 was 18.5¢ per Mcf, without tax reimbursement. An additional 1¢ was allowed for the premium features in the contracts, volume of gas supply, ten year make-up provision, slow build-up in contract quantities, and onshore delivery to Southern.

[9] The Commission stated in pertinent part:

> * * * The Examiner was of the view that it was unnecessary to resolve this and other questions surrounding the alleged premium feature since the claim could more appropriately be raised in defense of the justness and reasonableness of any increased rate that the producers might file. *We believe, however, that a consistent application of the "in line" comparison requires that we give consideration at the stage of certification to any additional feature of the proposed sale which is of objectively measurable value.* [Opinion No. 397, 30 FPC 227 at 232; italics and item emphasis supplied.]

See also *Panhandle Eastern Pipe Line Co., et al.*, 27 FPC 35, where the Commission allowed the producer (Shell Oil Co.) 2.5¢ for gathering, compression, and dehydration of gas above the in line wellhead price.

main transmission line but only 18¼¢ per Mcf for gas delivered in a field to which the pipeline [10] had to build a lateral (Tr. 215).

The provision for delivery by Superior to its processing plant at Lowry and American's mainline represents an important saving to Superior and the pipeline which inures to the benefit of all parties.

This difference in the conditions of delivery [11] between the contracts used to determine the 18.5¢ line and the 1963 agreement covering the proposed substitution would justify an adjustment to the in line price to the extent that this premium factor could be objectively measured. The difficulty lies in quantifying the difference.

Superior maintains that it will cost at least 1.9¢ per Mcf to gather and transport Block 14 gas to the point of delivery. PSC argues that this unit transportation cost assumes an unreasonably low and expensive 40% annual use of pipeline capacity and that operation at 80% of capacity would reduce that transportation cost to 0.97¢ per Mcf. An additional problem lies in the fact that the gas is transported to Superior's processing plant where the liquid hydrocarbons are extracted and retained by Superior for its own benefit. Some portion of these transportation costs should be charged against the revenues Superior obtains from the sale of such liquids. It is obviously unreasonable to charge the total cost of transporting the gas, including the liquids retained by Superior, to the pipeline. Nor would it be proper merely to add an allocated portion of the transportation cost to the in line price of 18.5¢. As noted in *CATCO* (27 FPC 100), it is improper to apply an increment derived from cost factors to a base derived from field prices. Staff also argues that production from Block 14 will yield a larger income to Superior, since the gas delivered to the Lowry plant from Block 14 will have a higher percentage of recoverable liquids than the gas from presently dedicated acreage.

Superior takes the position in its reply brief (p. 15) that the matter of income from liquids extracted by Superior at its Lowry Plant is immaterial.

In any event, it is not possible on this record to make a cost allocation between costs properly chargeable to the gathering and transportation of the hydrocarbons retained by Superior and the gas delivered to American; nor would such an allocation be meaningful since the essential criteria determining the appropriate price condition is comparability not cost.[12]

[10] See American Louisiana's 1953 contracts with British American Oil Producing Company (Item E, p. 11); Kerr-McGee Oil Industries, Inc. (Item E, p. 12) and Pan American Petroleum Corporation (formerly Stanolind Oil & Gas Company (Item E, p. 13). Also see contracts listed in American's brief p. 19.

[11] The Commission's original Statement of General Policy 61–1, issued September 28, 1960, 24 FPC 818, fixing guideline prices indicated that these prices were subject to adjustment to take into account contract provisions which may affect the actual price, such as conditions of delivery.

[12] See *California Oil Co.* v. *F.P.C.*, 315 F. 2d 652 (CA 10) decided March 28, 1963, where the Court, in sustaining the Commission's refusal to allow an extra amount for gathering and processing Red Wash Field gas by the producer stated in part (pp. 659–660):

> Beyond this, however, we also have serious doubts as to whether any of the costs or delivery services urged by petitioner to sustain the initial price of 18.5 cents are relevant at all in determining the "in line" price of a Section 7 proceeding. The *CATCO* case, *supra*, directs the Commission to "hold the line" on price while the "just and reasonable" price is being determined in an appropriate proceeding. The Court, in *United Gas Improvement Co.* v. *Federal Power Commission*, *supra*, said that "The 'hold the line' technique spelled out in *CATCO* is a stopgap devise; that the "in line" price should be determined by comparing the proposed price with existing producer prices in the area; and that "comparative purposes does not require examination into factors such as relative production costs which are not reflected in specific terms of the contracts." (283 F. 2d at pages 822 and 825). We do not think that the commission was required in this case to consider the exploration and drilling costs or the cost of delivery services in arriving at the "in line" price in a certification proceeding. The consideration of these matters may properly be left to a Section 4 proceeding.

Assuming, however, the relevance of cost criteria and the Superior's "actual costs will range between 1.9¢ and 2.5¢ per Mcf to make the onshore delivery" (Superior's rep. br. p. 12), a premium price for this transportation service is not justified under the substitution agreement. Superior's present contract with American requires it to deliver gas from the presently dedicated offshore West Cameron reserves at the 20¢ contract price. According to Superior's presentation, this will cost 5.89¢ per Mcf, approximately 3.4¢ per Mcf more than the cost of delivering the Block 14 gas. The proposed substitution, therefore, will reduce Superior's costs to the point where it will net 16¢ per Mcf by delivering Block 14 gas at the 18.5¢ in the line price (18.5¢ minus 2.5¢ equals 16¢) rather than 14.1¢ (20¢ minus 5.9¢ equals 14.1¢) by delivery from the present offshore reserves at the 20¢ contract price, and, as noted by PSC (br. p. 11) this gives no effect to any benefit to Superior resulting from the termination of existing drainage at Block 14 by other producers.

In *Medina*, cited *supra*, the Commission offset the six-month peaking feature by permitting the producers to maintain the contract escalations. Here the premium feature of onshore delivery is offset by the additional benefit to Superior from the Block 14 connection as compared with its present obligations under the contract to connect and deliver gas from the West Cameron offshore reserves as needed.

This is not to say that the 18.5¢ in line price as determined in *CATCO* and *Placid* is a rigid unchanging price line applicable to all future initial sales. Nor is 18.5¢ the price at which all gas is to enter the interstate market in southern Louisiana short of an adjudicated just and reasonable rate under Sections 4 and 5 of the Act. The 19.5¢ ceiling price, issued on October 31, 1961, has been continued in effect after the 18.5¢ in line determination of *CATCO* and *Placid* and has been the basis for numerous Commission actions in approving initial sales in excess of 18.5¢ in temporary authorizations, uncontested proceedings, and settlements. The 1¢ differential between the 18.5¢ in line price and the 19.5¢ ceiling price appears to have been retained to afford the Commission the necessary flexibility to make price adjustments in the light of post policy statement developments and the special terms and conditions of particular contracts and sales.

The Commission's recent decision in *Hassie Hunt*, cited *supra*, rejects the view that the pre-policy level must necessarily prevail for post-policy contracts.

> While the impact of the policy statement is one factor to be considered in the proceeding covering the post-policy statement contracts, there are other compelling reasons for severing these contracts and consolidating them with all of the other applications contemporaneously executed. It is important to recognize the key element in our in-line determination is the time at which the contract in issue was executed. We cannot assume that the evidence upon which we govern an in-line determination for contracts in the late 1950's can automatically be applied to contracts executed in the 1960's. On the contrary it would seem clear that the evidence must relate to a period reasonably contemporaneous with the contracts in issue. The evidence in this proceeding was focused upon the pre-policy statement period and the date of the policy statement therefore provides a convenient dividing point, without which we would be determining 1963 prices on the basis of contract prices in the previous decade. [30 FPC 1438 at 1442.]

The price line that is closest to the terms and conditions under which the April 1, 1963 substitution of reserves was negotiated is 19¢, the settlement rate [18]

[18] Staff notes that the 19¢ rate has been the settlement rate for all offshore sales in south Louisiana regardless of what service the producer performs. These settlements have also included a moratorium on escalations and an extension of the "make-up" period (br. p. 41).

at which offshore sales in southern Louisiana have recently been authorized. And, as noted by the Court in *United Gas Improvement Co.* v. *F.P.C.*, 283 F. 2d 817, 823, C.A. 9th, "* * * The line referred to in *CATCO* may properly be referenced to relevant existing producer prices under which substantial amounts of natural gas move in interstate commerce."

In *Columbia Gulf Transmission Company, et al.*, Docket No. CP64–1, 30 FPC 1297, the Commission approved the sale of 6.1 trillion cubic feet of gas to the Columbia Gas system at 19¢ per Mcf for offshore gas for the first 23 years. The Commission order recites in pertinent part (p. 1299):

> We find the proposed sales, as reflected in the contracts and offer of settlement to be in the public interest. The price approved herein for the sales pursuant to the settlement offer is the same as has been previously approved pursuant to other settlement proposals for sales in the southern Louisiana area.[4] The guarantee of such a substantial quantity of gas at a price which is not the subject of escalation over a 23 year period is in the public interest, as are the provisions allowing for the make-up of any take-or-pay quantities over the life of the contract and the wide daily swing in takes of gas by United Fuel and the graduated schedule of daily contract quantities.

[4] See orders issued August 7, 1963 (Humble Oil & Refining Company) and October 9, 1963 (Gulf Oil Corporation and Socony Mobil Oil Company, Inc.) in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, 30 FPC 456 and 979, respectively.

In *Texas Eastern Transmission Corp., et al.*, Docket No. CP64–5, *et al.*, the Commission on December 19, 1963, approved the sale of 4.4 trillion cubic feet of gas from offshore southern Louisiana over a 26-year period at an initial price of 19¢ at a 100% load factor with no escalation for the first 10 years.

3. Superior has not sought the 2.5¢ escalation permitted by the contract since August 15, 1961, and states that it does not currently propose to seek such increase if its current proposal is allowed (Tr. 56). The proposed 20¢ price is not approved, however, and the contract presently authorizes an increase in the onshore price to 24¢, including tax reimbursement, and 22.5¢ for offshore gas. In *Placid*, Op. No. 398, p. 298, the Commission concluded that triggering and price redeterminations will take place in southern Louisiana at a price in excess of 23.55¢ per Mcf, including tax reimbursement, and ordered a moratorium on all price increases in excess of 23.55¢, pending a final decision in the area rate proceeding or until July 1, 1967.

The Commission noted that all permanent certificates issued in southern Louisiana since the remanded *CATCO* proceeding have contained a similar provision and that the inclusion of such a moratorium assuring price stability pending the final rate determination "has been a major factor in our decision to issue those certificates." (p. 298.)

None of the parties proposed a moratorium in this proceeding as a condition of the proposed substitution and the record is barren of any evidence or discussion as to whether or not such a condition is appropriate here, and if so, its precise terms and provisions. The moratorium issue is necessarily involved in this proceeding but the parties should have an opportunity to present their position to the Commission before any final determination is made. Accordingly, the parties, in any exceptions they may file to this decision, may express their views in opposition to, or in support of, a moratorium on price escalation pending a just and reasonable rate determination. This will enable the Commission to give serious consideration to the problem of a moratorium as a condition of the proposed substitution, and to its precise terms

and provisions, should it conclude that a moratorium here is required by the public interest. In this connection, it should be noted that the validity of the moratorium in *Placid* is *sub judice* in *Callery Properties Inc.* v. *F.P.C.*, CA 5 No. 20872, *et al.*, now pending for decision after a stay of the Commission's order was granted on October 18, 1963 [Reversed and remanded, 335 F. 2d. 1004].

In summary, the Examiner has concluded that the motion to modify the certificate of public convenience and necessity by substituting reserves should be granted upon condition that the initial price for the sales proposed from the substituted acreage be not greater than 19 cents per Mcf at 15.025 psia. The question as to whether there should be a further condition—a moratorium on price escalation under the contract pending a rate determination—is left undecided by the Examiner because of the absence of any analysis or discussion in the record and the briefs. This will afford the parties an opportunity on exceptions to present their positions on this issue, should they wish to do so, and permit the Commission to give appropriate consideration to the moratorium question.

WILLIAM C. LEVY,
Presiding Examiner.

OPINION NO. 436

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.

OPINION AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 23, 1964)*

Syllabus

1. **In-line price is not mechanical reflection of certificated prices or of market– –** rather it is Commission's considered judgment as to maximum initial price appropriate in interest of public convenience and necessity, reflecting current conditions in industry. P. 260.
2. **Once in-line price has been established for an area,** it shall be presumed to continue until sufficient evidence is presented that there has been a change. P. 260.
3. **Commission *concludes* that for period prior to January 1, 1960, in-line price in southern Louisiana may be taken as established at 18.5 cents per Mcf,** plus 1.5 cents reimbursement for Louisiana severance tax where applicable. P. 260.
4. **Earlier determinations of in-line prices in southern Louisiana area, as well as elsewhere, have relied principally upon initial prices for gas sold** under permanent certificates involving substantial volume of interstate gas. P. 261.
5. **Here, as in previous in-line determinations, prices under temporary certificates are given lesser weight.** P. 262.
6. **In-line initial price in southern Louisiana for all periods [1960 through 1962]** in question is 18.5 cents per Mcf plus 1.5 cents reimbursement for Louisiana severence tax– –a total initial price of 20 cents. P. 262.

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*Initial decision appears on p. 279. Order issued August 27, 1964 partially granted rehearing for purposes of reconsideration, 32 FPC 666; Opinion No. 436–A modifying and granting stay issued October 8, 1964, 32 FPC 952, amended by order issued November 23, 1964, 32 FPC 1359. Set aside on *Catco* settlement issue, *sub nom. Continental Oil* v. *F.P.C.*, 373 F. 2d 96 (CA10–1967; #8117). Remanded on 1.5¢ tax reimbursement issue; set aside on refund power, otherwise affirmed, *sub nom. Pan American Petroleum Corp.* v. *F.P.C.*, —— F. 2d. ——. (CA10–1967; #7912). (Petition for certiorari pending on #7912).

7. Instant record contains nothing to cause change in prior determinations that in-line initial price of 18.5 cents should apply in offshore Louisiana area as well as within southern Louisiana. P. 263.
8. Certificate conditioned to provide that take-or-pay requirement in contracts be subject to provisions of final rulemaking order in Docket No. R-199, with producers not being required to accept provisions for less than 80 percent of annual contract quantities. P. 264.
9. Certificates conditioned to prohibit any change in rate in excess of 23.55 cents per Mcf, inclusive of tax reinbursement, prior to final determination of Area Rate Proceeding, Docket No. AR61-2, or July 1, 1967, whichever is earlier. P. 264.
10. Refunds required where producers accepted temporary certificates containing express refund conditions. P. 264.
11. Commission *defers* question of whether refunds should be ordered where temporary certificates did not contain refund condition- -*allows* participants to file briefs on issue. P. 265.
12. Fact that condition in temporary certificate did not specifically provide for payment of interest is insufficient to relieve producer of such obligation on money of which it had use. P. 265.
13. Where producer accepted temporary certificate, originally with a refund condition, it is in a poorer position to claim inequity than are those who accepted such certificates in belief no refund could be required. P. 265.
14. Fact that some producers received more favorable treatment is not persuasive argument that another should be accorded like treatment. P. 265.
15. Whether refunds should be ordered of amounts collected pursuant to take-or-pay clause determined to be in excess of in-line price, is question to be determined on same basis as that of whether refund should be ordered of amount in excess of in-line price collected for gas actually delivered. P. 266.
16. Assignment of a part of dedicated and producing acreage must under authority of *Graridge Corporation*, be treated in same manner as assignment of entire producing acreage- -thus assignees are placed in shoes of assignors. PP. 266, 267.
17. On remand of *General Crude* case to Examiner, the initial price of any acreage which may not previously have been dedicated shall be fixed at 20 cents per Mcf; for gas from assigned acreage, 18 cents per Mcf. P. 267.
18. In accordance with principle of placing assignee in shoes of assignor, General Crude's permanent certificate will be conditioned with respect to assigned acreage to require refund of difference between rates collected prior to January 1, 1962, under temporary certificate and rate or rates ultimately fixed by final order in Area Rate Proceeding, Docket No. AR61-2. P. 268.
19. Reasons for placing assignee in shoes of assignor also applies in case of assignee of non-productive acreage. P. 268.
20. Additional acreage [added to original contract by amendment] should be subject of a separate permanent certificate providing for an initial price of 20 cents per Mcf. PP. 268, 269.
21. There is no basis for argument that 19.5-cent settlement price for offshore CATCO gas should continue pending results of Area Rate Proceeding since instant proceeding is a "similar proceeding" within contemplation of settlement agreement. P. 269.
22. Producers, through their own inaction, cannot be allowed to cast upon consuming public burden of invalid Louisiana gathering tax which they could have recovered had they taken necessary steps- -language of temporary authorization should not be construed to require actual receipt of

money where, but for producers' own fault, money would have been received. P. 271.

23. Commission *issues* certificates of public convenience and necessity under Section 7 of the Natural Gas Act.

Justin R. Wolf, Charles A. Case, Jr., and *Stanley Wanger* for Union Texas Petroleum; The California Company; C. H. Lyons, Jr., and M. F. McCain.

Harold L. Talisman for Alabama Gas Corporation.

Harry S. Littman for Alabama Gas Corporation, and Piedmont Natural Gas Company, Inc.

Edward S. Nail, Joseph W. Morris, and *N. Kenneth Scott, Jr.* for Amerada Petroleum Corporation.

Charles V. Shannon and *Louis Flax* for American Louisiana Pipe Line Company.

Paul S. Davis for American Natural Gas Production Company.

J. Evans Atwell for Agnes Cullen Arnold, et al.; Isaac Arnold, et al; Austral Oil Company; Perry R. Bass, Operator, et al.; Crown Central Petroleum Corporation; J. M. Flaitz, et al.; Geological Geophysical Associates, Inc., Operator, et al.; R. E. Kellerman; Robert W. O'Meara; Joseph M. Rault, Jr., Inc.; Sword Co., et al., by its Agent, K & H Operating Co.; Ted Weiner, Operator; Gene M. Woodfin, et al.; and Texas Crude Oil Company.

E. J. Kremer, Jr., for The Atlantic Refining Company.

Bernard A. Foster, Jr. for The Atlantic Refining Company; The British-American Oil Producing Company; Cities Service Production Company; Colorado Oil & Gas Corporation; Michel T. Halbouty; Humble Oil & Refining Company; Magna Oil Corporation; Murmanill Corp.; Robert B. Prentice; Shoreline Exploration; Skelly Oil Company; Tex-Star Oil & Gas Corporation; and J. C. Trahan Drilling Contractor.

Roy T. Durst for Perry R. Bass, Operator, et al.

Philip R. Collins for Earl G. Bateman, Operator, et al.

Joe M. Holliman and *John L. Arrington, Jr.* for Beck Oil Company, et al.; and Falcon Seaboard Drilling Co. (Operator) et al.

John W. Glendening, Jr. and *John S. Schmid* for The Berkshire Gas Company; Boston Gas Company; The Bridgeport Gas Co.; Bristol and Warren Gas Company; Brockton Taunton Gas Company; Buzzards Bay Gas Company; Cambridge Gas Company; Concord Natural Gas Corporation; The Connecticut Gas Company; Fall River Gas Company; Fitchburg Gas and Electric Light Company; Gas Service, Inc.; The Greenwood Gas Company; The Hartford Electric Light Company; The Hartford Gas Company; Haverhill Gas Company; City of Holyoke, Massachusetts Gas & Electric Department; Lowell Gas Company; Manchester Gas Company; Mystic Valley Gas Company; New Bedford Gas & Edison Light Company; The New Britain Gas Light Company; New Haven Gas Company; The Newport Gas Light Company; North Attleboro Gas Company; City of Norwich, Department of Public Utilities; The Pequot Gas Company; Providence Gas Company; South County Gas Company; Springfield Gas Light Company; Tiverton Gas Company; Valley Gas Company; City of Westfield Gas and Electric Light Department; and Worcester Gas Light Company.

John A. Gage for Boston Gas Company.

Daniel F. Wheeler for The Bridgeport Gas Company.

Jack Corman for the British-American Oil Producing Co.

Cecil N. Cook and *Neal Powers, Jr.* for Bradco Properties, Inc.; George R. Brown; E. Cockrell, Jr.; Freeport Oil Company; John W. Mecom; Petroleum, Inc.; and U.S. Oil of Louisiana, Inc.

Richard L. Brickley for Brockton Taunton Gas Company.

Edwin F. Russell and *Harry G. Hill, Jr.* for The Brooklyn Union Gas Company.

Boyd D. Taylor for Cabot Corporation.

Woolen H. Walshe for The California Company.

R. J. Leithead and *Gentry Lee* for Cities Service Production Company; and Columbian Fuel Corporation.

Charles H. Toll, Jr. for Concord Natural Gas Corporation; and Manchester Gas Company.

C. William Cooper, Norman A. Flaningam, and *Thomas F. Brosnan* for Con-Gas Service Corporation.

Christopher T. Boland for Con-Gas Service Corporation; and Texas Gas Transmission Corporation.

James B. O'Malley and *Eugene B. Thomas, Jr.* for Consolidated Edison Company of New York, Inc.; and Orange and Rockland Utilities, Inc.

Tom Burton, Joseph C. Johnson, and *Bruce R. Merrill* for Continental Oil Company.

Charles B. Parker for Dorn & Miller Company; and Forest Oil Corporation.

Richard F. Generelly for Dorn & Miller Company; Forest Oil Corporation; General American Oil Company of Texas; and Mound Company.

Thomas G. Roderick, Jr., for The East Ohio Gas Company.

William R. Cook and *Halcyon G. Skinner* for Fitchburg Gas & Electric Company; and Springfield Gas Light Company.

H. H. Hillyer, Jr. for J. R. Frankel, et al., (successors to Berkshire Oil Company); and Harvey Peltier.

W. P. Barnes and *Cecil A. Munn* for General American Oil Company of Texas.

Frank J. Coyle for The Greenwich Gas Company.

John E. Thomason, Arthur F. Whitt, and *Anthony G. Riddlesperger* for Gulf Oil Corporation.

Sherman S. Poland for Michel T. Halbouty: Shoreline Exploration; Tex-Star Oil & Gas Corporation; and J. C. Trahan, Drilling Contractor, Inc.

H. Bissell Carey, Jr. for the Hartford Electric Light Co.

George N. Beauregard for City of Holyoke, Massachusetts, Gas and Electric Department.

J. J. Schmidt for Hope Natural Gas Company.

Thomas A. White for Hope Natural Gas Company; and The River Gas Company.

Jesse H. Foster, Jr. and *Albert C. McClain* for Humble Oil & Refining Company.

Thomas G. Crouch for Hunt Oil Company; H. L. Hunt; and Hassie Hunt Trust.

Robert W. Henderson for Hunt Oil Company; H. L. Hunt; Hassie Hunt Trust; and Placid Oil Company.

William W. Brackett and *Kenneth Wagner* for Jupiter Corporation.

Lynn Adams, Jack T. Conn, and *William Amory Underhill* for Kerr-McGee Oil Industries, Inc.

Morton L. Simons, David K. Kadane, Edward M. Barrett and *Bernard Hulkower* for Long Island Lighting Company.

Edward L. Twomey for Lowell Gas Company.

Robert M. Vaughn, Morton Taylor, and *Harold L. Kennedy* for Marathon Oil Company.

George E. Morrow, Reuben Goldberg, and George Spiegel for Memphis Light, Gas & Water Division.

Paul Montgomery for Irvin Miller (Operator).

D. G. Allen for Mystic Valley Gas Company.

Cornelius C. Moore for Newport Gas Light Co.

Kent H. Brown and *Mrs. Barbara M. Suchow* for New York Public Service Commission.

G. Kirby Herrington for New York State Natural Gas Corporation.

John N. Worcester for North Attleboro Gas Company.

C. W. Barbee and *R. J. Nery* for North Carolina Utilities Commission.

Carroll L. Gilliam, Dean J. Capp, J. P. Hammond, T. C. McCorkle, Harold H. Young, Jr., and *William H. Emerson* for Pan American Petroleum Corporation.

Frederick D. Cornelius, Herbert E. Squires, and *Alan R. Squires* for Pennsylvania Public Utilities Commission.

James B. Sayers for The Peoples Natural Gas Company.

Vincent P. McDevitt, Samuel G. Miller, Henry P. Sullivan, and *Donald Blanken* for Philadelphia Electric Company.

Richardson Dilworth and *William T. Coleman, Jr.* for Philadelphia Gas Works Division of the United Gas Improvement Company.

Kenneth Heady, John R. Rebman, and *H. K. Hudson* for Phillips Petroleum Company.

Dale A. Wright, and *Kenneth Brim* for Piedmont Natural Gas Company, Inc.

Paul W. Hicks for Placid Oil Company.

I. Beverly Lake for Public Service Company of North Carolina, Inc.

William R. Duff, J. Harry Mulhern, James R. Lacey, and *Edward S. Kirby* for Public Service Electric and Gas Company.

Guy H. Woodward and *George Otey, Jr.* for Samedan Oil Corporation.

Donald A. Mulvihill for Joseph E. Seagram & Sons, Inc., d/b/a Frankfort Oil Company.

Oliver L. Stone and *T. G. Johnson* for Shell Oil Company.

Angus A. Davidson, Charles E. McGee, and *James D. McKinney, Jr.* for Sinclair Oil & Gas Company.

Bradford Ross for Skelly Oil Company.

Tom P. Hamill and *R. D. Haworth* for Socony Mobil Oil Co., Inc.

William K. Tell for Sohio Petroleum Company.

George B. Meckum, III, and *Robert M. Goorick* for Southeastern Public Service Company.

William S. Tarver, Peter G. Smith, and *Hugh J. Morgan, Jr.* for Southern Natural Gas Company.

Robert C. Koury for South Jersey Gas Company.

Frederick G. Emerson for Southwest Gas Producing Co., Inc., et al.

Emmons Sebenius and *Donald G. Ingersoll* for State Exploration Company.

John A. Ward, III, Phillip D. Endom, Joiner Cartright, Herf M. Wienert, Martin A. Row, and *Robert E. May* for Sun Oil Company.

Homer E. McEwen and *Dale E. Doty* for Sunray DX Oil Company.

H. W. Varner, Homer Penn, and *William T. Kilbourne, III*, for The Superior Oil Company.

Roy C. Alletag and *Robert E. Shaw* for Tenneco Corporation; and Tennessee Gas Transmission Company.

W. C. Braden, Jr., and *B. J. Williamson*, for Tennessee Gas Transmission Company.

Alfred C. DeCrane, Jr. and *James J. Flood, Jr.* for Texaco Inc.

George J. Meiburger for Texas Gas Exploration Company.

Robert O. Koch and *William E. Feldhaus* for Texas Gas Transmission Corporation.

Clyde E. Willbern for Tidewater Oil Company.

William H. Davidson, Jr., William N. Bonner, Jr., Richard J. Connor, and *Thomas F. Ryan, Jr.*, for Transcontinental Gas Pipe Line Corporation.

Frank D. Horning, Jr., C. Frank Reifsnyder, and *Patrick G. Sullivan* for Union Oil Company of California.

Willis L. Meadows for Union Producing Company.

W. O. Crain for Union Producing Company; and United Gas Pipe Line Company.

Frederick H. Clark for United Fuel Gas Company.

J. David Mann, Jr., William W. Ross, and *John E. Holtzinger, Jr.* for The United Gas Improvement Company.

Vernon Woods for United Gas Pipe Line Company.

Ernest N. Agesti for Valley Gas Company.

Edward M. Lee for City of Westfield Gas and Electric Light Department.

William I. Harkaway and *David B. Ward* for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

BLACK, *Commissioner:* The questions to be determined in this proceeding are the prices and other conditions to be included in permanent certificates to be issued under Section 7 of the Natural Gas Act for sales of natural gas in southern Louisiana and the adjacent Federal domain offshore. Of the 362 dockets originally consolidated in this proceeding, approximately two-thirds have been severed and settled. The remaining dockets involve contracts of various dates from 1947 through 1962. The presiding examiner's initial decision of January 14, 1964, determined that the in-line price for all gas produced in the Federal domain off the shore of Louisiana for the period from June 7, 1954 (the effective date of the Commission's regulation of producers), through December 31, 1962, was 18.5 cents per Mcf and that the same in-line price, plus 1.5 cents reimbursement for Louisiana severance tax, obtained for this period in southern Louisiana. The examiner's decision also provided that the permanent certificates to be issued to the producers should include certain conditions as to take-or-pay provisions of the producers' contracts and as to moratoria with respect to price increases.

The case is now before us on exceptions filed by producers, interveners, and the Commission staff. Insofar as the exceptions are of general application, they will be considered as having been made for the benefit of all to whom they might apply. Such exceptions were taken to the exclusion of evidence, to the conditions as to take-or-pay provisions of the producers' contracts, to the moratoria with respect to price increases, to the ordering of refunds where refund conditions were found in temporary certificates, and to the refusal to order refunds where refund conditions were not found in temporary certificates. A number of dockets present special problems which are not of general application, and these will be separately considered.

Few of the parties have requested oral argument. The issues have been thoroughly considered in the able briefs presented by the participants. In our judgment, oral argument would contribute nothing to justify the attendant delay and expense. The motions for oral argument will be denied.

The facts have been set forth in the initial decision of the presiding examiner, and will be referred to here only to the extent necessary to make plain the reasons for our determinations.

The In-Line Price

The principal questions to be determined in this proceeding are the in-line prices applicable in southern Louisiana and offshore thereof during the relevant

periods. Such prices will determine the initial prices in the permanent certificates in the majority of the dockets now before us. The in-line price is not a mechanical reflection of certificated prices or of the market. It is, rather, the Commission's considered judgment as to the maximum initial price appropriate in the interest of the public convenience and necessity reflecting the current conditions in the industry. Further, it is our view that once an in-line price has been established for an area, it shall be presumed to continue until sufficient evidence is presented that there has been a change.

The presiding examiner found a single in-line price of 18.5 cents per Mcf, plus 1.5 cents tax reimbursement where applicable, for the entire period from June 7, 1954, through December 31, 1962. His initial decision was rendered before issuance of the opinion of the Commission in *Amerada Petroleum Corporation*, Opinion No. 422, 31 FPC 623, modification denied Opinion No. 422–A (1964) 31 FPC 1315. Under the principles laid down in that case and in *Skelly Oil Company*, 28 FPC 401, modified, 28 FPC 1065, on appeal *P.S.C. of New York* v. *F.P.C.*, 329 F. 2d 242 (CADC, 1964), cert. den. 377 U.S. 963 (June 8, 1964), we must here determine the in-line price for the period prior to the issuance of a guideline price applicable in the area, and a separate in-line price for the period subsequent to the issuance of such a guideline price.

The Commission's Statement of General Policy No. 61–1, issued September 28, 1960, 24 FPC 818, did not specify any guideline price applicable to natural gas produced in southern Louisiana, or in the Federal domain offshore. On October 25, 1960, 24 FPC 902 the first amendment to that statement established a guideline price of 21.5 cents per Mcf applicable in southern Louisiana, exclusive of tax reimbursement. (No separate guideline price was established at that time for gas produced in the Federal domain off the shore of Louisiana.) On October 31, 1961, 26 FPC 661, the fourth amendment to Statement of General Policy No. 61–1 reduced the guideline price applicable in southern Louisiana to 21.25 cents per Mcf (including tax reimbursement), and for gas produced in the Federal domain off the shore of Louisiana, the same amendment established a guideline price of 19.5 cents per Mcf.

We note at the outset that the question of the appropriate in-line price for gas from southern Louisiana and the offshore Federal domain for the years 1956, 1957, 1958, and 1959 has been considered by the Commission on three prior occasions: *CATCO*, 27 FPC 96 (1962); *Placid Oil Company*, 30 FPC 283, mod. 30 FPC 682 (Opinion No. 398–A, 1963); and *United Gas Pipe Line Company*, 30 FPC 329 (1963). In each proceeding, on the basis of evidence substantially similar to that before us here, we concluded that the proper initial price was 18.5 cents per Mcf, plus 1.5 cents reimbursement for Louisiana severance tax where applicable.

The evidence presented in the present proceedings for contracts entered into from 1957 to 1959 corresponds with that on which our three prior determinations of the in-line price for this area were based and we find no reason to depart from the conclusions reached in these cases. Accordingly, we conclude that for the period prior to January 1, 1960, the in-line price may be taken as established at 18.5 cents per Mcf, plus 1.5 cents reimbursement for Louisiana severance tax where applicable.

The in-line prices must now be determined for the following three periods: the year 1960 up until October 25, the date of issuance of the first guideline price; October 26, 1960, to October 31, 1961, the period from the issuance of the first guideline price until the issuance of the second guideline price; and November 1, 1961, to the end of 1962, the period after the issuance of the second guideline price.

In our earlier determinations of in-line prices in this area, as well as elsewhere, we have relied principally upon the initial prices for natural gas sold under permanent certificates where substantial volumes of gas were moving in interstate commerce under such permanent certificates. For the three periods for which we have not yet determined an in-line price, the initial prices for natural gas sold under permanent certificates in southern Louisiana (and off the shore of Louisiana, but within its jurisdiction) are as follows:

Contracts dated Jan. 1, 1960, to Oct. 25, 1960

Price [1]	No. of sales	1961 volume (Mcf)
12.5	1	684, 534
16.25	1	360, 000
18.3	1	91, 972
18.5	1	409, 428
18.75	3	1, 155, 535
19.5	9	1, 586, 897
19.75	1	177, 994
19.9	4	1, 747, 696
20.375	4	487, 739
20.75	1	135, 156
21.75	2	1, 983, 440
23.25	2	14, 763, 997

Contracts dated Oct. 26, 1960, to Oct. 31, 1961

Price [1]	No. of sales	Volume in Mcf (one year projected)
10.5	1	186, 000
14.25	1	257, 297
15.8007	5	953, 975
16.25	1	65, 403
17.75	1	506, 943
19.75	2	614, 820
19.9	1	279, 550

Contracts dated Nov. 1, 1961, to end of 1962

Price [1]	No. of sales	Volume in Mcf (one year projected)
10.75	1	960, 000
18.0	1	28, 800
19.5	3	888, 000
19.75	1	7, 200

[1] In cents per Mcf, including reimbursement for Louisiana severance tax.

Contracts falling in the first of these periods, January 1 to October 25, 1960, accounted for a substantial volume of gas moving in interstate commerce in 1961 under permanent certificates—a total volume of nearly 23.6 million Mcf. Of these 30 certificates, 21 provided for a price, including tax reimbursement, of less than 20 cents per Mcf, with the largest number at any one price being the 9 certificates at 19.5 cents per Mcf. Two certificates at 23.25 cents per Mcf accounted for nearly 14.8 million Mcf of the total volume. These two certificates were issued at a point in time when the Commission was applying pricing standards in certificate cases which have since been disapproved by the courts. The weighted average price for all the contracts under permanent certificate is, as indicated below, approximately the same as prevailed in 1957 and 1958. Under these circumstances we think that the in-line price for this period should also be set at 20 cents, including reimbursement for Louisiana severance tax.

Contracts falling in the period between the issuance of the two guideline prices (from October 26, 1960, to October 31, 1961) accounted for a less substantial volume of gas moving in interstate commerce under permanent certificates. The projected annual volume was approximately three million Mcf, whereas 10.8 million Mcf moved under temporary certificates. For contracts dated in the period from November 1, 1961, to the end of 1962, the volume moving in interstate commerce under permanent certificates is about 1.9 million Mcf, compared with 18 million Mcf moving under temporary certificates.

The weighted averages of the initial prices for natural gas sold in southern Louisiana (and offshore, but subject to Louisiana tax) under temporary and permanent certificates have been computed for the three periods in question and for the three prior years. These weighted averages are as follows:

Contract date	Weighted average price in cents per Mcf, including reimbursement for Louisiana severance tax	
	Permanent certificates	Temporary certificates [1]
1957	21.7702	19.5573
1958	21.8988	22.1654
1959	20.8814	22.2080
Jan. 1, 1960–Oct. 25, 1960	[2] 21.767	22.76
Oct. 26, 1960–Oct. 31, 1961	[3] 17.1478	21.25
Nov. 1, 1961–Dec. 31, 1962	[4] 15.0194	20.87

[1] Pending in present proceeding.
[2] For the year 1960, the figure is the same.
[3] For the year 1961, the figure is 17.3020.
[4] For the year 1962, the figure is 14.5590.

We note the marked decline in permanently certificated prices in this area in the last two periods subsequent to the issuance of the guideline prices. This might indicate that there had been a decline in the in-line price for this area. We think, however, that an insufficient volume of gas has moved under these contracts to establish a lower in-line price than prevailed in the earlier periods. Further, the weighted average of prices specified in permanent certificates relating to contracts of the period January 1 to October 25, 1960, is distorted by the two contracts, previously mentioned, at 23.25 cents per Mcf for nearly two-thirds of the volume for that period. Also, the weighted average of prices specified in permanent certificates relating to contracts of the November 1, 1961–December 31, 1962, period is distorted by one certificate, covering more than half the volume of gas, issued at 10.75 cents per Mcf. The effect of these distortions must, of course be considered in the exercise of our discretion.

In view of the nature of the proceedings for issuance of temporary certificates, we will here, as in previous in-line determinations, give the prices under temporary certificates lesser weight. A slight decline is reflected, in prices at which temporary certificates were issued during these later periods, but the weighted average of prices specified in these temporary certificates still remained above the corresponding average for the 1957 period.

We do not think this evidence is sufficient to establish that a change in the in-line price has taken place in this area between January 1, 1960, and December 31, 1962.

In light of all these circumstances, we find that the in-line initial price in southern Louisiana for all the periods in questions is 18.5 cents per Mcf, plus 1.5 cents reimbursement for Louisiana severance tax—a total initial price of 20 cents per Mcf.

We find nothing in the record to cause us to change our prior determinations that the in-line initial price of 18.5 cents should apply in the Federal domain off the shore of Louisiana, as well as within southern Louisiana itself. (Within the domain of Louisiana, as has been said, an additional 1.5-cents reimbursement for Louisiana severance tax may be added.) There were no permanent certificates involving gas in the Federal domain off the shore of Louisiana under contracts dated in any of the three periods we are considering. Temporary certificates covered the following sales of gas outside Louisiana's jurisdiction;

Contracts dated Jan. 1, 1960, to Oct. 25, 1960

Price [1]	No. of sales	1961 volume (Mcf)
21.5	2	7,320,000

Contracts dated Oct. 26, 1960, to Oct. 31, 1961

Price [1]	No. of sales	Volume in Mcf (one year projected)
19.5	4	12,532,500

Contracts dated Nov. 1, 1961, to end of 1962

Price [1]	No. of sales	Volume in Mcf (one year projected)
19.5	2	720,000

[1] In cents per Mcf. No Louisiana tax was applicable.

With no sale under permanent certificates involving contracts dated in any of the three periods under consideration, and with so few sales under temporary certificates, we do not think the Federal domain contracts alter in any way the conclusions previously set forth.

The presiding examiner excluded evidence offered by various producers as to individual companies' cost of service, nationwide costs of the industry as a whole, costs restricted to the area in question, and evidence as to the financial requirements of the industry and the economic needs of the nation. It is the firmly established position of the Commission that such evidence is not admissible. The arguments of the producers that such evidence is necessary in determining a just and reasonable rate are not in point.

> * * * § 7 does not stipulate that the Commission must find the initial rate to be just and reasonable but simply that the service proposed is required by the present and future public convenience and necessity * * * [*F.P.C.* v. *Hunt*, 376 U.S. 515 at 521, 84 Sup. Ct. 861, 865 (1964).]

The Commission in the instant proceeding has issued an order dated March 31, 1964, 31 FPC 756, denying a motion to reopen the proceeding to admit cost evidence, and stating that such evidence

> is not relevant in producer certificate cases where the initial price should be determined by reference to the "in-line" price in the area. *Skelly Oil Company*, 28 FPC 401, 410–412, on appeal *P.S.C. of New York* v. *F.P.C.*, 329 F. 2d 242 (CADC–1964); Cert. den. 377 U.S. 963 (1964); *Placid Oil Company*,

30 FPC 283, Opinion No. 398, issued July 17, 1963; *Texaco Seaboard Inc.*, 29 FPC 593, 595; *United Gas Pipe Line Co.*, 30 FPC 329, Opinion No. 399, issued July 17, 1963, at p. 332; *California Oil Company* v. *F.P.C.*, 315 F. 2d 677 (CA10); *The Atlantic Refining Co.* v. *F.P.C.*, 316 F. 2d 677 (CADC).

Reconsideration of that order was denied by the Commission in an order issued May 27, 1964, which reiterated that such evidence was not relevant in this proceeding. The exceptions to the exclusion of evidence will be denied.

The Condition as to Take-or-Pay Provisions

The order accompanying the initial decision conditions the take-or-pay requirement in each contract to be subject to the provisions of our final order in the rulemaking proceeding in Docket No. R–199. This, as well as the limitation in the condition that the producers will not be required to accept provisions for less than 80 percent of the annual contract quantities, is in line with the general practice in our recent decisions. *Amerada Petroleum Corp., supra; Hassie Hunt Trust, Operator, et al.*, Opinion No. 412, 30 FPC 1438 (1963); *Placid Oil Company, supra; United Gas Pipe Line Company, et al., supra; Texaco Seaboard, Inc., et al.*, 29 FPC 593 (1963); *Skelly Oil Company, supra; Shell Oil Company, Operator, et al.*, Opinion No. 434, 32 FPC 34 (1964).

The exceptions to the condition will be denied.

The Moratorium on Excessive Price Increases

The presiding examiner's proposed order provided that each certificate issued should be subject to a condition that no change in rate providing for a price in excess of 23.55 cents per Mcf, inclusive of tax reimbursement, shall be filed prior to the final determination of the Area Rate Proceeding, Docket No. AR61–2, *et al.*, or July 1, 1967, whichever is earlier. Provisions to the same effect were included in the Commission orders in *Placid Oil Company, supra*, and *United Gas Pipe Line Company, supra*, and we find nothing in the producers' exceptions which would lead us to depart from this established practice.

Transcontinental Gas Pipe Line Corporation (Transco) has urged that a moratorium should be placed upon all price increases above the in-line price here determined, and has stated that any such price increases by its suppliers will compel Transco to apply for increase in its own rates. We do not believe that established Commission policy should be altered at this time. Any increase applied for by Transco will be dealt with in the appropriate proceeding.

Refunds

The presiding examiner, in his initial decision, would distinguish between the refund obligations of producers who accepted temporary certificates containing express refund conditions, and those whose temporary certificates contained no such condition. Certain producers whose temporary certificates contained express refund conditions except to the examiner's proposed order calling for such refunds. Such refunds are in accord with the established Commission practice, and have been recognized and approved by the courts.[1] We find nothing in the producers' exceptions that convinces us that a departure from this practice would be in the public interest. Accordingly, the exceptions will be denied.

[1] Most recently in *P.S.C. of New York* v. *F.P.C.*, 329 F. 2d 242 (CADC, 1964), cert. den. 377 U.S. 963 (June 8, 1964).

Refunds in the Absence of Refund Conditions

The presiding examiner, however, did not order similar refunds in cases where the temporary certificates did not contain refund conditions. This action was in accord with the practice of the Commission prior to the decision in *P.S.C. of New York* v. *F.P.C., supra.* In that case, however, the court held that the Commission has power to order such refunds and should do so if the equities of the case so dictate. Two dockets were remanded for determination by the Commission as to whether the equities indicated that refunds should be required although refund conditions were not contained in the temporary certificates.

In *Amerada Petroleum Corp., supra,* the Commission deferred the question whether refunds should be ordered in such cases, but the participants were permitted to file briefs on the issue. The same procedure will be followed here. In addition, the participants may state any additional facts which they believe might affect the determination as to whether refunds should be ordered, and the evidence by which such facts are to be established. With respect to such facts as we find relevant, and which are not now established in the individual dockets, an opportunity will be provided for the submission of admissible evidence.

General American Oil Company of Texas (Docket No. CI61–1230) would be required by the presiding examiner's proposed order to pay interest on the amount that it was ordered to refund. It has excepted to this part of the order on the ground that, while the temporary certificate contained a refund condition, said refund condition did not include any provisions for interest. The fact that the condition in the temporary certificate did not specifically provide for the payment of interest is insufficient to relieve the producer of the obligation to pay interest on the money of which it had the use.[3]

In Hurley Oil and Gas Company, Docket No. G–17775, the Commission issued a temporary certificate containing a refund condition. The producer, after accepting the temporary certificate, applied to the Commission for an order to strike the refund condition, urging that other producers similarly situated have been given temporary certificates without refund conditions. The order was issued without opposition. The producer, however, had failed to serve Public Service Commission of the State of New York (PSC) with notice of its motion. When PSC learned of the motion, the matter was reopened. The Commission vacated its order striking the refund condition and referred the docket to the presiding examiner to allow both PSC and the producer to present evidence. PSC offered no evidence; the producer offered cost-of-service evidence which the presiding examiner properly excluded.

We agree with and adopt the presiding examiner's conclusion that the refund condition should not be stricken from a temporary certificate under these circumstances, but we place our decision upon another ground as well. It has already been determined that, standing by itself, the absence of a refund condition from a temporary certificate is not sufficient to prevent a refund being ordered as a condition of the permanent certificate. Hurley Oil and Gas Company accepted its temporary certificate, originally, with a refund condition; to that extent it is in a poorer position to claim inequity than are producers who accepted such certificates in the belief no refund could be required of them.

The fact that some other producers received more favorable treatment is not a persuasive argument that Hurley Oil and Gas Company should be accorded like treatment. As the producer has already had an opportunity to present the equities of its case, a decision need not be deferred. The exception of Hurley Oil and Gas Company on this point is denied.

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[3] *Texaco Inc.* v. *F.P.C.*, 290 F. 2d 149, 157 (CA 5, 1961).

K & H Operating Company, Agent for Sword Co., *et al.*, also accepted a temporary certificate with a refund condition. Thereafter, it obtained a Commission order striking the refund condition from the temporary certificate. The Commission's order struck the condition despite opposition by PSC. The order was never served upon PSC. PSC now asserts that the failure to serve the order on it deprived PSC of its opportunity to apply for rehearing and for court review. PSC argues that the order, therefore, is just as much a nullity as in the case of Hurley Oil and Gas Company, where the failure to serve the motion deprived PSC of its opportunity to oppose at Commission level the removal of a refund condition from a temporary certificate.

K & H Operating Company, like Hurley Oil and Gas Company, is in a poorer position to claim inequity than are those who accepted temporary certificates in the belief that no refund would be required of them. K & H Operating Company may present a brief, and a statement of any additional facts which would militate against requiring refunds to be made, together with a statement of any evidence it wishes to introduce in support of such facts. In the absence of a showing of such facts, the refunds will be ordered.

In Docket No. CI61–182, Transco has made payments to General American Oil Company of Texas (General American) for gas not yet taken, pursuant to the take-or-pay provisions of its contract. These prepayments were made on the basis of a price of 23.55 cents per Mcf, the initial price provided in the temporary certificate. The temporary certificate contained no refund condition. The proposed order provides for an initial price of 20.0 cents in the permanent certificate, but does not provide for any refund of the difference (3.55 cents) between 23.55 and 20.0 cents per Mcf, whether paid for gas actually delivered or pursuant to the take-or-pay provisions of the contract.

Transco has excepted to the omission from the proposed order of a requirement that refund be made of 1.55 cents per Mcf of the amount paid pursuant to the take-or-pay provisions of the contract. It is our view that such a take-or-pay clause requires payment to be made by the purchaser on the same basis as though gas had been delivered physically at the point in time at which the obligation to pay arose under the take-or-pay clause. Whether a refund should be ordered of amounts collected pursuant to the take-or-pay clause which are determined to be in excess of the in-line price is a question to be determined on the same basis as the question whether a refund should be ordered of amounts in excess of the in-line price collected for gas actually delivered. The parties may show, of course, any equities applicable in the determination of one of these questions which may not be applicable in the other case; but in the absence of such a showing, the two questions should be similarly decided. General American and Transco will be permitted to submit briefs and evidence as to any equities which may bear upon the decision.

Pending Proceedings Under Section 4(e)

Union Texas Petroleum (Union Texas) and General Crude Oil Company (Operator) (General Crude) have raised the question of the effect of the present proceeding upon pending proceedings under Section 4(e) of the Natural Gas Act. It is not our intention to disturb any of these proceedings or preadjudicate any of the issues to be determined in them. Paragraph (C) of the presiding examiner's proposed order will be revised to reflect this determination.

The Succession Cases

We agree with the decision of the presiding examiner that the assignment of a part of dedicated and producing acreage must under the authority of *Graridge*

Corporation, Opinion No. 408, 30 FPC 1156 be treated in the same manner as an assignment of the entire producing acreage, and that the assignees be placed in the shoes of their assignors. No exceptions were taken by any parties to these views. We think, however, that the application of these principles requires modification of the final results reached by the presiding examiner in a few dockets.

Under the proposed order, J. C. Trahan, Drilling Contractor, Inc. (Operator), et al. (Trahan) (Docket No. CI61–452), and Shoreline Exploration Inc. (Shoreline) (Docket Nos. CI62–73 and CI62–102), would receive permanent certificates at the last firm rate of their assignors. These assignors, however, had filed for increased rates prior to the assignments to Trahan and Shoreline. Trahan and Shoreline have received temporary certificates at the increased rates. The assignors were collecting the increased rates subject to the possibility of refund as a result of the Section 4(e) proceeding. Trahan and Shoreline are not parties to any 4(e) proceeding. They say that in order to place them in the same position as the assignors they should be allowed to continue to collect the increased rates subject to an express condition in the permanent certificates that they remain liable for refunds of the difference between the currently effective rates and the rate or rates ultimately fixed by final order in the Area Rate Proceeding, Docket No. AR61–2, *et al.*

We think that this result is consistent with the precedent established in *Graridge Corporation*, *supra*, and the order herein will so provide.

General Crude (Docket No. CI61–1280) has excepted to the determination of the presiding examiner that the acreage concerned in its docket is assigned acreage. The proposed order would provide for an initial price in the permanent certificate of 18 cents, the last firm rate of the assignor. General Crude contends that it is entitled to the in-line price of 20 cents per Mcf, which would apply in the case of newly dedicated acreage, as only part of the acreage covered by the certificate was assigned. If General Crude is correct in its contention that a portion of the acreage was dedicated for the first time under the temporary certificate to General Crude, and was never previously dedicated, the correct determination in this docket would be that the initial price applicable to such acreage as was not previously dedicated should be 20 cents per Mcf. The record, however, does not establish to our satisfaction what the facts in this case are. Accordingly, this docket will be remanded to the presiding examiner for a determination as to whether the facts are as alleged by General Crude. On remand, the initial price applicable to any acreage which may not previously have been dedicated shall be fixed at 20 cents per Mcf, while gas from assigned acreage shall be treated as provided by the presiding examiner's proposed order.

There remains the question of the amount of possible refunds. The temporary certificate issued to General Crude covering all this acreage contained a refund condition with a 20-cent floor; that is, General Crude, under the terms of the condition, would be liable to refund the difference between the amounts it actually collected and 20 cents per Mcf if the initial price fixed in this proceeding were 20 cents per Mcf or less. The refund condition did not provide that General Crude would be liable to refund the difference between the amounts collected and the initial price or prices established in this proceeding.

It is unnecessary, however, for us to determine whether the refund floor in the temporary certificate would prevent us in this proceedings from ordering refunds of amounts below the 20-cent floor. With respect to the unassigned acreage, the initial price here determined of 20 cents per Mcf coincides with the 20-cent refund floor. With respect to the assigned acreage, the assignor had filed an increased rate prior to the assignment to General Crude; and General

Crude thereafter filed for two additional increases, the first of which became effective January 1, 1962. Any question of refunds by General Crude after the date of its own filing for an increased rate will be determined in the Section 4(e) proceeding now pending, to which the refund floor has no application. In accordance with the principle of placing an assignee in the shoes of its assignor, a condition will be included in the permanent certificate to be issued to General Crude, with respect to the assigned acreage, that General Crude shall be liable to refund the difference between the rates collected by it for the period prior to January 1, 1962, under its temporary certificate and the rate or rates ultimately fixed by final order in the Area Rate Proceeding, Docket No. AR61–2, *et al.* This condition will equate the refund possibility, for the period not subject to General Crude's Section 4(e) proceeding, with what would have existed had no assignment taken place.

The presiding examiner's proposed order would have required General Crude to refund the difference between the price authorized in its temporary certificate (20.4 cents per Mcf) and the refund floor of 20 cents per Mcf. Although no exception was taken on this point, we think no refund should be ordered here with respect to gas from the assigned acreage. Refunds with respect to this acreage for the period after January 1, 1962, will be determined in the pending Section 4(e) proceeding, consolidated in the Area Rate Proceeding, and General Crude's refunds for the period prior to January 1, 1962, with respect to this acreage will also be subject to the determination of the area rate or rates in the Area Rate Proceeding by virtue of the condition to be incorporated in the permanent certificate.

The presiding examiner ruled that where a producer took an assignment of acreage previously dedicated to interstate commerce but not yet producing, the contract must be treated as a new contract and not as an assignment of acreage under an old contract. This ruling was in accord with the rulings of the Commission until 1962. Later policy, however, has been to treat the assignee of nonproductive acreage in the same manner as the assignee of producing acreage. See letter order issued February 25, 1963, in Mayflo Oil Company, Docket No. CI63–473. We think that the reasons for placing the assignee in the shoes of his assignor apply in the case of the assignee of nonproductive acreage.

There remains but one docket unsettled in which the result reached by the presiding examiner will be changed as a result of this reasoning. Earl G. Bateman (Docket No. CI61–1325) was issued a temporary certificate with an initial price of 23.25 cents per Mcf, and the proposed order would provide an initial price in the permanent certificate of 20 cents per Mcf, the in-line price. Earl G. Bateman's assignor, however had been issued a permanent certificate at 23.55 cents per Mcf. Accordingly, we think that a permanent certificate should be issued to Earl G. Bateman at the same initial price as that of his assignor.

Separate Certificate for Additional Acreage

Additional acreage was added to the original contract of Union Texas (Docket No. G–13221) by an amendment dated February 22, 1962. An amendment was filed to the certificate application asking a total price of 22.24 cents per Mcf be provided for gas from the additional acreage. A separate temporary certificate was issued July 10, 1962, providing for an initial price of 21.25 cents per Mcf without any refund condition. Union Texas points out that the presiding examiner's initial decision did not provide for a separate certificate for gas from the additional acreage, although this was accorded to other producers in similar cases in this proceeding. (Initial Decision, page 315.) No objection has been made to this by any participant.

The additional acreage should be the subject of a separate permanent certificate, providing for an initial price of 20 cents per Mcf. Decision as to whether a refund will be ordered will be deferred, and Union Texas may present a brief and make such showing of the equities as it wishes in accordance with our determination with respect to other producers having no refund condition in their temporary certificates.

CATC, Docket Nos. CI62–135, CI62–137, CI62–146, and CI62–147

In these dockets, involving sales from offshore platforms within the Federal domain, temporary certificates were issued at 21.4 cents. Thereafter, a settlement price of 19.5 cents per Mcf was approved by the Commission. The settlement provided:

> * * * that such price shall be changed to agree prospectively with whatever *initial service price* is determined by the Commission in an order which becomes final and no longer subject to judicial review in Docket No. AR61–2, *et al.*, or *other similar proceeding* * * * [Emphasis added.]

At the time of these settlements, these dockets were consolidated in the Area Rate Proceeding, Docket No. AR61–2, *et al.*, one subject of which was the establishment of initial service prices for the area. However, the proceeding was later divided, and the determination of all initial service prices therein involved were placed in the instant proceeding.

We find no basis for overruling our earlier decision of April 10, 1963 (29 FPC 730), denying the producers' motion for severance from this proceeding, nor do we find any basis for their argument that the 19.5-cent settlement price should continue pending the results of the Area Rate Proceeding. We have determined that the instant proceeding is a "similar proceeding" within the contemplation of the settlement agreement. By the terms of the settlement, the initial price is to be adjusted to conform, prospectively, with the in-line price herein determined, and our order will so provide.

Prices and Conditions for Phillips, Kerr-McGee and Jupiter

Phillips Petroleum Company (Phillips) and Kerr-McGee Oil Industries, Inc. (Kerr-McGee), sold gas from Rollover Field, within the Federal domain off the shore of Louisiana, and from Hog Bayou Field, off the shore of Louisiana but within that State's jurisdiction, under contracts dated in February 1953. The gas from the Hog Bayou Field was delivered onshore in southern Louisiana at a price of 16.4 cents per Mcf. The sales were made to Niagara Gas Transmission, Ltd. (Niagara), for export to Canada. Delivery was actually made to Tennessee Gas Transmission Company (TGT) as agent for Niagara; TGT, under a separate contract with Niagara, delivered equal quantities to Niagara at the Canadian border near Buffalo, New York. These sales continued until November 5, 1958, when Niagara assigned its contract to TGT.

The sales from the Rollover Field were made to The Jupiter Corporation (Jupiter) although the original contract was with Jupiter's predecessor. The contract price to Jupiter was 14 cents per Mcf at the offshore platform. Jupiter, after gathering, dehydrating, separating out liquids, and transporting the gas to a delivery point onshore in southern Louisiana, resold the gas for 16.4 cents per Mcf to Niagara for export to Canada. As in the case of Hog Bayou gas, delivery was made to TGT as agent for Niagara, and TGT delivered equal quantities to Niagara at the Canadian border.

In substance, Jupiter acted as a transporter from an offshore platform to the delivery point onshore, receiving for its services 2.4 cents per Mcf. The transactions, however, were couched in the form of sales by Phillips and Kerr-McGee to Jupiter and resales from Jupiter to Niagara.

Deliveries under the contracts with Niagara continued from both the Rollover and Hog Bayou Fields until November 5, 1958, when Niagara assigned its contracts to TGT.

All parties concerned, including this Commission, regarded these sales prior to November 5, 1958, as being outside the jurisdiction of this Commission, although applications were made for temporary certificates (limited in time) for interim sales made in 1954 while waiting for Niagara to make ready to receive the gas. When Niagara began to accept deliveries, the Commission itself suggested that the applications with respect to the interim sales should be withdrawn. No application was made for temporary or permanent certificates covering sales made to Jupiter or Niagara prior to November 5, 1958. When Niagara assigned its contracts to TGT, however, Phillips, Kerr-McGee, and Jupiter recognized that sales from November 5 onward would be subject to Commission jurisdiction and applied for temporary certificates. By letter agreements dated September 22, 1958, the price to Niagara at the onshore delivery point in southern Louisiana was increased to 21.3333 cents per Mcf, plus .75 reimbursement for Louisiana tax where applicable, effective November 1, 1958—4 days before the effective date of the assignments to TGT. Accordingly, the initial price specified in the temporary certificates for gas delivery to TGT was 21.3333 cents per Mcf, plus .75 reimbursement for Louisiana tax where applicable.

Long Island Lighting Company (Lilco) has presented the argument for the first time in its exceptions that these sales were jurisdictional from the beginning, even though neither the parties nor the Commission apparently regarded them as being jurisdictional prior to November 5, 1958. This matter was not argued before the presiding examiner, nor dealt with in the briefs of other participants. We think so important and novel an issue should be decided only after the Commission has had the benefit of a full discussion. Accordingly, decision as to the initial rates in these dockets will be deferred to allow all interested participants to present briefs upon the jurisdictional question, and the consequences which would follow upon its decision. When the permanent certificates issue in these dockets, the initial prices therein prescribed shall be retroactive to the effective date of this order, and provision will be made for refund of any amounts in excess of such initial prices collected subsequent to the effective date of this order.

Refund of Reimbursement for Invalid Tax

The presiding examiner's proposed order would require Phillips Petroleum Company, in Docket No. G–16612, and Kerr-McGee Oil Industries, Inc., in Docket No. G–16719, to refund the amounts paid them by the purchasers as reimbursement for a Louisiana gathering tax later declared unconstitutional by the Louisiana Supreme Court.

The temporary authorization in each of these dockets contained a condition that the tax reimbursement should be refunded to the purchaser "should such tax be held invalid and *refunded by the State*." [Emphasis added.] The producers have never received a refund from the State of Louisiana and cannot do so, since they did not protest at the time they paid the illegal tax. They state that their reasons for not protesting were the same as the reasons made known to the Commission in *Texaco, Inc., et al.*, 27 FPC 441 (1962). In that case, the

reasons advanced were found inadequate by the Commission. In the opinion on the application for rehearing, 27 FPC 847, the Commission said at page 849:

> * * * Admittedly, if there had been no way by which the producers could have recouped from the State of Louisiana the amounts required to be refunded to their customers, we would have a different question. Procedures for obtaining a tax refund did exist, however, and the fact that some of the producers elected not to avail themselves of these procedures, and thus cannot at this late date be made whole, is not a sufficient reason to inflict upon their customers the burden of an invalid and readily avoidable tax.

We cannot allow the producers, through their own inaction, to cast upon the consuming public the burden of an invalid tax which the producers could have recovered had they taken the steps to do so. The language of the temporary authorization should not be construed to require the actual receipt of the money where, but for the producers' own fault, the money would have been received.

If we assume, *arguendo*, that the language of the temporary certificate would require no refund under these circumstances, the producers would be in no better case. Even in the absence of a refund condition, the Commission has power to order refunds to be made, and is required to decide whether refunds should be made on the basis of the particular equities in the individual case. *P.S.C. of New York* v. *F.P.C., supra.* Every equitable consideration requires that refunds be ordered here. The producers' exception to this part of the presiding examiner's proposed order will be denied.

The proposed order would require payment of interest on the above refunds at six percent on amounts collected prior to March 1, 1961, and at seven percent on all amounts collected thereafter. We feel that the producers here should be treated in the same manner as those in *Texaco Inc., et al., supra.* Accordingly, no interest will be charged for any period prior to May 5, 1962, 91 days after the decision in *Texaco Inc., et al.*, was issued, and the amount of interest which would have been paid to the producers by the State of Louisiana, had the producers protested payment of the invalid tax, will not be included in the amount to be refunded. The producers will be required to pay interest at seven percent from May 5, 1962, on all amounts collected by them as reimbursement for the tax later declared invalid.

Interest on Refunds

The proposed order would require payment of interest on all refunds at six percent on amounts collected prior to March 1, 1961, and at seven percent on all amounts collected thereafter. The initial decision, at page 316, *infra* thereof and the date of the Commission order on which the presiding examiner relied, indicates that the correct date for the change from six to seven percent interest is March 1, 1960. The proposed order will be amended to reflect the correct date.

The Commission finds:

(1) Each of the applicants listed in Appendices B, C, and D is engaged in the sale of natural gas in interstate commerce for ultimate public consumption and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sales of natural gas hereinbefore described, as more fully described in the applications, are or, upon commencement of the sale, will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Each of the applicants listed in Appendices B, C, and D is (a) able and willing to perform the service proposed in the respective application, (b) a party to a gas sale contract negotiated at arm's-length and in good faith, and (c) willing and able to do the acts and perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder. Appendix E applicants have shown good cause why their service should be abandoned and why their dockets should be terminated.

(4) The sales of natural gas by the independent producers referred to in the above paragraph (1), together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are and have been required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) The proper in-line initial price to be incorporated in permanent certificates covering the sale of natural gas in southern Louisiana and off-shore thereof under contracts dated at any time prior to January 1, 1963, is 18.5 cents per Mcf at 15.025 psia, plus reimbursement for Louisiana severance tax, where applicable, of not more than 1.5 cents per Mcf.

(7) Except as herein granted, the exceptions to the presiding examiner's decision should be denied.

The Commission orders:

(A) Paragraph (C) of the presiding examiner's proposed order is amended to read as follows: "Each certificate issued severally as provided in paragraph (A) above is hereby conditioned to prohibit any total initial price for natural gas at 15.025 psia, including all reimbursements and changes, greater than the certificated price listed opposite the applicable docket number in Appendices B, C, and D, from the date of issuance of this order, except as such prices may be lawfully changed in the manner provided by the Natural Gas Act, and subject to any such lawful changes which are now the subject of other proceedings before the Commission. Within 30 days from the date of issuance of this order each of the applicants receiving certificates in paragraph (A) above with a conditioned initial price different from the initial price provided in the contract shall file supplements to their presently filed rate schedules reflecting the conditioned price as the initial price in lieu of the initial price provided in the contract; provided that the notice provisions of Section 154.94(b) and the detailed submittal provisions of Section 154.94(f) of the Commission's Regulations under the Natural Gas Act are waived insofar as they apply to the reductions in rates hereby ordered.

(B) Paragraph (F) of the presiding examiner's proposed order is amended to read as follows:

> Each of the applicants listed in Appendix C shall, prior to or within 60 days after the final determination of these proceedings, refund to the purchasers the difference between the price charged and collected for gas covered by the respective applications and the applicable certificated price listed in Appendix C except as other refund conditions have been established by prior order of the Commission and reflected in the text of this decision or in a particular provision of this order. Interest shall be paid on all such refunds at the rate of six percent per annum for all amounts collected prior to March 1, 1960, and at the rate of seven percent per annum for all amounts

collected thereafter, except that in Docket Nos. G–15542, G–16612 and G–16719 the interest on the refunds ordered of amounts collected as reimbursement for the invalid Louisiana gathering tax shall be at the rate of seven percent per annum from May 5, 1962, whereas no interest shall be paid for any period prior to May 5, 1962 on such amounts.

(C) The decision whether refunds should be ordered as a condition to the permanent certificates listed in Appendix B is deferred for subsequent determination. Within 30 days from the date of issuance of this order the parties to this proceeding, to the extent desired, may file briefs directed to the issue whether refunds should be ordered in any or all of the dockets and to the extent of such refunds, if any. Replies may be filed within 10 days of service of the briefs. Any party who wishes to introduce into the record evidence as to additional facts which might bear upon the ultimate determination of this matter shall file with its brief, within 30 days from the date of issuance of this order, a statement of such additional facts and of the evidence by which it is proposed to establish such facts.

(D) The certificate herein issued to J. C. Trahan, Drilling Contractors, Inc. (Operator), *et al.*, in Docket No. CI61–452 and to Shoreline Exploration, Inc., in Docket Nos. CI62–73 and CI62–102 shall contain the following condition: "The producer, although authorized to collect the initial rate herein provided, shall remain liable for, and by acceptance of this certificate agrees to remain liable for, refund (with interest) of the difference between any amounts collected by it from a purchaser (with respect to natural gas produced from the acreage covered by this certificate, whether before or after the issuance of this certificate) and the rate or rates ultimately determined to be applicable in the area by final order issued in the Area Rate Proceeding, Docket No. AR61–2, *et al.*, or such other applicable proceeding as the Commission may order for the determination of rates under Section 4(e) of the Natural Gas Act, whether or not the producer shall be a party to such proceeding."

(E) Docket No. CI61–1280, General Crude Oil Company (Operator), *et al.*, is remanded to the presiding examiner for determination in accordance with this opinion, as relevant to that docket.

(F) The decision as to the proper initial rates and other particular conditions in Docket Nos. G–16611, G–16612, G–16718, G–16719 and G–16679 will be deferred, except as herein provided. Any interested participant may within ninety days of the effective date of this order file with the Commission a brief upon the question of whether sales made by the sellers under the contracts involved in these dockets were subject to the jurisdiction of this Commission prior to November 5, 1958, and upon the consequences following from a decision upon this question. Nothing herein shall affect the decision of the Commission with respect to the refund of reimbursement for invalid taxes in Docket Nos. G–16612 and G–16719.

(G) Except as herein set forth to the contrary, the exceptions to the presiding examiner's decision and proposed order are hereby denied.

(H) The motions for opportunity to present oral argument before the Commission are denied.

(I) The presiding examiner's initial decision and proposed order, to the extent not inconsistent herewith, are adopted as part of this opinion and order.

(J) Appendices A, B, C, D and E hereto attached shall be substituted for Appendices A, B, C, D and E to the presiding examiner's proposed order.

APPENDIX A

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.

DOCKETS SEVERED FOR SETTLEMENT OR OTHER DISPOSITION

Docket No.	Applicant	Date of severance
CI61-1564	Aladdin Exploration, Inc	Oct. 11, 1963
G-14116	Amerada Petroleum Corp	Feb. 1, 1963
G-18346	do	Oct. 29, 1963
G-20200	do	Do.
CI60-688	Amerada Petroleum Corp. (Operator)	Feb. 1, 1963
CI61-727	Amerada Petroleum Corp	Oct. 29, 1963
CI62-216	do	Do.
CI62-525	do	Do.
CI62-805	do	Do.
CI61-1246	American Natural Gas Production Co. (Operator)	Nov. 12, 1963
G-17207	Arnold, Agnes Cullen	Aug. 23, 1963
CI60-237	Arnold, Isaac, *et al*	Do
G-11904	Atlantic Refining Co., The	Nov. 27, 1963
G-17411	do	Do.
G-18399	do	Do.
G-18804	do	Do.
CI61-450	do	Do.
CI61-652	do	Do.
CI62-8	do	Do.
CI62-416	do	Do.
CI62-435	do	Do.
CI62-1276	do	Do.
G-17563	Austral Oil Co., Inc	Sept. 13, 1963
CI62-395	Austral Oil Co., Inc. (Operator)	Do.
CI63-342	Austral Oil Co., Inc. (Agent)	Mar. 14, 1963
CI61-406	Bass, Perry R. (Operator), *et al*	Jan. 7, 1964
CI61-714	do	Do.
CI61-973	do	Do.
CI63-631	do	Do.
CI60-68	Bradco Properties, Inc., *et al*	Dec. 23, 1963
G-14515	British-American Oil Producing Co., The	Nov. 18, 1963
G-18445	do	Do.
G-18963	do	Do.
CI60-322	do	Do.
CI61-649	do	Do.
CI62-1016	do	Do.
G-18131	Brown, George R., *et al*	Dec. 26, 1963
CI60-580	Brown, George R. (Operator), *et al*	Do.
CI63-523	do	May 4, 1964
CI61-709	Brown, Herman	Dec. 26, 1963
CI60-414	Cabot Corporation (SW)	Oct. 25, 1963
CI60-499	do	Do.
G-16167	California Co., The, a division of California Oil Co	July 19, 1963
G-19343	do	Do.
CI61-348	do	Do.
CI61-628	do	Do.
CI61-629	do	Do.
CI61-630	do	Do.
CI61-1285	do	Do.
CI60-721	Colorado Gas and Oil Corp	Dec. 18, 1963
CI63-813	do	Do.
CI62-1068	Columbian Fuel Corp	Dec. 23, 1963
G-17649	Continental Oil Co	July 15, 1963
CI62-1504	do	Do.
CI62-1507	do	Do.
CI62-1513	do	Do.
G-16907	Crown Central Petroleum Corporation	Sept. 13, 1963
CI61-433	Falcon Seaboard Drilling Co. (Operator)	Oct. 25, 1963
CI63-225	Flaitz, J. M., *et al*	Sept. 13, 1963
CI61-1519	Geological, Geophysical Associates, Inc. (Operator), *et al*	Dec. 26, 1963
CI61-54	General American Oil Company of Texas	Mar. 14, 1963
CI61-217	do	Do.
CI61-316	do	Do.
CI62-1410	Goodrich, Hugh	Jan. 7, 1964
G-19246	Graridge Corporation, *et al.* (Operator)	Mar. 14, 1963
G-19062	Gulf Oil Corp	Oct. 9, 1963
G-19467	do	Do.
CI60-54	do	Do.
CI60-440	do	Do.
CI60-824	do	Do.
CI61-716	do	Do.
CI61-1562	do	Do.
CI61-1630	do	Do.
CI62-62	do	Do.
CI62-411	do	Do.
CI62-412	do	Do.
CI62-859	do	Do.
CI62-965	do	Do.
CI63-123	do	Jan. 25, 1963

APPENDIX A—Continued

Docket No.	Applicant	Date of severance
CI60-700	Halbouty, Michel T. (Operator), *et al*	Oct. 25, 1963
CP61-152	Hope Natural Gas Co	Nov. 12, 1963
G-8938	Hudson Gas & Oil Corporation (Operator), *et al*	Mar. 14, 1963
CP61-290	Humble Gas Transmission Co	Nov. 25, 1963
CP62-27	do	Do.
G-14967	Humble Oil & Refining Co	Aug. 7, 1963
G-15227	do	Do.
G-17349	do	Do.
G-17570	do	Do.
G-17772	do	Do.
G-18547	do	Do.
G-18714	do	Do.
G-18715	do	Do.
G-18716	do	Do.
G-19800	do	Do.
G-20019	do	Do.
CI60-96	do	Do.
CI60-177	do	Do.
CI60-531	do	Do.
CI60-623	dl	Do.
CI61-397	do	Do.
CI61-425	do	Do.
CI61-1176	do	Do.
CI62-69	do	Do.
CI62-70	do	Do.
CI63-129	do	Jan. 25, 1963
CI63-455	do	Mar. 14, 1963
CI63-635	do	Aug. 7, 1963
CI63-755	do	Do.
G-14307	Jefferson Lake Sulphur Co. (Operator) *et al*	Mar. 14, 1963
G-19307	Kerr-McGee Oil Industries, Inc	Nov. 29, 1963
CI62-398	do	Do.
G-18136	Kellerman, R. E	Sept. 13, 1963
CI60-329	Lyons, Sr., C. H., *et al*	Aug. 23, 1963
CI63-789	do	Oct. 11, 1963
G-19957	Magna Oil Corp	Mar. 14, 1963
G-19958	do	Do.
CI61-44	do	Oct. 25, 1963
G-20182	Mayronne, Reuben W., Jr., d/b/a Riverside Oil Company (Operator), *et al*	Dec. 26, 1963
CI62-582	McCain, M. F. *et al*	Aug. 23, 1963
CI61-621	Midwest Oil Corp. (Operator) *et al*	Jan. 7, 1964
CI62-1317	do	Do.
CI63-179	Miller, Irwin (Operator) *et al*	Mar. 14, 1963
CP61-141	Mississippi River Fuel Co	Nov. 12, 1963
CI60-258	Mound Company (Operator), *et al*	Aug. 5, 1963
G-17765	Newmont Oil Co	July 15, 1963
CI61-1570	North Central Oil Corporation (Operator), *et al*	Jan. 20, 1964
CI61-1571	do	Do.
CI62-313	do	Do.
CI61-1162	Ocean Drilling & Exploration Co	Nov. 12, 1963
CI60-743	Ocean Drilling & Exploration Co. (Operator), *et al*	Apr. 16, 1964
CI61-1469	do	Do.
CI61-1708	do	Do.
CI62-479	O'Meara, Robert W. (Operator) *et al*	Sept. 13, 1963
G-19223	Pan American Petroleum Co	Feb. 3, 1964
G-20049	do	Do.
CI60-133	do	Do.
CI60-777	do	Do.
CI61-143	do	Do.
CI61-355	do	Do.
CI61-808	do	Do.
CI61-974	do	Do.
CI62-724	do	Do.
CI62-782	do	Do.
CI62-1341	do	Do.
G-17977	do	Do.
CI61-127	do	Do.
G-10022	do	Do.
CI60-505	Peltier, Harvey	Aug. 13, 1963
G-18375	Phillips Petroleum Co	Nov. 29, 1963
G-19714	do	Do.
G-18710	Prentice, Robert B. & The Murmanill Corp	Sept. 26, 1963
G-19292	Prentice, Robert B. (Operator), *et al*	Do.
CI61-1412	Seagram & Sons, Inc., Joseph E., d/b/a Frankfort Oil Co	Dec. 18, 1963
CI60-356	Shoreline Exploration, Inc	Jan. 21, 1964
CI61-1015	do	Do.
G-17917	Sinclair Oil & Gas Co	Oct. 28, 1963
G-20297	do	Mar. 26, 1963
CI61-390	do	Oct. 28, 1963
CI61-670	do	Do.
CI61-1257	do	Do.
CI63-463	do	Mar. 14, 1963

APPENDIX A—Continued

Docket No.	Applicant	Date of severance
CI61-1419	Skelly Oil Co.	Dec. 18, 1963
G-17625	Socony Mobil Oil Co., Inc.	July 15, 1963
CI60-310	do	Oct. 9, 1963
CI60-311	do	Do.
CI60-392	do	Do.
CI61-290	do	Do.
CI61-659	do	Do.
CI61-674	do	Do.
CI61-1128	do	Do.
CI61-1640	do	Do.
G-14247	Sohio Petroleum Co.	Nov. 13, 1963
G-14569	do	Do.
CI60-489	do	Do.
CI61-638	do	Do.
CI62-337	do	Do.
CI62-1396	Southeastern Public Service Co.	Mar. 14, 1963
G-18129	Southern Natural Gas Co.	Aug. 23, 1963
G-20103	Southwest Resources, Inc.	Mar. 14, 1963
CI62-326	State Exploration Co.	Oct. 25, 1963
G-8837	Shell Oil Co.	Aug. 1, 1962
G-19574	Sun Oil Co.	Dec. 23, 1963
CI62-1186	do	Do.
CI60-250	Sunray DX Oil Co.	Aug. 23, 1963
CI63-377	Superior Oil Company, The, *et al.*	Mar. 14, 1963
G-18980	Tenneco Corp.	Apr. 11, 1963
CP60-6	do	Do.
G-16994	Texaco, Inc.	Oct. 25, 1963
G-17779	do	Do.
G-20251	do	Do.
CI60-518	do	Do.
CI61-60	do	Do.
CI61-955	do	Do.
CI61-962	do	Do.
CI61-969	do	Do.
CI61-1416	do	Do.
CI61-1420	do	Do.
CI61-1438	do	Do.
CI61-1463	do	Do.
CI61-1713	do	Do.
CI62-16	do	Do.
CI62-407	do	Do.
CI63-449	do	Do.
CI63-756	do	Do.
G-20124	Texas Crude Oil Company (Operator), *et al.*	Sept. 13, 1963
CI61-1125	Texas Gas Exploration Corp.	Dec. 18, 1963
CI62-930	do	Do.
G-14832	Texas Gulf Producing Co.	Dec. 30, 1963
CI63-772	do	Dec. 26, 1963
CI61-1524	Tex-Star Oil & Gas Corp., *et al.*	Nov. 12, 1963
CI63-823	Tidewater Oil Co.	Dec. 26, 1963
CI63-824	do	Do.
G-18287	Trahan, J. C., Drilling Contractor, Inc. (Operator), *et al.*	Jan. 21, 1964
CI60-481	do	Do.
CI60-698	do	Do.
CI62-771	do	Do.
G-17010	Union Oil Co. of California	Apr. 11, 1963
G-19333	do	Do.
G-19682	do	Do.
G-20568	do	Do.
CI61-165	do	Do.
CI61-166	do	Do.
CI61-331	do	Do.
CI62-806	do	Do.
CI62-822	do	Do.
CI62-1120	do	Do.
CI60-344	Union Producing Co.	Oct. 29, 1963
CI61-1111	do	Do.
G-14227	Union Texas Petroleum, a division of Allied Chemical Corp.	Dec. 18, 1963
CI61-462	Union Texas Petroleum (Operator), *et al.*, a Division of Allied Chemical Corp.	Aug. 23, 1963
CI61-173	U.S. Oil Co. of Louisiana	[1] Mar. 14, 1963
G-20126	Weiner, Ted (Operator), *et al.*	Sept. 13, 1963
CI63-885	Woodfin, Gene M., Trustee for the Jean Curry Glassell Trust	Apr. 14, 1964
G-18369	Zapata Offshore Company (Operator)	Aug. 23, 1963

[1] This March 14, 1963, order provided for severance with respect to all sales covered by U.S. Oil of Louisiana Inc. (Operator), *et al.* FPC Gas Rate Schedule No. 4 except with respect to sales covered by Supplement No. 4 to such Rate Schedule. See Appendix C, *infra*.

APPENDIX B

UNION TEXAS PETROLEUM, ET AL. DOCKET NO. G-13221, ET AL.

DOCKETS DEFERRED FOR PRESENTATION OF BRIEFS AND STATEMENT OF EVIDENCE AS TO WHETHER REFUNDS SHOULD BE ORDERED

Docket No.	Applicant	Temporarily authorized price per Mcf	Price certificated
		Cents	*Cents*
G-20243	Burton Industries, Inc., William T	21.75	20.0
G-20379	do	23.8	20.0
G-17298	Carter, Reese E. (Operator), *et al*	20.25	[1]
CI63-326	Cockrell, E., Jr. (Operator), *et al*	21.25	20.0
CI62-400	Cockrell, E., Jr	21.25	20.0
CI62-997	Christie, Mitchell & Mitchell Co., *et al*	21.25	20.0
CI62-1359	Clegg & Hunt, *et al*	21.25	20.0
G-16840	Continental Oil Co	22.8	20.0
CI60-645	Cyprus Oil Co	22.8333	20.0
CI61-841	Dillon, Herbert L., Jr. (Operator), *et al*	22.8	[1]
CI63-410			
CI61-42	Dixon Management Corp., agent, *et al*	21.5	20.0
CI62-697	Dorn & Miller Co	19.5	18.5
G-18461	Drew Petroleum, Inc	23.55	[1]
		23.25	[1]
G-2804	Forest Oil Corp. (Operator), *et al*	[2] 20.3	20.0
CI61-248	do	23.55	20.0
CI62-283	do	21.25	20.0
CI62-898	do	19.5	18.5
CI62-720	Freeport Oil Co	21.25	20.0
G-20123	General American Oil Co. of Texas	20.75	20.0
CI61-126	do	23.55	20.0
CI61-182	do	23.55	20.0
CI62-1502	do	21.25	20.0
G-19897	Hassie Hunt Trust	23.55	20.0
G-19249	do	23.6	20.0
CI62-702	Hibbert, R. E	21.25	20.0
CI62-841	Hudson Gas & Oil Corp	21.25	20.0
G-18680	Huffington, Roy M	22.8	20.0
G-19460	Hunt, H. L., *et al*	23.55	20.0
G-18596	Hunt Oil Co	23.55	20.0
CI62-546	Jameson, F. E., *et al*	20.8	20.0
CI62-606	Lamson & Bennett, Inc. (Operator), *et al*	21.25	20.0
G-15542	Marathon Oil Co	22.95	20.0
G-18053	McDermott & Co., Inc., J. Ray	23.05	20.0
CI63-301	do	21.25	20.0
CI61-236	Mecom, John W	20.25	20.0
CI60-745	Midwest Oil Corp	20.25	20.0
CI60-8	Owen, J. P. (Operator), *et al*	21.8	20.0
CI62-538	do	20.3	20.0
CI62-1486	do	20.3	20.0
G-16946	Pan American Petroleum Corp	23.54	20.0
G-17468	Petroleum, Inc. (Operator), *et al*	20.25	20.0
CI61-67	Pioneer Oil & Gas, Inc	20.675	20.0
G-18021	Placid Oil Co	20.25	20.0
G-18076	do	23.6	20.0
G-18502	do	23.6	20.0
CI61-511	do [3]	23.6	20.0
CI63-306	do	21.25	20.0
G-17632	Samedan Oil Corp	[4] 20.25	20.0
G-17632	do	[5] 21.25	20.0
CI62-378	Samedan Oil Corp. (Operator), *et al*	21.25	20.0
CI62-561	Samedan Oil Corp., *et al*	21.25	20.0
CI62-623	Shell Oil Co	20.8	20.0
CI62-625	do	21.25	20.0
CI63-188	Skelly Oil Co. (Operator), *et al*	20.3	20.0
CI62-551	Southdown, Inc	21.25	20.0
G-14835	Southwest Gas Producing Co., Inc	[6] 21.75	20.0
G-20046	do	21.05	20.0
CI63-748	do	20.7	20.0
G-17412	Superior Oil Co., The	22.05	20.0
CI61-537	do	21.25	[7] 20.0
CI61-1436	do	21.25	[8] 20.0
CI61-1481	do		20.0
G-18058	Sword Co., *et al*	23.55	20.0
G-12308	Texas Gulf Producing Co., *et al*	23.25	[9]
CI62-305	Texas Liberty Gas Corp	21.25	20.0
G-17467	Trice Production Co. (Operator), *et al*	22.05	20.0
CI60-17	do	20.15	20.0
CI62-1026	do	20.15	20.0

See footnotes at end of table.

APPENDIX B—Continued

Docket No.	Applicant	Temporarily authorized price per Mcf	Price certificated
		Cents	*Cents*
CP60-106	Trunkline Gas Co	22.8333	20.0
G-13221	Union Texas Petroleum, A Division of Allied Chemical Corp.	21.25	[10] 20.0
CI60-607	U.S. Oil of Louisiana, Inc. (Operator), *et al*	20.75	20.0
CI61-144	do	20.15	20.0
CI60-483	Walker, W. E	22.8333	20.0
CI60-638	Walker, W. E. and Freedom Minerals, Inc	22.8333	20.0

[1] Authorization to abandon or terminate sales will be deferred pending determination of the refund obligation (if any).
[2] Proposed initial price. No temporary authorization requested.
[3] Prior rate filing is rejected; applicant shall within 30 days from the final determination hereof file the amendatory agreements to the related rate schedule reflecting a 20-cent price per Mcf.
[4] Covering deliveries made under original contract acreage per order of January 29, 1959.
[5] Applicable to additional acreage covered by amendment to contract dated January 16, 1960, per order December 20, 1962.
[6] Proposed initial price. No temporary authorization requested.
[7] Rate Schedule No. 103. Refund obligation (if any) to be determined with respect to Supplement No. 2 only.
[8] Rate Schedule No. 102. Refund obligation (if any) to be determined with respect to Supplement No. 2 only.
[9] Authorization to abandon or terminate sales will be deferred pending determination of the refund obligation (if any).
[10] Applicable to additional acreage covered by Supplement No. 7 to Union Texas' FPC Gas Rate Schedule No. 8. For price certificated under original contract acreage, see Appendix D.

APPENDIX C

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL. DOCKETS REQUIRING REFUND BY APPLICANTS OF EXCESS COLLECTED OVER PRICE CERTIFIED, EXCEPT AS NOTED

Docket No.	Applicant	Temporarily authorized price per Mcf	Price certification	Rate schedule No. (S-Supp.)
		Cents	*Cents*	
CI61-1325	Bateman, Earl G	23.25	23.25	5
G-17521	Continental Oil Co	23.675	20.0	166
G-20242	do	22.175	20.0	186 S1
CI61-1492	Cordell, J. H	21.5	20.0	1
CI61-1230	General American Oil Co. of Texas	22.25	20.0	43
CI61-645	Hassie Hunt Trust	23.25	20.0	29
G-17775	Hurley Oil and Gas Co	23.05	20.0	8
G-16719	Kerr-McGee Oil Industries, Inc	22.08333	[1] Deferred	57
G-15542	Marathon Oil Co	22.95	[2] 20.0	30
CI60-659	McDermott & Co., Inc., J. Ray	21.5	18.5	15
G-16612	Phillips Petroleum Co	22.08333	[1] Deferred	330
CI61-1362	Placid Oil Co	23.25	20.0	31
CI62-1028	Samedan Oil Corp. (Operator), *et al*	22.25	20.25	13
G-16754	Superior Oil Co., The	20.25	20.0	----------
CI60-681	do	21.5	18.5	104
CI60-167	do	23.25	20.0	97
CI61-168	do	23.25	20.0	96
CI61-537	do	21.25	20.0	[3] 103
CI61-1436	do	21.25	20.0	[3] 102
CI61-173	U.S. Oil of Louisiana, Inc	23.15	20.0	[4] 4
CI61-1809	Whitehall Oil Co., Inc	23.25	20.0	2
CI61-1042	Williams Brothers Co	20.25	20.0	1
CI62-146	The Atlantic Refining Co	21.4	[5] 18.5	----------
CI62-135	Cities Service Production Co	21.4	[5] 18.5	----------
CI62-147	Continental Oil Co	21.4	[5] 18.5	----------
CI62-137	Tidewater Oil Co	21.4	[5] 18.5	----------

[1] Refund at this time only of amounts collected in reimbursement for invalid Louisiana gathering tax.
[2] Refund at this time only of amounts collected in reimbursement for invalid Louisiana gathering tax Determination of additional refund obligation (if any) deferred pending submission of briefs and statements of evidence.
[3] The refund here required does not apply with respect to Supplement No. 2. Determination of the refund obligation (if any) as to supplement No. 2 is deferred pending submission of briefs and statements of evidence.
[4] See footnote [1] to appendix A, *supra*.
[5] No refund required by reason of term of settlement.

APPENDIX D

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.

DOCKETS NOT REQUIRING PRICE CONDITION

Docket No.	Applicant	Price certificated
		Cents
G-17657	Beck Oil Co., *et al.*	16.0
CI61-586	Continental Oil Co. (Operator), *et al.*	18.7
G-19284	General American Oil Co. of Texas	10.497
CI63-291	Hawthorne, Hugh A	19.75
CI63-299	do	19.25
G-18379	Helis Petroleum Corp	19.75
CI62-1197	Huffington, Inc., Roy M. *et al.*	18.8
G-17197	McDermott Co., Inc., J. Ray, *et al.*	19.05
CI61-1464	McKnight, W. L., dc/b/a La Gorce Oil Co	19.75
CI61-289	Owen, J. P., *et al.*	20.0
G-14358	Pioneer Oil & Gas Co., Inc., *et al.*	20.0
CI63-469	Texas Pacific Coal and Oil Co	14.5
CI62-951	Texstar Corp., The, *et al.*	19.75
G-13221	Union Texas Petroleum, A Division of Allied Chemical Corp	19.5
CI62-1320	Wacker Oil Co., Inc	19.75
G-13265	Walker, W. E. and Meeker, J. R	18.0
CI62-1282	Whitehall Oil Co., Inc., *et al.*	19.75
CI62-1019	Woodfin, Gene M., *et al.*	18.0
G-17635	Trice Producing Co. (Operator)	19.05
G-14307	Jefferson Lake Sulfur Co	[1] 17.5

[1] Certificate and price applicable only to rate schedule 3.

APPENDIX E

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.

DOCKETS AUTHORIZING ABANDONMENT OR TERMINATION OF SALES

Docket No.:	*Applicant*
G-19297	Irwin & Bess

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 14, 1964) [1]

WESTON, *Presiding Examiner:* This is a consolidated proceeding instituted by orders of December 31, 1962, January 22, 1963 and February 7, 1963, which brought together 362 separate "certificate" dockets involving sales of natural gas from Southern Louisiana by almost every major gas producer in the United States market, many of the minor gas producers, and a few pipeline companies making field sales as producers. The dockets involve the same principal question: the proper initial price for new sales of gas to interstate pipeline companies from the Southern Louisiana (including offshore Louisiana) pricing area. The issue is framed in terms of pennies, within a possible range of, say, 18.5 cents and 25 cents per Mcf (thousand cubic feet). However, the contracts involved in this proceeding deal with annual sales volumes on the order of 575 million Mcf. (Exh. 1, Schedule 1.) It is apparent that, especially over a time-span of several years, many millions of dollars of realizations by gas producers or savings by gas consumers, are involved in the issue. See generally,

[1] The proceeding involves a very large number of independent producers, and (because some producers are involved in more than one docket) an even larger number of applications. For clarity and efficiency, groups of producers and dockets appear in the Appendix hereto, according to the dispositions made of the applications.

Swidler, "New Directions in Gas Regulation," address of September 19, 1961, to the Independent Natural Gas Association, Houston, Texas; mimeo. copy p. 3.

As will be seen, a large number of the dockets have been settled and therefore severed from this proceeding and terminated. Fourteen dockets were severed and disposed of by the Commission in *Graridge Corp., et al.*, Docket No. G–19246, *et al.*, Opinion 408 30 FPC 1156 issued October 31, 1963. Two dockets severed herefrom have been the subject of a Presiding Examiner's decision of October 24, 1963 (*Southern Natural Gas Co.*, Docket No. CP63–26, *et al.*, 31 FPC 801).

Because they involve recent successions to sellers' interests, acreage conditions, and other changes in situation requiring certification under the Natural Gas Act, fourteen of the dockets in this proceeding stem from contracts dated prior to 1955; one dating back to 1945. The rates under these contracts are, with one exception, at levels reached in more recent years; eight provide for over 20 cents per Mcf.[2] The number of contracts included in this proceeding dated in years subsequent to 1954 are as follows: 1955—eight; 1956—six; 1957—twelve; 1958—thirty-eight; 1959—sixty-nine; 1960—ninety-five; 1961—seventy-six; 1962—thirty-four.

Virtually all of the sales considered herein have been temporarily authorized by *ex parte* Commission action, and deliveries are being made. Some of the temporary authorizations contain refund conditions, and some do not. The sales are sorted into appropriate categories for disposition in accordance with the determinations made herein, in the appendices to this decision.

FORMAL PROCEEDINGS AND STIPULATED FACTS

In prehearing conferences, the parties stipulated that applicants' contract and certificate filings established (a) arm's-length bargaining, and (b) ability and willingness of applicants to perform in accordance with the contracts, the Natural Gas Act, and the Commission's valid promulgations thereunder.

Thereafter, prepared testimony and exhibits were served; hearings commenced June 11, 1963, continued from time to time, and concluded July 23, 1963; simultaneous initial briefs were filed September 16, 1963 and simultaneous answering briefs were filed September 30, 1963.

On June 18, 1963, an appeal by substantially all of the producers from rulings excluding evidence, next considered, was certified to the Commission. By order of July 8, 1963, the Commission denied the appeal, deferring decision on the correctness of the exclusionary rulings until decision on the merits, and indicating that "sufficient guidelines with respect to the types of evidence which will be considered by us in certificate proceedings involving initial price determinations" have been set forth in *Skelly Oil Company*, 28 FPC 401, 411, *Texaco Seaboard, Inc.*, 29 FPC 593, and *El Paso Natural Gas Co.*, 29 FPC 1175, Opinion 390 issued June 19, 1963. Accordingly, the correctness of the rulings will be determined herein.

EVIDENCE OFFERED, EVIDENCE REJECTED, EVIDENCE CONSIDERED

Evidence offered. The producers offered testimony and exhibits covering a great variety of presentations which they claim are relevant to the issue "whether a proposed sale of gas in accordance with the contract provisions is required by the present or future public convenience and necessity." (Continental Oil

[2] Including tax reimbursement. All figures in this decision, except where otherwise noted, include tax reimbursement where provided for in the contract, because such reimbursement is part of the total cost of the gas to the consumer.

Company, brief, p. 20.) [3] It may be said that such evidence includes every type of presentation heretofore made to the Commission which tends to justify contract prices at the higher levels reached in recent years on the basis of: producer costs; cost-of-service; rate of return; trends in cost of production intrinsically and comparatively; trends in actual production; the intrinsic and comparative value of gas to pipelines and consumers; the needs of the oil and gas industry and of particular units of that industry—nationwide and in Southern Louisiana; and on the basis of considerations arising out of geological, economic, social, legal and psychological facts and contentions adduced by the producer witnesses (supported in many cases by charts, graphs and other analyses).

Quoting again from Continental's brief, p. 20—

> It is the producers' position that the value of gas as a commodity is the key determinant, and that the public interest would best be served by authorizing the proposed sales at prices in accord with this commodity value. We offered extensive economic evidence to show "the reason why" contract prices for gas reflect commodity values, to show "the reason why" contract prices and commodity values have changed over the past period, and to show "the reason why" the proposed sales, at the contract prices, are required by the present and future public convenience and necessity.

A detailed description of each item of evidence offered by the producers is unnecessary in view of the definitive Commission policies recently enunciated, considered *infra*. However, we should for illustrative purposes instance the first item of excluded testimony and rejected accompanying exhibit. Robert H. Park, assistant Division Manager, Gas Division, Domestic Producing Division, Texaco Inc., was presented to give 37 pages of testimony and a 12-schedule exhibit (Exh. 3, rejected) designed to show the following—

> The purpose of my testimony is to present a study analyzing the current costs on a nation-wide basis experienced by the producers in finding and developing supplies of gas well gas, and to demonstrate the financial requirements of the producers of natural gas in their efforts to find and develop such gas supplies. From these data are derived the estimated market prices required for current sales of gas in order to meet the producers' requirements for financing the necessary gas supplies. These necessary market prices demonstrate that the prices contained in the contracts for the sale of gas produced in South Louisiana in the various fields in this proceeding are not higher than those required by the financial need of producers and are, therefore, required by public convenience and necessity.

Mr. Park's studies have led him to the conclusion that in order to meet the minimum financial requirements of the producer companies, "it is necessary to have a nation-wide average price level for current new sales of natural gas of approximately 23 cents per Mcf." Exh. 3–A (rejected), p. 7. In Southern Louisiana, Mr. Park suggests a level of not less than 110% of the national average, and the certification of contract prices up to 25 cents or 26 cents per Mcf. *id.*, pp. 36–37.

Evidence rejected. Without going into further detail at this point, suffice it to say that all testimony and exhibits described above, which may be further summarized as proposed evidence related to costs, values, needs and public policy applicable thereto, were excluded from consideration in this proceeding. *Placid Oil Company*, 30 FPC 283, Opinion 398 issued July 17, 1963 and Opinion 398–A, 30

[3] Many of the producers have, in short-form briefs, announced their acceptance of and concurrence in the Continental presentation.

FPC 682, issued September 11, 1963, on appeal to CA5 No. 20891; *Skelly Oil Company*, 28 FPC 491, 410–412, on appeal to CADC, Nos. 17582 *et al.*; *Texaco Seaboard, Inc.*, 29 FPC 593, and Opinion 383–A (on rehearing) issued August 27, 1963, 30 FPC 613; *United Gas Pipe Line Co.*, 30 FPC 329, Opinion 399 issued July 17, 1963; *Standard Oil Company of California*, 27 FPC 1153, rehearing denied, 28 FPC 292; affirmed in, and see also *California Oil Company* v. *F.P.C.*, 315 F. 2d 652 (CA10); see also *The Atlantic Refining Co.* v. *F.P.C.*, 316 F. 2d 677 (CADC). In general, these references are to recent court and Commission applications, in respect of evidence to be considered, of the general principles laid down in *Atlantic Refining Co.* v. *Public Service Commission*, 360 U.S. 378, hereafter usually called the "Catco" case.

In the order of December 31, 1962 instituting this proceeding [unreported], the Commission pointedly refers to its efforts to "hold the line on prices," and in this connection cites *Skelly* as a decision which "helped to crystallize the principles and guidelines to be employed in the certification of sales by independent producers." (Mimeo. copy, p. 10.) The fair inference is that the Commission wanted to make it very clear that the principles and guidelines adopted in *Skelly* to govern admission of evidence, *inter alia*, were to be used in the proceeding at bar, rather than certain variant and inconclusive observations about evidence contained in prior Commission and court cases.

Evidence considered. In general, the evidence admitted into the record dealt with the actual prices of new gas in Southern Louisiana, covering all or selected parts of the period 1954–1962 inclusive. The scope of the proceeding was thus sharply narrowed. Nonetheless, extended controversy developed between the producers on one hand, and Staff and Eastern Seaboard Intervenors[4] on the other, as to what actual prices should be given controlling weight in the determination of the price-line applicable to the contracts involved in this proceeding.

Conclusion. These rulings on evidence are of course rulings on matters of substance and great importance. A price-line determined, *e.g.*, with reference to the Hassie Hunt Trust "1960 Cost of Service Study (Using Relative Cost and Modified Btu Allocations) patterned after FPC Opinions 338 and 339" (Exh. 13, rejected), would not be a price-line derived only from comparison of the Hassie Hunt Trust prices with other gas prices in the area. Actual receipts of Hassie Hunt Trust from its gas sales contracts may be seriously affected by the rejection of cost of service evidence.

Aside from the citation of controlling Commission decisions, the reasons for the rulings excluding evidence will not be developed further at this point. These rulings follow one of several aspects of current Commission policy concerning initial prices for new gas. All aspects of current Commission policy are best understood in the light of past policy and past error in the control of initial prices, as next considered.

THE EVOLUTION OF AND THE PRESENT CONTENT OF THE PRICE-LINE CONCEPT

In fixing the proper initial price for the gas sold under dockets consolidated herein, should we look exclusively at other gas prices existing in the area? Should the gas prices to which we refer include only prices which have been certificated by the Commission, *i.e.*, prices allowed for sales in interstate commerce? Should such prices to be considered herein exclude prices which the Commission has erroneously, or in the abuse of its discretion, as determined by court decisions, allowed in the past, and other prices at the same levels? If

[4] The Brooklyn Union Gas Company, *et al.*, comprising a group of gas distribution companies serving New York, New Jersey, Pennsylvania and the New England States.

these questions are answered in the affirmative, then what is the reason for such a Commission policy?

We must start with the recognition that the Commission's policy with respect to the correct price for new gas connections has evolved and changed over the years since the *Phillips* decision of June 7, 1954. We will find that some of the Commission's past expressions and certifications not only do not accord with present policy, but do not accord with proper policy and proper exercise of discretion, as determined by reviewing courts. It is because these past expressions and certifications were made in error, and as a result of an abuse of proper Commission discretion, that certain prices heretofore established and still being charged by producers in Southern Louisiana should be disregarded in the determination of the proceeding at bar.[5] It will simplify the necessary case-by-case analysis to divide the history of Southern Louisiana pricing (with some reference to general pricing policy) into three separate periods, which periods to some extent overlap.

A. *Period of Substantially No Interference With the Open Market*

This period extends roughly from June, 1954, when the *Phillips* case[6] was decided and the Commission's jurisdiction in the premises first appeared, through December, 1959, when the Supreme Court summarily reversed a divided decision of the Third Circuit, which had found "not unreasonable" an "exercise of judgment" by the Commission certificating an unconditioned sale of Southern Louisiana gas (on shore and offshore) at prices ranging from 22.4 cents to 23.3 cents per Mcf. *PSC of N.Y.* v. *F.P.C.*, 361 U.S. 195, reversing *United Gas Improvement Co.* v. *F.P.C.*, 269 F. 2d 865, 869 (CA3).

It appears that up to the end of 1958, the Commission price-conditioned a producer sale of natural gas in only one instance, which was reported in *Cities Service Gas Co.*, 14 FPC 134, affirmed *sub nom*, *Signal Oil & Gas Co.* v. *F.P.C.*, 238 F. 2d 771 (CA3), certiorari denied, 353 U.S. 923. In that case, a 12-cent price was conditioned to 10 cents, on evidence the proposed price would constitute a new high and trigger favored-nations clauses in the north-central region of Oklahoma. (See 14 FPC at 140.)

In 1959, several Commission orders imposed price conditions. See *Transwestern Pipeline Co.*, 22 FPC 391, 542, 574, and *Phillips Petroleum Company*, 22 FPC 694, 1021. However, despite the Supreme Court's "strictures"[7] in the now famous *Catco* case,[8] most of the Commission's decisions through 1959 certified the initial prices arrived at by bargaining on the open marketplace, marked by competitive bidding between pipelines, without price conditions designed to "hold the line" at pre-existing levels. *Catco* did not mark the beginning of firm control, but the beginning of a period of uncertainty.

Staff's brief in this proceeding correctly characterizes the "limited approach" of the Commission during the period 1954–1959 by reference to the opinion in *Seaboard Oil Co.*, 19 FPC 416. The philosophy and public policy expressed in this opinion, now known to be erroneous, was the policy underlying many of

[5] The discussion does not proceed on the currently familiar basis of "suspect" or "tainted" prices for reasons that are implicit in the foregoing, but which will later be spelled out. There is a genuine, not merely a semantic, difference between reasoning based on a so-called "suspect price doctrine" (Staff Br., 28, 30) and reasoning based on recognition of error or abuse of discretion.

[6] *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672.

[7] Term used by Judge Hastie, dissenting in the *UGI* case, *supra*, 269 F. 2d at 869.

[8] *Atlantic Refining Co.* v. *Public Service Commission*, *supra*, decided June 22, 1959.

the prices which must be taken into consideration in the proceeding at bar, and is therefore worth quoting at length (19 FPC at 421)—

> On the same day that Signal was decided, November 23, 1955, this Commission had before it another certificate proceeding,[6] in which, as in the Signal proceeding, the Commission was requested to condition the issuance of the certificates as to price. The Commission refused to so condition the certificates and called attention to the fact that while it frequently had imposed such conditions in pipeline certificate cases, that:
>
> > Because the economic and other conditions presented in certificate applications filed by independent producers are substantially different from those presented in certificate applications filed by interstate pipeline companies, the Commission has not deemed it prudent to expend the time required to resolve rate issues at this stage, nor has it found it practical to inquire into the reasonableness of producer rates in all producer certificate proceedings.
>
> Time and experience have attested to the soundness of our position in the Tamborello case and have forcibly demonstrated at least in the great majority of independent producer certificate cases coming before us, where the price for the proposed sale has been arrived at on an arm's length basis, that the imposition of a rate condition under Section 7(e) reducing the price proposed by the applicant for its sale of gas is neither a proper nor practicable means for protecting the consumer against prices which may not have been shown to be just and reasonable; and that the primary instrument for the protection of the consumer against excessive rates is and must continue to be the means afforded by the rate provisions of the Act.
>
> Mature consideration of the various factors involved had led inescapably to this conclusion. * * *

[6] See our Opinion No. 287, In the matter of Anthony J. Tamborello, *et al.*, Docket No. G–3045, et al., 14 FPC 123.

This being the basic philosophy of initial price regulation at the outset, it is not surprising that many specific cases decided by the Commission resulted in the issuance of certificates at price levels far exceeding previous price levels, reflecting pipeline competition for new supply from the Southern Louisiana area.

A–1. *Unreversed Commission cases.* The principal decisions of the Commission during the period now under discussion not reversed by the courts on appeal, resulting in the certification of new high prices in the Southern Louisiana area, and resulting in the important question, whether these prices are to be weighed in the determination of the appropriate price-line to be used in this proceeding, are as follows:

1. *Gulf Interstate Gas Co.*, 12 FPC 116, issued May 20, 1953 (before the *Phillips decision*). Here, a new pipeline was certificated to pick up Southern Louisiana gas for United Fuel Gas Company (Columbia System). Prices paid by this new line far exceeded the pre-existing market prices as shown in Exhibit 1–B herein. The highest price reached 21 cents per Mcf, including tax reimbursement, for gas from several major producer sales in the Erath field. Exh. 1–B, pp. 8, 10, 13.[8]

[8] The Commission describes this price as one at 20 cents per Mcf in the cited decision, 12 FPC at 123, being the price before tax reimbursement. The certificates were issued to Humble Oil & Refining Company, The Texas Company, and Tide Water Oil Company on November 2, 1954 under the Commission's abbreviated procedure. See 14 FPC 1238 and 1247. On February 29, 1956, Phillips Petroleum Company applied for, and later received, separate certification of its interest in the gas theretofore certified to The Texas Company, with an indicated price of 21.2 cents per Mcf by reason of an intervening escalation. Exh. 1–B, p. 13 shows the escalated price.

2. *American Louisiana Pipe Line Co.*, 13 FPC 380, issued October 1, 1954 (after the June 7, 1954 *Phillips* decision). Following the new price-line established in *Gulf Interstate*, nine sales of gas at 19.25 cents per Mcf, three sales at 21 cents, and one sale at 17 cents were approved,[10] on a conclusion by the majority that the Commission should not "adopt any procedure for enforcing the mandate of the *Phillips* decision, which might result in a collapse of the American Louisiana project to the detriment of the public welfare." (13 FPC at 391.) Chairman Kuykendall and Commissioner Digby, dissenting, stated their concern "about the producers' prices as shown in their contracts, which are among the highest, if not the highest, known to this Commission." The dissenters were of the opinion that the reasonableness of the producers' rates "in this first, precedent setting, certificate case since the *Phillips* decision, deserves consideration which is not being given here, under the present state of the record." (13 FPC at 397.)

The concern of a gas distributor about the new high range of prices paid to producers first clearly appears in this proceeding. Thus, the Memphis distribution system, supplied by Texas Gas Transmission Company, had been allowed "limited participation" in the Commission proceedings, and sought review of the certification on the basis that prices paid by American Louisiana would trigger prices under the contracts of *Texas Gas* with various producers in the area. On review, the court dismissed the Memphis petition for want of a showing of aggrievement or abuse of discretion. *Memphis Light, Gas & Water Div.* v. *F.P.C.*, 243 F. 2d 628 (CADC).

3. *Anthony J. Tamborello, et al.*, 14 FPC 123, issued November 28, 1955. Again following the precedent of allowing new high prices for Southern Louisiana gas, the Commission authorized eight producers to sell new gas from the area to Transcontinental Gas Pipe Line Corp., at a new high to this pipeline of 17 cents per Mcf, including 1 cent of tax reimbursement. The Commission significantly observed that it "has not deemed it prudent to expend the time required to resolve rate issues at this stage [*i.e.*, at the stage of the issuance of certificates for new sales], nor has it found it practical to inquire into the reasonableness of producer rates in all producer certificate proceedings." Citing its reservation of the rights "to inquire later into the reasonableness of the rates," the Commission concluded that distribution company and consumer interests were "protected" while processing of certificate cases was expedited "without the complicating consideration of the producer rates." (14 FPC at 126.)[11]

The growing concern of gas distributors and the public was indicated by the interventions of five of Transco's customers and of the New York Public Service Commission (hereafter NYPSC).

4. *The Atlantic Refining Company*, 14 FPC 480, 490, decided December 30, 1955, rehearing denied 15 FPC 1121. Here, the Commission authorized an initial price of 21 cents per Mcf (including one cent of tax reimbursement) pursuant to Texas Gas Transmission Corporation's contracts for offshore Louisiana deliveries from The California Company, Union Oil Company of California, and the captioned producer company.[12]

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[10] Provided that the producers apply for certificates to sell the gas, pursuant to the then new Commission Order 174–A. Certificates were applied for, and granted in an uncontested proceeding, *The Superior Oil Co.*, Docket No. G–6067 *et al.*, unreported.

[11] See, however, *Cities Service Gas Co.*, 14 FPC 134, issued on the same day as *Tamborello*, conditioning the proposed new high in prices for south-central Oklahoma gas of 12 cents per Mcf to the prior high of 10 cents per Mcf; affirmed *sub nom. Signal Oil & Gas Co.* v. *F.P.C.*, 238 F. 2d 771, *supra*.

[12] See lines 4 and 6, p. 3, and line 15, p. 4, of Schedule 2B of Exhibit 1, showing higher total price currently being paid because of current tax reimbursement levels.

The importance of this decision extended beyond its effect on Texas Gas. Taken in conjunction with sales to two other transmission companies, this 21-cent price triggered increases to 14 other producers for gas purchased by Tennessee Gas Transmission Company under 18 separate rate schedules. Rates mainly at 10.97633 cents per Mcf went to 22.0833 cents per Mcf, for a total annual increase to this one purchaser of $7,312,643.

5. *Houston Texas Gas & Oil Corp.*, 16 FPC 118, issued December 28, 1956, rehearing denied, 17 FPC 303. Here, a new pipeline to bring gas from fields in Texas and Louisiana to Florida was authorized. The pipeline, now Florida Gas Transmission Company, paid 19.75 cents per Mcf for gas from Southern Louisiana under certificates granted in independent, unconsolidated dockets. (Exh. 1, Schedule 2C, p.8, lines 8, 16, 17.) The Commission reaffirmed its position that, in effect, initial prices were not to be considered in certificate cases, because the matter of rates "is subject to our continuing supervision and control and if sufficient reason appears therefor, can be considered in an appropriate proceeding under the act." (16 FPC at 142.)[13]

The case is noteworthy because the Commission's view of its duties in regard to initial prices was specifically affirmed by the majority of the reviewing court. *Florida Economic Advis. Coun.* v. *F.P.C.*, 251 F. 2d 643 (CADC) (Bazelon, C. J. dissenting), certiorari denied, 356 U.S. 959. The court said (251 F. 2d at 646)—

> Petitioner claims the Commission should have held a rate hearing to determine the lawfulness of the rates to be charged by the gas suppliers. But this inquiry may be resolved in a rate proceeding rather than in a proceeding for a certificate of public convenience and necessity, and the Commission did not abuse its discretion in declining to consider the matter in the instant proceeding. The rates are subject to the Commission's continuing jurisdiction, and, whenever sufficient reason appears, they may be taken up. * * * [Footnote omitted.]

6. *Southern Natural Gas Co.*, 18 FPC 38, issued July 12, 1957, rehearing denied, 18 FPC 179. Here, five producers were issued certificates covering eight separate sales of gas to Southern Natural; six of the sales being from the offshore subarea. Tidewater and Gulf oil companies were allowed 19.75 cents per Mcf in respect of one onshore sale apiece; Kerr-McGee was allowed 21.25 cents for two offshore sales; Phillips Petroleum and Socony-Mobil were allowed 22 cents in respect of three offshore sales by the former and one such sale by the latter.[14] The Commission had before it no evidence upon which a proper price line could be determined; for which reason Commissioner Connole dissented. (18 FPC at 43.) The full opinion (mimeo, copy) reproduced in part in the official reports, did not undertake to justify or explain the allowance of these new highs in prices paid for gas by Southern Natural.[15]

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[13] See also, the Commission's observations in denying the NYPSC application for rehearing, 17 FPC at 310, and citing the *Memphis* decision, 243 F. 2d 628, *supra*. It is perfectly clear that during the period of non-interference with initial prices, the Commission was acting under color (or more) of justification, derived from *Memphis* and other subsequent court decisions.

[14] Exhibit 1, Schedule 2C, pp. 11 lines 5 and 6, 12 lines 16 and 17, and 14 lines 1, 2, 3 and 4.

[15] Southern Natural, under 1956 contracts, paid 19 cents per Mcf to Secure Trusts and H. L. Hunt, 19.75 cents to five Hunt trusts, and 19 cents to Mississippi River Fuel Corp. Exh. 1, Sch. 2: pp. 8 lines 12 and 18; 9 lines 1, 2, 3, 4, 13 and 16. In 1957, Southern paid 20 cents for new gas from Continental Oil Co., M. P. O'Meara *et al.*, and Shell, prior to the decision under discussion, and prices ranging up to 23.675 cents per Mcf in respect of contracts entered into after the issuance of the July 12, 1957 decision. Exh. 1, Sch. 2; pp. 11 line 17; 12 lines 1, 2, 4; 13 lines 7, 15, 16, 17 and 18; 14 lines 6, 7, 8, 9, 10, 11, 15.

7. *Seaboard Oil Company*, 19 FPC 416, issued March 31, 1958. This decision is of importance because it fully states the Commission's philosophy and approach to initial price issues, during the era of *laissez-faire*, and was therefore, quoted at some length at the outset of this section. Additionally, it is noteworthy that the Commission ruled that "where the issue of the attachment of a rate condition to the certificate was injected into a proceeding by another party to the proceeding [*i.e.*, any participant, including Commission staff, other than applicant] that the burden of going forward with the evidence relating to the issue so injected was on the party raising the issue," for—

> * * * it is inconceivable that we would have required applicants to undertake the burden of going forward with evidence to show that this particular rate, considered in conjunction with others, must be shown to be justified by the public convenience and necessity. If such standards are to be required of applicants, there is no end to what may be required of them. * * * [19 FPC at 420.]

This decision was also the occasion for a full statement of the dissenting views of Commissioner Connole (19 FPC at 427–436), which in general presaged the present policy of firm control of initial prices, *infra*.[16]

Specifically, the Seaboard decision authorized sales of gas by two producers from Vermilion Parish to United Gas Pipe Line Company at 19.5 cents per Mcf,[17] partly on the basis that sales from the nearby Erath field had theretofore been allowed at 21 cents per Mcf in the *Gulf Interstate* decision, *supra*.

8. *Trunkline Gas Company*, 21 FPC 704, issued May 22, 1959. This decision authorized prices of 24.05 cents per Mcf by the captioned pipeline company, in respect of sales within Louisiana's taxing jurisdiction, to producers Nicklos Oil & Gas Company, Pan American Petroleum Corporation and Union Oil Company of California, as well as prices of 22 cents per Mcf to the last-named producer in respect of non-taxable offshore sales. (Exh. 1, Sch. 2, p. 18, lines 8, 9, 10, 11, 13, 14, 15.)

The Commission opinion refers to all prices as being at 22 cents per Mcf, being the price before tax reimbursement, and for explanation of the certifications merely states flatly, without detail, that (1) other sales in Louisiana at prices as high as 22 cents have been certificated; (2) no "party to this proceeding" has objected[18]; (3) there is no evidence of adverse effect on the public interest. (21 FPC at 715.)

9. *South Georgia Natural Gas Co.*, 22 FPC 211, issued August 7, 1959. This was the first Commission decision on initial prices subsequent to the Supreme Court's *Catco* decision of June 22, 1959. The Commission considered sales of gas to Southern Natural Gas Company from fields in Louisiana and Mississippi. The Commission opinion is not clear on the price level of the Louisiana sales, but generally quotes the Presiding Examiner's findings that the initial prices ranged from 19 to 21.5 cents per Mcf. (See 22 FPC at 217, compare 22 FPC at 227.) Exhibit 1 indicates that sales from two fields—Felice Bayou and Coffee Bay—are located in the area covered by the proceeding at bar. Including tax

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[16] See also *Hope Natural Gas Co.*, 19 FPC 405, involving West Virginia gas, where the Commission reaffirms its intention to issue producer certificates under the abridged procedure whenever possible, without considering the question of price; and see Commissioner Connole's dissent, 19 FPC at 410.

[17] Exh. 1, Sch. 2, p. 11, lines 12 and 16.

[18] NYPSC was denied intervention. Its petition for review of the Commission decision was dismissed for want of timely filing, and therefore the court did not reach or consider the question of substantial error in the Commission decision. *Public Service Com'n of N.Y. v. F.P.C.*, 284 F. 2d 200 (CADC).

reimbursement, the Felice Bayou sales were at a price of 20.75 cents per Mcf, and the Coffee Bay sales were at 23.55 cents per Mcf. Exh. 1, Sch. 2: p. 17 lines 7 and 15; p. 18 lines 7, 12, 16, 17, 18; p. 19 lines 1, 2 and 5. Southern had been previously certificated in respect of two prior contracts at the level of 23.675 cents per Mcf, including tax reimbursement, see note 15 above.

The Commission, after summarizing its view of the *Catco* decision, concluded—

> * * * that the requirements laid down by the Supreme Court in its *Catco* opinion have been met in this case. In our opinion, the evidence in the record before us substantially establishes that the proposed initial prices for the producers' sales are in the public interest, and the proposed sales required by the public convenience and necessity. To us, it is clear that there is no warrant or justification for the attachment of any initial price condition in this case.

The Commission refused to accept Staff's argument that prices like the *Catco* prices should fall within the ambit of the Supreme Court's directions in the *Catco* case; in any event, according to the decision, "the Supreme Court did not hold that a 21.5 cent rate or any other rate could never be substantiated but merely that the price proposed in the *Catco* case had not been." (Citing *United Gas Improvement Co.* v. *F.P.C.*, 269 F. 2d 865 (CA3), considered *infra*.)

A–2. *Commission cases reversed by courts.* On June 22, 1959, the Supreme Court decided *Catco*, and remanded certifications of sales of offshore gas by four producers at 21.4 cents per Mcf.[19] The *Catco* decision is well-known and need not be restated. The Supreme Court, specifically mentioning the interests of gas consumers seven times in three pages of text, in effect directed the Commission to rigorously apply its conditioning powers in respect of prices for new gas, see 23 FPC at 675–676, and thus drastically curtailed the permissible ambit of Commission discretion. This direction and curtailment, however, was not immediately implemented in Commission decisions.

We have seen, *supra* case number nine, the Commission's August 7, 1959 reading of *Catco*. On August 10, 1959, Commissioner Connole not participating, this qualified and restricted reading was reinforced in five decisions involving Southern Louisiana gas, in which a series of producer sales were authorized at the contract prices. *All of these certifications were reversed on appeal.* The Commission's decisions are, however, of present importance because they reveal erroneous policy which must not be perpetuated.

The Commission's 1959 policy is summarized in one of these decisions, *Texas Gas Transmission Corporation*, 22 FPC 378, 387, rehearing denied 22 FPC 657, as follows:

> As we understand the *Catco* decision, the Supreme Court held, in essence, that the producer's proposed initial price must be supported by substantial evidence establishing that the price is required by the public convenience and necessity and is in the public interest; that although the Commission should consider all the factors and has broad discretion in determining whether an initial price is so supported, price is an element of prime importance and the Commission should scrutinize the price closely with a view to protecting the consumer and holding the line against price rises. The Court further held that the Commission can attach such price conditions as it believes necessary when the proposed price is out of line, when it might result in a triggering of general price rises by reason of favored-nation

[19] Plus provision for one cent of Louisiana tax reimbursement. The Louisiana tax appears not to be applicable to these deliveries from Federal lands 20 to 30 miles offshore.

clauses, or when its approval might result in a general increase in applicants existing rates.

* * * * * * *

From our foregoing analysis of the evidence adduced to support the producer prices in this case and the Supreme Court's *Catco* decision, it appears that the producer applicants have sustained their burden of showing that the prices are required by the public convenience and necessity, and there is no adequate basis or reason for denying or conditioning the producer certificates herein sought. As the record shows, the prices are the same or lower than numerous other certificated sales in this area.

Of 25 sales covered by *Texas Gas*, 21 sales were at 23.55 cents per Mcf and four were at 23.05 cents per Mcf. (Exh. 42, Sch. 5.)

In *Superior Oil Company*, 22 FPC 369, rehearing denied, 22 FPC 655, the Commission approved a price of 21.4 cents per Mcf for offshore Louisiana gas, after referring to other sales in the area made at the same or higher prices, as well as competitive considerations and the needs of the pipeline purchaser. (22 FPC at 371.)

In *Sunray Mid-Continent Oil Company*, 22 FPC 361, rehearing denied, 22 FPC 652, a price of 23.55 cents per Mcf was authorized for onshore Southern Louisiana sales, on the basis of other equivalent prices existing in the same field, and the benefits to the purchasing pipeline.

California Company, 22 FPC 252, rehearing denied, 22 FPC 653, involved prices for Terrebonne Parish gas stated in the Commission decision to be "21.5 cents, without tax reimbursement," although the existence of "greater tax reimbursement than some other 21.5 cent sales" is recognized. (22 FPC at 253, 254.) The actual price including tax reimbursement is shown by the Examiner's decision to be 23.8 cents per Mcf. (22 FPC at 257.) The sales were approved on general recitals as to putative benefits and absence of price detriments.

In *Sun Oil Company*, 22 FPC 351, rehearing denied, 22 FPC 654, the price after tax reimbursement for gas from St. Mary Parish was also 23.8 cents per Mcf. (Cf. 22 FPC at 351, 353 and 356.) The Commission held the price "not out of line on a comparative basis." Although, counting tax reimbursement, the price was contended to be "the highest price in the area," the Commission found that "this tax reimbursement resulted from the fact that United [the pipeline purchaser] needed the gas to help meet its system demands and therefore offered the slightly higher tax reimbursement to give Sun an incentive to sell." (22 FPC at 353.)

Seriatim, the above decisions were reversed and remanded as follows:

The *Texas Gas* decision was reversed in *PSC of NY* v. *F.P.C.*, 287 F. 2d 146 (CADC), certiorari denied 365 U.S. 800, 802.

The *Superior Oil* decision was reversed in *United Gas Improvement Co.* v. *F.P.C.*, 290 F. 2d 147 (CA5), certiorari denied, 366 U.S. 965.

The *Sunray Mid-Continent* decision was reversed in *United Gas Improvement Co.* v. *F.P.C.*, 287 F. 2d 159 (CA10).

The *California Company* decision was reversed in *United Gas Improvement Co.* v. *F.P.C.*, 283 F. 2d 817 (CA9), certiorari denied, 365 U.S. 879, 881.

The *Sun Oil* decision was reversed in *United Gas Improvement Co.* v. *F.P.C.*, 290 F. 2d 133 (CA5), certiorari denied, 368 U.S. 823.

All of the Commission decisions of August, 1959, had relied heavily on a decision of the Third Circuit in the so-called *Transco-Seaboard* case, titled *United Gas Improvement Co.* v. *F.P.C.*, 269 F. 2d 865, and referred to *supra*. There, a majority of the court upheld Commission action of September 4, 1958, 20 FPC 264, granting certificates in 30 dockets for sales of gas from Southern Louisiana to Transcontinental Gas Pipe Line Corporation at initial prices of 23.55 cents

per Mcf (two at 23.30 cents) onshore, and 21.4 and 22 cents per Mcf offshore. (Exh. 42, Sch. 5.) The Third Circuit's action was taken after, and with full verbal recognition of, the Supreme Court's decision in *Catco*. The action was clearly and expressly pitched on the Third Circuit's understanding as to the ambit of the Commission's discretion in considering and judging all the factors involved in "public convenience and necessity." (See 269 F. 2d at 869.)

In December, 1959, the Supreme Court *per curiam*, in one sentence (a) granted certiorari, (b) vacated the Third Circuit's judgment, and (c) directed that court to remand the case to the Commission for redetermination in the light of *Catco*. *PSC of NY* v. *F.P.C.*, 361 U.S. 195. This summary, drastic action[20] should have made it perfectly clear that in the interest of consumer protection, the Commission had no discretion to approve prices in Southern Louisiana similar to the prices approved in the *Catco* case, and no discretion to follow policies leading to such approvals.

B. *Period of Uncertainty*

After the Supreme Court's action in *Transco-Seaboard*, the Commission decisions became less clear in philosophical outlook and in the results reached. On January 15, 1960, the Commission granted rehearing of an order issued November 17, 1959 (reported at 22 FPC 836), which had, *inter alia*, issued several unconditional certificates for gas from Southern Louisiana at initial base prices of 21.5 cents per Mcf (on shore) and 22 cents per Mcf (offshore), plus applicable taxes up to 2.05 cents per Mcf. *Transcontinental Gas Pipe Line Corporation*, Docket No. G–16603, *et al.*, unreported. Thereafter, on May 19, 1961, the Commission being "convinced that these applications should be redetermined," consolidated these cases into the Southern Louisiana area rate proceeding, cited and considered in pertinent part *infra*,[21] from which the cases were later severed and finally included in the proceeding at bar.

The Commission's rather tentative approach to the initial price issue during 1960 is also illustrated in *Gulf Oil Company*, 23 F.P.C. 664, 666—

> Although the Atlantic Refining decision [*i.e.*, *Catco*] does not, as the examiner stated, instruct the Commission to "freeze" prices at existing levels, it does preclude the issuance of certificates at prices higher than those established in recent proceedings unless the applicants have clearly shown that such higher prices are required by the public convenience and necessity * * * unless the evidence demonstrates the necessity of a high price the issuance of these certificates must be conditioned * * *. [Footnote omitted.]

This approach is in strong contrast to the presently accepted attitudes. In the proceeding at bar, it cannot be doubted that on the evidentiary standards here employed, we will "freeze producers' gas rates for new service at pre-existing area levels, while the standards of 'just and reasonable' rates for producers (Act, Sec. 4(a)) are being evolved." (23 FPC at 677.) The producer briefs do not even argue against "freezing" prices, but against so-called "rollback" to pre-1957 prices.

On September 28, 1960, the Commission issued its Statement of General Policy No. 61–1, 24 FPC 818, 25 F.R. 9578, establishing price levels for geographically defined gas producing areas of the United States. No price was announced for Southern Louisiana. By First Amendment to the Statement, issued October 25, 1960, 24 FPC 902, a price of 21.5 cents per Mcf (at the 15.025 psia base generally

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[20] Such action is sometimes taken "when the decision below is so clearly erroneous as to make argument before the Court a waste of time." Stern and Gressman, Supreme Court Practice (BNA, Washington, 1954), pp. G–155, 156.

[21] Order of May 19, 1961 in Docket No. AR61–2, unreported.

used in the area, and used in this decision) was set for initial sales from Southern Louisiana, *before allowance for tax reimbursement.*

On November 29, 1960, the Commission issued its decision in *Trunkline Gas Company*, 24 FPC 1020, involving Southern Louisiana gas located within the taxing jurisdiction of the State. The producers claimed 22 cents per Mcf plus 2.05 cents tax reimbursement; the pipeline purchaser contended only that the tax reimbursement should be at 1.8 cents per Mcf. The record contained some evidence of costs of one of the producers involved in the proceeding, as well as price-line evidence. The Commission, without disclosing its subsidiary premises, disposed of the price issue in the following paragraph (24 FPC at 1038)—

> Obviously, under the provisions of the Commission's Policy Statement, as amended, the producers are entitled to no more than 21.5 cents per Mcf, at 15.025 psia, exclusive of tax. We consider it necessary and appropriate to determine at this time what shall be the entire price for these producer sales, including tax. Accordingly, we conclude that, considering all the circumstances of this case, including the evidence adduced by the parties summarized above, the proper initial price for the producers' sales here in issue, including tax, is 23.25 cents per Mcf. [Footnote omitted.]

On May 10, 1961, the Commission instituted the *Area Rate Proceeding*, AR61–2, 25 FPC 942, which was originally intended to settle the matter of proper initial prices (the subject of the present proceedings) as well as Section 4 "just and reasonable" rates, for Southern Louisiana gas. Thereafter, all pending certificate dockets for gas in the area at prices of 19.05 cents per Mcf and above which had not advanced to final certification were consolidated into AR61–2. *Area Rate Proceeding*, Docket No. AR61–2, *et al.*, order of May 19, 1961, unreported.

These dockets included: (a) 17 applications for prices ranging between 19.05 and 23.55 cents per Mcf, as to which certification had been "deferred" by order of May 17, 1961,[22] (b) seven applications which had been the subject of Initial Decisions imposing price conditions:[23] and (c) five applications for prices of 21.5 and 22 cents per Mcf "plus applicable taxes up to 2.05 cents per Mcf" which had been granted by order of November 17, 1959 in *Transcontinental Gas Pipe Line Corp.*, 22 FPC 836, but as to which petition for rehearing had been granted by order of January 15, 1960 (unreported). Such dockets as were still at issue on December 31, 1962 were, by the order instituting the proceeding at bar, consolidated herein.

On August 9, 1961, the Commission issued the first of a series of orders in *Coastal Transmission Corp.*, 26 FPC 318, subsequent to court reversal, *PSC of NY* v. *F.P.C.*, 295 F. 2d 140 (CADC), of its action denying intervention therein to the New York Commission. In this order, the Commission rescinded 51 certifications theretofore issued in abbreviated proceedings, conditioned two 23.55 cent prices to 23.25 cents (citing the Policy Statement and the *Trunkline* case, *supra*), and imposed apparently retroactive floorless refund conditions in permanent certifications issued subject to further hearings on the matter of proper initial price.

On October 31, 1961, the Commission issued the Fourth Amendment to the Statement of General Policy 26 FPC 661, reducing Southern Louisiana ceiling

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[22] In *Transcontinental Gas Pipe Line Corp.*, 25 FPC 978.

[23] The decisions in question are (1) *Humble Oil & Refining Corp.*, issued January 29, 1960, conditioning prices of 21.2 cents per Mcf plus tax reimbursement to 18.72 cents without taxes; and (2) *Phillips Petroleum Company*, issued June 17, 1960, conditioning prices of 21.3333 cents per Mcf, plus tax reimbursement to 16.4 cents plus tax reimbursement.

prices to 21.25 cents per Mcf for gas sales subject to the 2.3 cents per Mcf State taxes, and 19.5 cents per Mcf for such sales not subject to such taxes (*i.e.*, in the Federal domain offshore.)[24] The Fourth Amendment describes in general terms a broad ex parte Commission review of economic and other considerations, and cites some of the court cases, *supra*, reversing certifications of sales from the area.

In the Fourth Amendment, the Commission also announced its conclusion that the determination of the initial price issue for Southern Louisiana in the Area Rate Proceeding was "not feasible," and that the "contemplated first phase of AR61–2" was therefore to be eliminated. (26 FPC at 661.) This presaged the order of December 31, 1962 instituting the proceedings herein.

On November 2, 1961, the Commission reconsidered *Coastal Transmission Corp.*, 26 FPC 677. The permanent certifications issued August 9, 1961 were rescinded; the two 23.55 cent prices mentioned above and another undisclosed price were conditioned to the new Policy Statement level of 21.25 cents per Mcf; the refund conditions were deleted in toto; and gas deliveries pursuant to temporary authorizations were in effect ordered to continue. The dockets in this case that were still extant at December 31, 1962 were on that date consolidated herein for determination.

The two decisions in *Coastal Transmission Corp.* illustrate the uncertainty of the Commission's pricing policy during 1961 in respect to refund requirements as noted above, and in respect of the effect to be given to the Policy Statement. In the first decision, the Policy Statement seems to be referred to as though it wrought a substantive change in the law of initial pricing, see 25 FPC at 331–332 and footnote 36; compare the language of the *Trunkline* case quoted *supra*. In the second decision, the Commission says that the Policy Statement prices are "ceilings at which a proposed initial sale will, in the absence of otherwise compelling evidence, be certificated." 26 FPC at 682.

Relevance of Statement of General Policy prices. One of the uncertainties which existed during the period under discussion concerned the effect to be given to the prices set forth in the Policy Statement and the amendments thereto. In *Trunkline, supra*, the Commission seemed to adopt a Policy Statement price-line as a substantive determination controlling the result of a formal hearing on initial prices. See also Judge Prettyman's analysis lending color to such a conclusion, in *Wisconsin* v. *F.P.C.*, 303 F. 2d 380, 387 ff., affirmed on May 20, 1963 in *Wisconsin* v. *F.P.C.*, 373 U.S. 294, without specific consideration of the matter.

The Supreme Court, in the last-cited decision, observed that the Statement of General Policy "was issued without notice or hearing," and continued: "the Commission expressly stated that the price levels were 'for the purpose of guidance and initial action by the Commission and their use will not deprive any party of substantive rights or fix the ultimate justness or reasonableness of any rate level.'" 373 U.S. at 299, fnt. 7. At page 313 of the same decision, the Supreme Court observed that "the Statement of General Policy did not purport to establish just and reasonable rates."

The producers in the proceedings at bar, however, claim that substantive effect should be accorded to the Policy Statement prices, in respect of announced levels of prices, after a given producer "has relied thereon to its detriment." Gulf Oil Corp. brief, p. 24. As we have seen, a Policy Statement level of 21.5 cents per Mcf obtained from October 25, 1960, until October 31, 1961. A level of 21.25 cents per Mcf where subject to Louisiana tax and 19.5 cents per Mcf where not taxable, stated on the latter date, still prevails. Are the Policy

[24] The differential of 55 mills in favor of offshore sales "provides producers with an additional incentive to explore for and extract natural gas of great value to the nation's economy in areas beyond the limits of the State's jurisdiction." (26 FPC at 662.)

Statement prices to be given substantive effect, as a "floor" or otherwise, in respect of pre- or post-Policy Statement contract prices? The answers are fairly clear in the text of Commission cases during the current time-period next considered.

C. *Current Period of Well-Defined Principles*

Recent Commission decisions have settled, subject to review in the courts, the main issues on price line briefed by the producers herein.

C–1. ***Effect to be given to Policy Statement prices.*** The Commission has made it entirely clear that Policy Statement prices are to have no weight or effect in the determination of the proper initial price to be applied to contracts entered into before the Policy Statement was issued. This ruling was made in *Texaco Seaboard, Inc.*, 30 FPC 613, Opinion 383–A issued August 27, 1963 (p. 616)—

> * * * The prices in the Commission's Policy Statement are guidelines for future Commission action. They have no retroactive effect. * * * Such guideline prices are at levels at which the Commission will grant permanent certificates in noncontested cases and authorize temporary service in emergencies. By fixing these rates we do not foreclose the possibility that the parties in a contested proceeding may persuade us that the level at which we should certificate a particular new sale should be at either a higher or lower price. Our determination will be based upon the record in each proceeding in accordance with the principles enunciated in *Catco* and *Skelly* and herein.

In *Texaco-Seaboard*, the contracts had been executed on July 1, 1960, prior to the September 28, 1960 issuance of the Policy Statement. The gas came from Texas Railroad Districts 3 and 4, where the Policy Statement "initial service rate" was 18 cents per Mcf. The contract prices, including taxes and other allowances, were 20 cents per Mcf in one instance, and approximately 20 cents per Mcf in the two other instances. The Commission found in-line prices of 15 cents in District 4, and 16 cents in District 3—prices considerably lower than those set originally in the Policy Statement—and observed: "We may add that the issuance of the Policy Statement on September 28, 1960 did not automatically elevate the price line." (Opinion 383–A, p. 617.) The significance of this observation is made plain in the dissenting opinion (p. 620)—

> * * * the majority recognizes that guideline ceilings may be set improperly and that permanent certificates may be issued at a lower level in an appropriate proceeding. The significance of this statement is that guideline ceilings are not a floor. They should not be a floor because experience has repeatedly demonstrated that guideline levels have been overstated, with the result that producers have collected excessive prices under temporaries at such levels.* * *

To the same effect as regards Policy Statement prices in relation to pre-Policy Statement contracts, see also *Skelly Oil Co.*, 28 FPC 401, 407–408; *Coastal Transmission Corp.*, 26 FPC 677, 682; and other cases discussed *infra*, including the Commission action in *Catco* on remand, and the *Placid Oil* decision.

With respect to contracts entered into *after* the Policy Statement was issued, the authority is not entirely clear. In *Skelly*, the majority of the Commission left open, 28 FPC at 418, the question whether "its own ceiling prices are entitled to no weight in determining the initial price under contracts executed after the ceiling prices were put into effect."

However, there are several important indications that the Policy Statement prices are not to be given substantive effect, as evidence or otherwise, in the

determination of proper prices for post-Statement contracts involved in formal proceedings such as those at bar. In such proceedings, all parties are "free to show the proper in-line price, wherever it might happen to fall." Order of February 7, 1963 herein, 29 FPC 274, denying request of seven producers for production of documents and subpoenas, fnt. 5; see also text of Order, p. 275. The Policy Statement prices are "guideline" prices at which the Commission will exercise its "discretion in the absence of protest by intervening parties to certificate sales in a particular area," and do not purport to fix price lines. Order of April 2, 1963 herein, denying rehearing of the February 7, 1963 order.

See also *Amerada Petroleum Corp.*, Docket No. CI62–1544, *et al.*, Presiding Examiner's Initial Decision issued July 23, 1963, 31 FPC 647, giving no effect to Policy Statement prices in determining a post-Policy Statement price line and referring to positions taken in Commission briefs; see also *Southern Natural Gas Co.*, Docket No. CP63–26, *et al.*, Presiding Examiner's Initial Decision issued October 24, 1963, 31 FPC 801 at 852–854, coming to the same conclusion.

When examined in principle it seems clear enough that the Commission could not and does not, by *ex parte* action in issuing and amending Policy Statement prices, finally decide (by way of a floor) proper initial prices which will control the result of open hearings held pursuant to Section 7 of the Act. Discussion of the Policy Statement has been to the opposite effect. *Panhandle Eastern Pipe Line Company*, 27 FPC 35, 42–43, and Initial Decision, pp. 59–60. As the Commission contends in pending litigation—

> Clearly, in issuing the Policy Statement the Commission was only announcing considerations that would guide it in acting without the benefit of a hearing, namely in issuing temporary authorizations and in deciding whether increased rates should be suspended. * * * [Policy Statement] price levels obviously cannot bind the Commission to approve those prices after hearing where competent evidence shows that the Policy Statement price is not in conformity with the price standards announced by *Catco* and the subsequent related judicial decisions. (Brief for Respondent FPC, in *PSC of NY* v. *F.P.C.*, CADC No. 17582 *et al.*, July, 1963, p. 21.)

The Policy Statement does not purport to make final determinations of proper initial prices. It does not purport to settle any substantive matter of public policy and private right that should under Section 7 of the Act be decided after notice and hearing. To give Policy Statement prices any degree of substantive effect, as evidence or otherwise, in the determinations reached herein, would *pro tanto* deprive all parties of their right under the Natural Gas Act and the Administrative Procedure Act to have these proceedings determined on the basis of an open record.

The fact that a producer may have "executed the contracts providing for initial prices at the Policy Statement level in order to secure * * * expeditious approval of its initial prices" (Gulf reply brief, p. 32) is of no consequence, since no basis for estoppel or any other equities is shown.

Consequently, the Policy Statement prices will be given no weight or effect in the derivation of proper prices for post-October 25, 1960 sales considered in this proceeding.

C–2. *Admissible evidence; derivation of price line; other matters.* There remains to be considered certain other principles laid down in five relatively recent Commission opinions which govern the proceedings at bar. The first of these five opinions was issued January 22, 1962 in respect of the remanded *Catco* proceedings, involving 1956 contracts for the sale of gas from offshore Southern Louisiana. *Continental Oil Co.*, 27 FPC 96; see also 27 FPC 498 and 592. In respect of matters of present importance, the Commission there deter-

mined: (a) price evidence relating to onshore sales to be useful in determining the proper offshore price line; (b) a price is "not in line as of a given time if it is the highest price or in the highest group of prices theretofore paid" (27 FPC at 102); (c) it is not appropriate to find the price line by adjusting field prices upward for drilling cost increases; (d) the price line is to be found from "field price evidence" as of the "time of the sale in 1956, and before, which were not affected by initial prices which the courts have called into question." (27 FPC at 100.)

On the basis of a discussion of groups of prices for other gas sales in Southern Louisiana, the Commission concluded that a price of 18.5 cents per Mcf was proper for these offshore sales, and made provision for refunds of all amounts collected in excess of this price. (27 FPC at 102, 108–112.) [25]

The remand, and the *Catco* case in its entirety, was finally disposed of by settlement approved December 21, 1962. 28 FPC 1090. Prices of 18.5 cents (Cameron area), 19.5 cents (West Delta area), 19.0 cents (Grand Isle) and 19.5 cents (Blocks 47 and 48, East Cameron) were established with several important contingencies: the West Delta settlement covered one cent per Mcf of potential tax reimbursement on sales from an area where Louisiana's tax jurisdiction was subject to adjudication, and collection of such reimbursement was to be escrowed; only temporary certificates were issued for the Blocks 47 and 48 sales, which were incorporated into the Docket No. AR61–2 area rate proceeding, and ultimately into the present proceeding in respect of final determination; and in substance, a moratorium on contractual rate increases until July 1, 1967, was agreed to.

The second recent decision of present importance is *Skelly Oil Company*, 28 FPC 401, modified by order of December 18, 1962, 28 FPC 1065.[26] The case involved South Texas gas. The Commission relied exclusively on evidence relating to price line in conditioning sales at 16 cents and above to a 15 cent per Mcf level. The Commission said—

> * * * we do not think it necessary or appropriate in a certificate proceeding to consider evidence of area costs or financial requirements, or of individual company costs or financial requirements. * * *
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> * * * * * * * *
>
> We therefore hold that cost of service and financial requirements evidence normally is not relevant in producer certificate cases and that the initial price in such proceedings shall be determined by the "in line" price in the area at the time the producer contract in issue was executed and by our guideline ceiling price for the area. * * * (28 FPC at 411.)

We have seen that *Skelly* was cited in the order convening these proceedings, presumably to furnish the dominant key for evidentiary rulings herein. The producer briefs have in this connection stressed the jarring note in *Skelly*: the use of the polar term "normally." The term has no meaning absent specificity

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[25] See also *Texaco-Seaboard, Inc.*, 27 FPC 15 and 482, involving Southern Louisiana initial price dockets in three categories: (a) the remanded *Transco-Seaboard* dockets, *supra*, 361 U.S. 195; (b) the remanded *PSC of N.Y.* dockets, *supra*, 287 F. 2d 146 (CADC); (c) the dockets as to which on January 15, 1960, the Commission granted rehearing of its November 17, 1959 certifications (22 FPC 836), *supra*. The Commission in *Texaco-Seaboard* (1) made the sales (being effected under temporaries) subject to flooriess refund conditions, (2) referred extensively to errors in earlier derivations of price line, and (3) set the dockets down for prompt hearing. All these dockets, plus dockets remanded in the *UGI* case, *supra*, 283 F. 2d 817 (CA9), were settled by order of July 30, 1962, 28 FPC 247, which provided the settlement pattern described *infra*.

[26] It has been noted in the text *supra* that *Skelly* and the *Placid* case later cited are on appeal.

or at least some indications as to what constitutes abnormality. For present purposes, we may consider all formal proceedings under Section 7 of the Act to be "normal" proceedings.

The third recent decision, *Texaco Seaboard, Inc.*, 29 FPC 593, Opinion 383–A, *supra*, in addition to clarifying the matter of the significance of Policy Statement prices (*supra*), also clarified and confirmed *Skelly*. Initial prices for gas from Texas Railroad Commission Districts 3 and 4 which had been remanded to the Commission for reconsideration, and all prices at the same or higher levels, were disregarded in the Commission's computation of a price line, although the Commission observes that it did not "entirely overlook the economic tendencies which they represent." (P. 599.)

In *Texaco Seaboard*, all evidence of cost of service, trends, and financial requirements was excluded in the derivation of the price line. The Commission affirmed the Examiner's exclusion of evidence which was, *inter alia* (p. 596)—

> designed to show industry and economic trends relating to the production of gas including (1) the decline in the productivity of drilling, (2) the increasing cost per foot drilled, (3) the effect of declining productivity and increased drilling cost on the cost of new supply, and (4) the inadequacy of revenues to induce the necessary drilling effort.

The fourth decision which must be followed herein is *Placid Oil* Company, 30 FPC 283, Opinion 398 issued July 17, 1963; Opinion 398–A, 30 FPC 682, issued September 11, 1963. The Commission there considered 13 dockets remaining from court remands discussed *supra*, which had not been settled under the July 30, 1962 settlement formula discussed *infra*. In *Placid*, the Commission has made determinations, equally applicable here, as follows:

a. With respect to admissible evidence, the Commission affirmed the Examiner's exclusionary rulings, and said (p. 287)—

> In particular, we affirm the decision as to its holding that economic and financial evidence, whether on an individual company or on an area-wide basis and whether of the type characterized as cost-of-service studies, cash flow studies, demand-supply, cost, profit and market price trends, area cost-revenue trends, comparative well cost data and gas replacement costs, plays no part in and is irrelevant to the determination of the initial price question in independent producer certificate cases * * * [footnote omitted].

b. With respect to the elimination of erroneous certifications in the determination of the proper price line for the *Placid* certifications, the Commission applied the "suspect price" observation made by the Ninth Circuit in the *UGI* case, *supra*, 283 F. 2d at 824–825,[37] to eliminate 1957–1958 prices at levels above 18.5 cents per Mcf before tax remibursement, and concluded that "18.5 cents per Mcf, exclusive of tax reimbursement, is the proper public interest initial price applicable to the instant sales." (P. 289.)

c. With respect to tax reimbursement, the Commission refused to allow the full producer outgo, variously computed at 1.69 and 1.85 cents on the weighted average actual payments, and 2.05 and 2.3 cents under contract provisions. The Commission, following its decision in the *Catco* remand, *supra*, allowed a partial tax reimbursement of 1.5 cents per Mcf, as to sales from areas subject to Louisiana taxes.

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[37] The decision, according to the Commission, "has made it clear that sales which are under Commission or court review are not legally relevant for purposes of determining an in-line price. The same decision also makes plain that like prices in the same area, even though themselves not under review, are equally suspect and 'ought not to be relied upon in fixing a line except upon evidence and findings to the effect that they are not subject to the same infirmities which are under test in the pending proceedings.'" (P. 289; footnote omitted.)

d. In *Placid*, and in the case at bar, periodic fixed escalations in price occur under the terms of the basic contracts. Finding that a triggering of favored nations clauses and price redeterminations will take place at a price in excess of 23.55 cents per Mcf, the Placid certificates were conditioned "to provide for a moratorium on the filing of all price increases in excess of 23.55 cents per Mcf, inclusive of tax reimbursement, pending the issuance of a final decision in the area rate proceeding in Docket No. AR61–2 or until July 1, 1967, whichever is earlier." (P. 300.)

e. The Commission followed and confirmed its ruling in *Skelly* Opinion 362 *supra*, by refusing to require refunds of amounts heretofore collected in excess of the proper price, in instances where the temporary authorization was unconditioned, in respect of the time-between commencement of deliveries until the date when a permanent certificate, later reversed and remanded, was issued. See also, *Placid Oil Co.*, Opinion 398–A issued September 11, 1963 (clarifying prior opinion and denying rehearing), P. 685.

Finally, in this current series of cases, we must take account of *United Gas Pipe Line Company*, 30 FPC 329, Opinion 399 issued July 17, 1963; order rejecting offers of settlement, denying applications for rehearing, and granting stay issued November 5, 1963, 30 FPC 1209.

United Gas involved gas from onshore Louisiana leases contracted in December, 1959, at initial prices of 22.5 cents per Mcf plus 2.3 cents per Mcf tax reimbursement, with fixed escalations of 2.5 cents per Mcf on July 1, 1962 (which have not been made effective), plus future adjustments.

Flow of gas was temporarily authorized May 3, 1961 and commenced June 22, 1962 at a gross initial price of 23.25 cents per Mcf, with provision for the refund of amounts found in formal proceedings to be excessive, down to a 20-cent floor.

The Commission concluded that "the record amply supports an in-line price of 18.5 cents per Mcf plus 1.5 cents tax reimbursement for a total initial price of 20 cents per Mcf," after considering "all applicable contracts not containing suspect prices within the criterion initially spelled out" in the Ninth Circuit's *UGI* case, *supra*, "and implemented by us" in *Skelly* and *Placid*, *supra*. (Opinion 399, pp. 332 and 333.[28])

Confirming and extending *Placid* on the matter of relevant evidence, the Commission says—

> * * * The sterility and inappositeness of cost evidence in certificate proceedings has now been proven to our complete satisfaction, and, we believe, with a certainty beyond reasonable doubt. * * * [We] take no cognizance of the cost, financial and related evidence submitted in this proceeding. (*op. cit.*, pp. 332–333.)

With regard to the contractual price escalations, the Commission concluded that the prices there established "could be used in the redetermination of prices in other contracts, leading thereby to the establishment of a new price plateau in the area far in excess of any existing rate." Therefore, the Commission ordered "that the certificates issued to Gulf and Tidewater include a moratorium on all price increases in excess of 23.55 cents per Mcf, inclusive of tax reimbursement, pending our final decision in the Docket No. AR61–2 area rate proceeding or until July 1, 1967, whichever is earlier." (*op. cit.*, p. 335.)

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[28] See also, *Medina Gathering Corp.*, 30 FPC 227, Opinion 397 issued July 16, 1963, formulating a "mandate" to the Commission to "impose a suitable condition limiting a producer's initial price to the level of prior certificated sales which are comparable and not 'under a cloud.'" (P. 230.)

D. Present Content and Rationale of Price-Line Concept

It is plain enough that the questions asked at the outset of this section must, on the basis of Commission authority, be answered in the affirmative. Price-line is determined exclusively by reference to existing certificated prices, excluding prices erroneously certificated at high levels without sufficient consideration of consumer protection, and all other certificated prices at the same levels, whether or not error in the certifications has been formally exposed or established.

The authoritarian answer is not, nor should it be, sufficient for the producer litigants herein. They ask for the rationale, and are not satisfied with Staff's analysis, which should now be considered.

Staff and producer contentions. Staff would have it that there exists in the law of initial pricing a "suspect price doctrine," according to which particular prices for gas sales, and like prices in the same area "should be considered suspect and unreliable for the purpose of fixing a price line," if such prices (1) triggered other price increases (2) established new highs for the area ("new price plateaus") (3) established the new high for the particular gas purchaser, or (4) caused the Commission to institute Section 5(a) rate proceedings. (Br. 30.)

The "suspect price doctrine" is open to, and meets strong opposition on considerations of equity and logic. The producers contend that it is an application of "guilt by association." They argue, in effect, that suspect prices, like suspect persons, are not in American jurisprudence to be considered convicted prices or persons. As for the logic of the situation—

> Thus, the logic underlying the investigation of "suspect" prices appears to be that any price paid by a purchaser after June 7, 1954, in excess of the highest initial price previously paid by that purchaser may be "suspect." Inasmuch as all "like" prices are also considered "suspect," the result could be to eliminate from consideration all prices at a level above the June 7, 1954, buying rate of that purchaser which had the lowest price scale at that date. The consequence, logically, could be to eliminate from consideration all prices above 10 or 11 cents and to freeze prices not only at the June 7, 1954, level but at levels in effect four or five years prior to that date. [Tr. 1395.]

Conclusions. We need not resolve the strenuously contended issue between Staff and producers as to whether the "suspect price doctrine" should be applied in this case, because no such doctrine has yet been formulated, and no such doctrine should be formulated.

The "suspect" prices certificated by the erroneous but unreversed Commission orders considered above still exist as valid, lawful FPC tariffs, and prices up to 24.05 cents per Mcf are still being collected thereunder. Prices subject to Section 5(a) rate investigation[29] during the pendency of the investigation are nonetheless the lawful, filed rates until changed by the Commission. See Regulations under the Natural Gas Act, Sec. 154.21, *Montana-Dakota Utilities Co.* v. *Northwestern Pub. Serv. Co.*, 341 U.S. 246, 251–252.

However, the extended analysis of past Commission policy undertaken above discloses *error* in past Commission action on Southern Louisiana prices. The *error* inheres in unreversed, still-effective certifications as well as in certifications reversed and remanded by the courts.

The courts have sent back the following prices in the area: onshore Louisiana—38 at 23.55 cents, 10 at 23.30 cents, and 5 at 23.05 cents; offshore Louisiana—9 at 21.40 cents, 4 at 22.00 cents, and 2 at 21.50 cents.

[29] As well as all other categories mentioned in Staff's contention.

The court decisions are by no means limited to a determination that these particular prices are too high. *Catco* and the subsequent court decisions make evident the general concern "that the Commission was not sufficiently protecting the public interest." J. Skelly Wright, Jr., writing for the court in *Atlantic Refining Co.* v. *F.P.C.*, *supra*, 316 F. 2d at 679. Error and abuse of discretion is apparent from the language of *Catco* and the subsequent court decisions.[20]

The Commission has in effect confessed error in respect of certain prices certificated at higher levels by issuing the Policy Statement October 25, 1960 ceiling of 21.5 cents per Mcf plus taxes, and an October 31, 1961 ceiling of 21.25 cents per Mcf inclusive of taxes where applicable, and 19.5 cents per Mcf where taxes are not applicable (both *supra*).

The analysis undertaken above of Commission principle and policy during the eras of laissez-faire and flux indicates, and a full reading of the cited decisions proves, that the Commission's underlying philosophy and approach towards high initial prices in Southern Louisiana was erroneous: beginning with the Gulf Interstate certification at 21 cents per Mcf; continuing with the intermediate decisions cited; and ended at January 22, 1962, when the certifications on the *Catco* remand were issued, with proper emphasis on consumer protection.

The *rationale* of price-line is, that no account will be taken of past mistaken Commission policy or prior Commission errors in the exercise of discretion to price-condition initial sales. Mistaken policy and error has been, and will be, corrected rather than extended to extant certificate proceedings.[21]

This rule in no way prejudices the producers. Producers seeking high prices for Southern Louisiana gas have no vested interests in or rights arising out of past erroneous Commission certifications. Although some certifications have been issued at improper prices and are no longer subject to review under Section 7 of the Act, there is no basis for claims of either (a) equities or rights in favor of, or (b) discriminations against, producers whose prices are still at issue. The consuming public (the Commission's main interest, under repeatedly stressed court decisions is not to be prejudiced by the perpetuation or cumulation of past improper prices or past error.

It follows that as a matter of the proper exercise of the Commission's discretion, consequently as a matter of law, all specific policy and prices reviewed above, up to the January 22, 1962 decision on the *Catco* remand, are to be disregarded in the determination hereof. On the basis of the specific case analysis heretofore made, high prices of 21 cents per Mcf and above, as allowed in the series of certifications beginning with *Gulf Interstate*, will be given no weight as evidence or otherwise, since all such prices were arrived at on the basis of erroneous policies and principles.[22]

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[20] Of course, courts do not interfere with decisions within the ambit of Commission discretion, *i.e.*, only pronounce error. See the second Chenery case, *S.E.C.* v. *Chenery Corp.*, 332 U.S. 194, 207, 208. Applications of this principle to Federal Power Commission cases abound. See *e.g.*, Davis, "Administrative Law Treatise," Chapter 29 (Scope of Review of Evidence), pp. 169–171; Chapter 30 (Review of Application of Law), pp. 206, 209, 210, 219, 258.

[21] See *Atlantic Refining Co.* v. *F.P.C.*, *supra*, 316 F. 2d at 680, where the court eliminates as a "mistake" a certificated sale 2.0 cents per Mcf over the price line, and 1.5 cents over the highest price considered in fixing the price line.

[22] The error has of course been established in the court decisions *supra* in variant forms of expression. Judge Washington, speaking of *Catco*, puts it that "• • • the Supreme Court meant to impress upon the Commission an interpretation of the 'public interest' which, in the context of a rising natural gas market, demands a real administrative effort to hold back prices. We find nothing in the record before us which would justify the conclusion that the Commission has adequately performed this duty." *P.S.C. of N.Y.* v. *F.P.C.*, *supra*, 287 F. 2d at 150.

DETERMINATION OF PRICE-LINE

Careful and detailed testimony concerning gas prices in Southern Louisiana was presented by staff witness D'Andrea and producer witness Celia Star Gody. Testimony relating to specific producer companies and their dockets consolidated herein was presented by producer witnesses Waddle, Henry, Conaway, and others. Mr D'Andrea concluded that "the price line for the period 1954 through 1962 should be recognized to be at 20.0 cents per Mcf," and that the price line for "sales in the federal domain, offshore Louisiana, is 18.5 cents per Mcf." (Tr. 354–355.) Mrs. Gody did not present her ultimate conclusion as to price line, but made useful analyses of the raw data collated from the Commission files by Mr. D'Andrea in his Exhibit No. 1, "Certain Contract Provisions of Natural Gas Sales in Southern Louisiana, Years 1954 through 1962."

The ruling heretofore made narrows the scope of our inquiry: we need not consider in any detail statistical data based on erroneous certifications at the highest price level. The statistical issues should be further narrowed by consideration of other broad contentions advanced by producers, Staff, and intervenors.

A. *Relevance of Open-Market Value of Gas*

For reasons of principle, Mrs. Gody as a technician concentrated on the open, unregulated market in presenting her analyses. "It is the prices negotiated in the market which are meaningful for economic analysis." (Tr. 417.) She therefore excluded the results of Commission action from consideration. "For the purpose of analysis of trends in the market, it is not meaningful to look to the results of regulatory action." (Tr. 411.) The Commission's original certification of the 1956 *Catco* contracts at the erroneously high 21.4 cent price did not bring about a change in price levels; "the *Catco* price simply gave concrete expression to what in fact had happened to the value of gas as a commodity." (Tr. 834.)

Mrs. Gody's studies are used to prove, and do prove, that a given producer's "initial contract prices at issue in this proceeding were well within the prevailing South Louisiana market price of natural gas at the time the contracts were executed." (Sun Oil Co., brief, p. 25.) Perhaps unfortunately from her clients' point of view, this fact does not prove that any given producer's prices are required by the public convenience and necessity, because the market price of natural gas in Southern Louisiana has consistently exceeded prices to be set by correct regulatory action from the controlling point of view of the Commission and courts, as we have seen.

It should be made very clear that values of gas in the open market are not a proper basis for determination of a price line; the very purpose of this proceeding is to determine an appropriate *regulated* price. The fact that 41 contracts dated prior to the *Catco* contracts (August 1, 1956) provide for prices of over 20 cents per Mcf as of December 1, 1962 (by reason of fixed escalations) is of no importance. As Mrs. Gody recognizes, the escalations "have generally been suspended by the Federal Power Commission." (Tr. 417.) Our main interest, following the directions of *Catco*, is to halt, rather than follow, the trend of the Southern Louisiana market. In following that interest, as concluded in the prior section hereof, we adopt the method of concentrating on Commission certifications which do not express erroneous principles or pricing policies.

Of course "This method is circular in that present Commission action is judged solely by measuring it against past Commission action." (Continental reply brief, p. 6.) If the method were to be used indefinitely, valid objection would lie. The objection does not, however, apply to a price line which is only a "stop-

gap device" with the "objective of providing simple, direct, and effective stop-gap protection for the consuming public." *U.G.I.* v. *F.P.C.*, *supra*, 283 F. 2d at 822, 823. We are freezing prices until the determination of the Southern Louisiana Area Rate Proceeding,[33] and no longer. We are involved with a temporary expedient which gives no consideration to value of gas service, reasonable return, or other aspects of fair and reasonable rates. The open market's only relevance is, that it "signals the existence of a situation that probably would not be in the public interest." *Catco*, *supra*, 360 U.S. at 391, speaking of any application reflecting the market.

B. *Single Price Line vs. Multiple Price Lines*

The producers which have contracts dated in 1959, 1960, 1961 and 1962 strenuously object to the application to their dockets of a single price ceiling, covering the period June 7, 1954–December 31, 1962. The producers cite rather extensive *dicta* from *U.G.I.* v. *F.P.C.*, *supra*, 283 F. 2d at 823–824, and general observations made by the Commission in its *Catco* Opinion 351, *Skelly* Opinion 362–A, and *Texaco-Seaboard*, Opinion 383–A, *supra*, to the effect that "the price line should be determined as of the time the contracts for the sales in question were executed."

It is clear that most contracts involved in this proceeding are dated in the 1959–1961 period; "the preponderant concentration, both in terms of rate schedules and annual delivery volume, is in contracts dated in 1959, 1960 and 1961." Eastern Seaboard Intervenors' Brief, p. 7. Contract prices negotiated between producers and pipelines during this later period are higher than those which prevailed in earlier years. We must find, as Mrs. Gody testified, that—

> the price under the Catco agreements was a reflection of the underlying market value of gas as a commodity. The change in price levels between 1952 through 1956 and 1957 through 1962 therefore was not simply a result of the fact that a particular sale was made at a particular price, but a reflection of the market value of the gas. * * * [Tr. 834.]

It is also true that consideration of a single time period June 7, 1954–December 31, 1962 gives emphasis to contracts entered into in 1954, 1955 and 1956 in finding the price line for contracts entered into in the later years of the period. There is no doubt that the market value of gas increased during the course of the period. As we have seen, this is not relevant. There is little if any doubt (although, of course, the matter is not in the record) that producer costs likewise increased.

However, these matters need not concern us in the determination of a temporary, stop-gap price line "on the low side"[34] which will afford consumer protection until fair and reasonable rates are determined in Docket AR61–2.

There is no basis in the record for reflecting upward adjustments in price line on considerations of 1962 costs contrasted with 1954 costs and there is no adequate basis for permitting "cost" evidence into the record. There is no suggestion of a method, and no adequate method exists, by which the Commission can make annual or other adjustments in a temporary price line that will reflect adequate consumer protection as well as producer claims. The producer remedy, as suggested in the *Atlantic Refining* decision, *supra*, is to file for a Section 4 rate increase, subject to refund, and subject to the limitation on grossly high increased rates considered *infra*.

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[33] Under the Commission's order of May 16, 1963 in AR61–2, as amended, the case in chief was presented December 10, 1963, the rebuttal will be presented February 18, 1964, and the hearings will commence March 17, 1964.

[34] *Atlantic Refining Co.* v. *F.P.C.*, 316 F. 2d at 679.

C. *Time Period Covered by Relevant Price Statistics*

Mr. D'Andrea's main presentations involve all certificated sales under contracts dated June 7, 1954 through December 31, 1962 except erroneous certifications. Mrs. Gody principally used contracts of 1957–1962 inclusive, except contracts specifically remanded by the courts. Producers argue a point closely related to the point just considered: that since virtually all of the dockets herein derive from contracts dated 1957 or later, there is "no justification for reference to certificated sales under contracts dated as far back as June 7, 1954." (Tr. 1398.)

If the producers could bring forward a substantial number of certificates issued during the later part of the total time period under correct pricing policies and principles, the prices reached in such certificates would form the proper statistical base for the determination herein. However, during 1960, 1961 and 1962 "the Commission has issued permanent certificates for very few sales (aside from sales certificated following settlements) and such sales, in the main, have covered small volumes at low prices certificated in abridged proceedings. Consequently "* * * [Mr. D'Andrea's] price compilation is dominated by the older contracts." (Mrs. Gody, at Tr. 1399.)

We do not have in the evidence a statistical basis for matching correctly decided certifications with applications at issue herein by years, or by any other divisions of the time period used by witness D'Andrea. Later certifications at excessive market prices, issued under erroneous conceptions of pricing policy, are in any event to be excluded from consideration herein, simply because they are erroneous, as heretofore found. The time period for useful statistics, on all considerations, is the period June 7, 1954–December 31, 1962.

D. *Inclusion or Exclusion of Tax Reimbursement*

Most of witness Gody's testimony, charts and schedules involve contract prices *before provision for tax reimbursement;* her stated reason being that there were a "number of changes in Louisiana law affecting the tax reimbursement payable under the contracts over this period of years." (Tr. 413.) In this respect, the evidence ignores the Ninth Circuit's injunction—

> * * * comparative tax reimbursement plans as well as comparative base rates ought to be taken into consideration in determining whether a proposed initial price is out of line. Except where the difference in the tax reimbursement features is relatively insubstantial, it is our opinion that failure to take account of such a difference would be an abuse of discretion. (*U.G.I.* v. *F.P.C., supra*, 283 F. 2d at p. 826; see also note 2, *supra.*)

The absence of consideration of tax reimbursement seriously impairs the validity of some of Mrs. Gody's schedules and charts; *e.g.*, schedules 9 and 10, showing range of initial base prices 1957–1962. The deficiency in this regard is not remedied by derivation of an "average" tax reimbursement in schedule 11, because the average cannot be tied to specific prices.[35]

It should be remembered that in dealing with initial price issues, we are not concerned with net realizations by the producers, which are a factor of just and reasonable rate problems, but with temporary protection to consumers. This is the plain and necessary import of *Catco, Atlantic Refining*, and other decisions *supra*. By definition, we are not here measuring net producer income, but the minimizing of consumer outgo. Evidence of contract prices before taxes is of no value to this proceeding.

[35] Additionally, in this "general summary of recent market prices," Mrs. Gody included the contracts which are the subject of these proceedings. (Tr. 419.)

E. Review of Relevant Statistics; Conclusions Thereon

Mr. D'Andrea's Chart 2 of Exhibit 2 analyzes the composite of contract prices (including taxes) allowed by the Commission during the relevant time period, in relation to 1961 sales volumes. This chart shows that more gas is being sold at 18.5 cents per Mcf (125.98 million Mcf) than at any other single price.

Other price indications from Chart 2 may be summarized as follows:

Price	Volume (Mcf)	Percent total volume [1]	Number of contracts
17.5 or less	80, 560, 000	15. 46	88
17.7–18.3	37, 560, 000	7. 21	44
18.5–19.0	137, 020, 000	26. 30	52
19.1–20.0	48, 150, 000	9. 24	72
20.25–21.9	75, 810, 000	14. 57	61
22.0–23.25	88, 920, 000	17. 07	37
23.425 or more	52, 960, 000	10. 17	23

[1] Due to rounding off the sum of the percentage amounts to 100.02%.

Charts 2–A through 2–G of the same exhibit show contracts, volumes and prices by years, and may be summarized as follows:

Year	Total contracts	Total Mcf volume	Highest single volume and price thereof
1954	16	12. 78	5.68 at 17.5 cents.
1955	31	139. 13	75.94 at 18.5 cents.
1956	89	135. 46	45.70 at 18.5 cents.
1957	56	115. 01	33.22 at 22 cents.
1958	80	75. 32	31.79 at 24.05 cents.
1959	27	15. 34	5.62 at 23.25 cents.
1960	31	23. 17	14.76 at 23.25 cents.
1961	14	3. 06	0.95 at 15.80 cents.
1962	3	1. 71	0.96 at 10.75 cents.

Schedule 6 of Exhibit 2 shows the distribution of prices for sales permanently certificated in Southern Louisiana under contracts dated 1954–1962. Focusing on the number of sales contracts for each year, we find the highest number, and second highest number, to be as follows:

1954—5 sales covering 5.7 million Mcf at 17.5 cents;
2 sales covering 735,000 Mcf at 14.25 cents.

1955—10 sales covering 18.3 million Mcf at 17.5 cents;
5 sales covering 76 million Mcf at 18.5 cents.

1956—20 sales covering 22.2 million Mcf at 17.5 cents;
12 sales covering 38.6 million Mcf at 18.5 cents.

1957—10 sales covering 9.3 million Mcf at 20.25 cents;
10 sales covering 30.2 million Mcf at 22 cents.

1958—8 sales covering 7.2 million Mcf at 23.55 cents; [1]
7 sales covering 3 million Mcf at 20.25 cents.

1959—5 sales covering 2.5 million Mcf at 19.5 cents;
3 sales covering 943,000 Mcf at 19.1 cents.

1960—9 sales covering 1.6 million Mcf at 19.5 cents;
4 sales each at 19.9 and 20.375 cents covering a total of 2.2 million Mcf.

1961—5 sales covering 954,000 Mcf at 15.8 cents;
3 sales covering 622,000 Mcf at 19.75 cents.

1962—1 sale covering 960,000 Mcf at 20.5 cents;
1 sale each at 18 and 19.5 cents covering, respectively, 29,000 and 720,000 Mcf.

[1] Excluding an atypical situation where a 17.9-cent price is subject to upward adjustment for gathering and compressing.

The weighted average price for permanently certificated onshore gas sales under 1954–1962 contracts is 19.7699 cents per Mcf excluding prices derived in settlements, and 19.9161 cents per Mcf including settlement prices. (Exh. 2, Sch. 8.) By years, there is in the first category an upward trend from 15.4526 cents per Mcf in 1954 to 21.8988 cents per Mcf in 1958, and a downward trend thereafter.

Chart 3 and related Schedule 7 of Exhibit 2 give in column form, and in narrative, the "factors causing certain permanently certificated sales to be suspect," and represent Mr. D'Andrea's compilation of instructions received by him from Staff counsel. These instructions concern prices which Mr. D'Andrea was not to take into consideration in arriving at his price line. As we have seen, we arrive at the same result without resorting to the use of labels of questionable content.

Summing up, Mr. D'Andrea "found that the price, not considered suspect or under a cloud [herein, not based on erroneous price policies], representing a preponderance of sales and a substantial amount of gas moving in interstate commerce was 19.75 cents per Mcf. This indicated to me where the in-line price might fall." (Tr. 353.) Supported by his findings of a 19.77 cents per Mcf weighted average price, and considering 23 contracts at 20.25 cents per Mcf involving volumes of a little more than one-half the 19.75 cents per Mcf volumes, Mr. D'Andrea derived the 20-cent price described at the outset of this section.

Mrs. Gody's rebuttal testimony, like her testimony in chief, mainly presents data for certificated sales under contracts dated 1957–1962 and compares this data for the longer period used by Mr. D'Andrea. Chart 1 of Mrs. Gody's Exhibit 42 shows that the price distribution for her period differed widely from the price distribution presented for Mr. D'Andrea because contract prices for the limited period were considerably higher than the prices taken under consideration in the longer period. Chart 2 summarizes information showing that the largest volumes delivered in 1961 were at prices of 22 cents per Mcf and above.

As testified by Mrs. Gody, out of 243 sales made in the period 1957–1962, after excluding settlement prices and court remanded prices, (a) 106 sales were at prices above 20 cents, and (b) 79 per cent of the total volume was certificated at prices higher than 20 cents.

As we have seen, certifications remanded by the courts for Commission redetermination after involving onshore sales were all at prices of 23.05 cents or above. Mrs. Gody's charts and testimony show that if we exclude from consideration only sales at prices equal to or higher than those involved in the court actions, the preponderance of sales within the Louisiana taxing jurisdiction would be at a range of 22 cents to 22.25 cents per Mcf. This preponderance derived from 27 onshore sales accounting for 47 billion cubic feet of gas amounting to 18 per cent of the total volume of permanently certificated onshore contracts.

However, Mrs. Gody's computation only shows the magnitude of Commission error in respect to some past certifications. The court remands cannot properly be used in the restricted fashion proposed by Mrs. Gody; the decisions do not set a 23.05-cent floor—the tenor of the decision is to the contrary. The court decisions do not principally involve particular, identified excessive prices: on the contrary, the decisions speak in terms of an erroneous pricing policy which, as we have seen, permeates all decisions certificating Southern Louisiana gas at prices of 21 cents per Mcf and higher. Mrs. Gody's analysis is well presented and sharply defines the issues. Her presentation, however, is rejected for the reasons heretofore stated. The price line for gas subject to the Louisiana tax jurisdiction is 20 cents per Mcf.

Offshore sales. There are but two sales outside of Louisiana's taxing jurisdiction which have been certificated to date, aside from certifications pursuant to settlement and certificates involved herein. The two certifications in question were issued to Union Oil Company of California at the contract price of 22 cents per Mcf and are listed as items 13 and 14, p. 18, Schedule 2, Exhibit 1. The certifications were issued in the *Trunkline Gas Co.* proceeding, *supra*, 21 FPC 704, on May 22, 1959. This, of course, was before the *Catco* decision of June 22, 1959 remanding off shore certifications at prices of 21.4 cents per Mcf.

As heretofore found, the *Trunkline* decision is erroneous and should be given no consideration herein. This means that there is a complete absence of certificated prices in the offshore area and that it is necessary to turn to certifications in other areas to find an appropriate price line, as was done in *Standard Oil Co. of California, supra*, 27 FPC 1153 and 315 F. 2d 652 (CA10).

The matter of pinpointing the offshore appropriate price has been disposed of by the Commission in *Continental Oil Co.*, 27 FPC 96, *supra*, and needs no independent justification. The price line of 18.5 cents per Mcf established in that decision is, for the reasons therein stated at length, found to be the appropriate price line for offshore gas sales not subject to Louisiana tax.

F. *The Settlements*

Citing the conventional reason for disregarding settlements in arriving at a judgment ("settlements may be a simple desire to end protracted litigation"), Staff and Continental conclude that "no consideration should be given to settlements in determining" the price line at issue herein.

This reasoning is fully applicable to private litigation, but is of doubtful validity when applied to Commission determinations of the public interest. Decisions as to the correct price line for gas sales is, of course, entirely a matter of public interest, as repeatedly stressed in the court decisions *supra*. Although settlements have not been used herein in the derivation of the price line, they should be noticed, both for reasons of candor and principle, as a check on the conclusions derived independently.

The settlement formula was established by order of July 30, 1962 in *Texaco Inc.*, 28 FPC 247. Essentially, the formula is: a price of 20.625 cents per Mcf onshore, 19 cents per Mcf offshore, and a moratorium on rate filings until the earlier of July 1, 1967 or the conclusion of Area Rate Proceeding AR61–2 (*supra*). Refunds are to be made of two-thirds of the difference between collected prices and settlement prices, pursuant to computation procedure, and with 6 percent interest to March 1, 1960 and 7 percent thereafter. Take-or-pay provisions are revised to provide for a four year make-up period, where shorter.

Other cases in the same pattern, prior to the commencement of the proceedings at bar, or not involved herein, include *Sun Oil Co.*, 28 FPC 809; *Mississippi River Fuel Corp.*, 28 FPC 915; *Bel Oil Corp.*, 28 FPC 1006; the remanded *Catco* dockets, *supra*, 28 FPC 1090; *Tennessee Gas Transmission Co.*, 29 FPC 4; *Petroleum Offshore Leaseholds, Inc.*, 29 FPC 453; *Shell Oil Co.*, 29 FPC 472; *Phillips Petroleum Co.*, 29 FPC 581; and see order issued herein April 10, 1963, 29 FPC 734.

A large number of the dockets originally consolidated for hearing herein have been finally settled pursuant to the formula, severed herefrom, and concluded by the issuance of permanent certificates. These dockets are listed in Appendix A of this decision, pursuant to the plan mentioned in footnote 1 above for reducing the size of the caption.

ISSUES ARISING IN PARTICULAR DOCKETS

1. *Right to Decide Certain CATCO Prices Herein*

As we have seen, the Catco remand was settled by order issued December 21, 1962, 28 FPC 1090. However, four dockets [36] involving new supply from the general Catco offshore area under temporary authorizations issued August 29, 1961 at 21.4 cents per Mcf, subject to refund, were not finally disposed of in the settlement, and were consolidated herein. The Commission agreed with the settlement proposal that service in these dockets "be continued under temporary authorizations" at a reduced conditioned price of 19.5 cents per Mcf, subject to later certification at a proper price to be determined after hearing, but not subject to refund. The exact language of the Commission's price condition is as follows:

> The initial price for such service shall be 19.5 cents per Mcf at 15.025 psia, effective September 1, 1962; provided, however, that such price shall be changed to agree prospectively with whatever initial service price is determined by the Commission in an order which becomes final and no longer subject to judicial review in Docket No. AR61-2, *et al.*, or other similar proceeding; and provided, further, that if such price so determined is less than 19.5 cents per Mcf, Applicant shall not be obligated to make refunds. [28 FPC at 1093.]

Cities Service Production Company and others argue that the proceeding at bar is not an "other similar proceeding" to the proceeding in Docket No. AR61-2. "Since this is not the forum provided in the Commission's Settlement Order for changing the settlement rate at Docket No. CI62-135 and since such Settlement Order has become final, neither the Commission nor the Examiner has the authority in these proceedings to change the settlement price." (Cities Service brief, p. 12.)

The producer claims have been considered and denied by the Commission. See order of April 10, 1963 herein, 29 FPC 730. The reasons for denial should be briefly considered.

The construction of the phrase "or similar proceeding" should of course be in accordance with the understanding and contemplation of the parties to the settlement and to the approval thereof.

As is apparent from the text of the order instituting the Area Rate Proceeding, 25 FPC 942, the Commission originally contemplated, and made very clear to all concerned, the joinder in that proceeding of both (a) certificate dockets concerned with the initial price issue, which were to be heard "in the first phase of this hearing" and to be decided by "the issuance of an interim order," and (b) just and reasonable rates under Sections 4 and 5 of the Natural Gas Act.

By the time of the Fourth Amendment to the Statement of General Policy No. 61-1, issued October 31, 1961, the indications were that the contemplated first phase of AR61-2 was "not feasible," and that the Commission would at some time in the future "eliminate the contemplated first phase of AR61-2." Fourth Amendment, *supra*, 26 FPC at 661. All parties presumably knew of these indications at December 21, 1962, which undoubtedly were the very reason for the use of the phrase "or other similar proceeding" in the settlement.

The present proceeding is similar to—indeed, identical with—AR61-2 insofar as the latter proceeding, at the outset, involved South Louisiana initial prices in certificate cases. CATC has no right or privilege to have their initial certificate prices determined in a rate proceeding. The settlement and the Commission order of December 21, 1962 do not contemplate any such strange result.

[36] CI62-135, CI62-137, CI62-146, and CI62-147.

The January 22, 1963 consolidation of the CATC dockets herein was entirely consonant with the terms of the settlement, and the contentions to the contrary are overruled.

2. Liability of Hurley Oil & Gas Co. For Refunds

In Docket No. G–17775, we find that on March 11, 1959, the Commission issued temporary authority to Hurley to sell certain gas at the 23.05 cents per Mcf contract price, conditioned upon Hurley's "refunding to Transcontinental [the pipeline purchaser] any amounts in excess of the amount resulting from the rate finally determined to be proper in Docket No. G–17775." This is, very clearly and definitely, an unlimited ("floorless") refund condition. Hurley accepted the temporary authority and commenced deliveries April 1, 1959.

On April 13, 1960, the New York Public Service Commission filed its Notice of Intervention in the proceeding [37] into which the Hurley case had, on March 29, 1960, been consolidated and which involved, *inter alia*, the matter of Hurley's permanent certification at a proper price line. NYPSC served Hurley with a copy of its intervention notice. The Commission on April 29, 1960 issued and served on Hurley a notice regarding the intervention of the NYPSC and others.

On May 12, 1960, Hurley filed with the Commission a "Motion to Remove Price Refund Condition from Temporary Authority," without serving copies on any party to the consolidated proceeding except Transcontinental. Hurley's motion was based on the fact that several other producers in the South Louisiana area had been granted temporary certificates at prices as high or higher than Hurley's price without refund obligations. On June 29, 1960, the Commission granted Hurley's "unopposed" motion and deleted the refund condition as requested.

On September 18, 1962, NYPSC filed with the Commission a "Motion to Annul Temporary Authorization, to Direct Refunds, and to Terminate Suspension Proceeding." In this motion, NYPSC brought to the Commission's attention the fact that Hurley had not served intervenors with a copy of its motion on May 12, 1960. NYPSC also noted the fact that this temporary authority (like all others) was granted by letter rather than published order, therefore was not a ruling of which NYPSC had knowledge.

In the order instituting the proceeding at bar, the Commission severed Docket No. G–17775 from the *Transcontinental* proceeding, and consolidated it herein.

By order of January 14, 1963, 29 FPC 71, the Commission, *inter alia*, (a) vacated its order of June 29, 1960 which had deleted the refund condition, and reinstated the original letter order of February 4, 1959, with its provision for refund of "any amounts in excess of the amount resulting from the rate finally determined to be proper in Docket No. G–17775;" (b) referred the issue of whether or not Hurley's May 12, 1960 motion to remove the refund condition should be granted or denied, for determination herein. Reconsideration was denied by order of March 4, 1963, 29 FPC 417.

The only basis for Hurley's motion of May 12, 1960 was the existence of a few unconditioned "temporaries" at the same price level in the area of Hurley's sales. We have seen that the authorization of sales and deliveries at the Hurley price level was the result of mistaken Commission pricing policies during the period in question, which policies should not be extended to extant dockets.

In principle, temporary authorizations are issued to help producers meet emergency situations. They are issued without notice or hearing. They are a license to start serving gas, but they are not a license to collect unwarranted prices therefor. The Commission correctly imposed a refund condition in the certificate issued March 11, 1959.

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[37] *Transcontinental Gas Pipe Line Corp., et al.*, Docket No. G–20107, *et al.*

The subsequent deletion of the refund condition was a nullity, because effected *ex parte* at a time when and in proceedings where all concerned, including NYPSC, were entitled to notice and an opportunity to be heard. This result was occasioned by Hurley's neglect to give notice of its application to other parties to Docket No. G–20107, *et al.* Hurley's prejudice, occasioned by its own fault, is simply that it has lost the possibility that the Commission might have erroneously deleted the refund condition..

In short, Hurley has no right in the premises, nor any visible equities. Hurley's claim for consideration of "evidence" about the issue was rejected at the hearing, because Hurley produced no relevant facts, but attempted to rely on matters of cost, value and return which, as we have seen, are useless in the fixing of a "stop-gap" price line, and which do not speak on Hurley's legal point. The facts relevant to the legal point are contained in Hurley's contract, rate schedule, and applications, which (together with price line determinants) are part of the record.[38]

3. *Prices for Kerr-McGee, Phillips, and Jupiter Corp.*

In a rather complicated situation, Kerr-McGee Oil Industries, Inc. and Phillips Petroleum Company, owners in equal shares of two gas properties, sell therefrom gas ultimately delivered to Tennessee Gas Transmission Company, at initial prices to be determined herein. It will simplify the presentation to consider each sale separately, although they are each part of one transaction.

Sales from Rollover Field. The first property is Rollover Field, located offshore, outside the Louisiana taxing jurisdiction. This sale is made by Kerr-McGee and Phillips from an offshore platform to Jupiter Corporation[39] under a contract dated February 6, 1953. During relevant periods prior to November 5, 1958, Jupiter (after gathering, dehydrating, separating out of liquids, and transportation to the Louisiana shore) resold the gas to Niagara Gas Transmission, Ltd. for export to the Dominion of Canada, and for service to the Toronto market pending deliveries thereto from Trans-Canada's gas sources in western Canada.

The sale was effected by displacement. Jupiter actually delivered the gas to Tennessee onshore in Louisiana. Tennessee applied for and received an export permit and a Presidential permit, and delivered equal quantities of gas to Niagara through facilities crossing the border near Buffalo, New York. See *Tennessee Gas Transmission Co.*, 12 FPC 311, 320, 330–331.

The sales from Rollover and from the field next considered were originally made to Tennessee at interim prices of 3.8 to 9.3 cents per Mcf. After the *Phillips* decision, applications covering the sales were made to the Commission pursuant to Order 174–A, but were withdrawn at Commission request when, in May 1957, the displacement sales actually commenced.

The displacement sales were at a price to Niagara of 16.4 cents per Mcf, which escalated to 21.3333 cents per Mcf on November 1, 1958. Such sales and the price therefor are apparently outside the Commission's jurisdiction. See *Border Pipe Line Co.* v. *F.P.C.*, 171 F. 2d 149 (CADC). The displacement sales continued until November 5, 1958, when Niagara assigned its contract to Tennessee.

Jupiter at all times was a transporter, rather than a producer. Compensation to Jupiter for its services depends on volumes delivered. All parties use

[38] An incidental reference in the Commission order of January 14, 1963 to "appropriate evidence" to be adduced in this hearing, in the context of the whole order and general Commission policy, should not be given controlling weight to the contrary.

[39] Actually, to one of Jupiter's two predecessors, originally. There is no issue about Jupiter's succession or the propriety of treating Jupiter as the real party in interest at all times.

the compensation actually realized, which is taken by all to be at the rate of 2.4 cents per Mcf.

After Niagara's assignment to Tennessee, applications for certificates of public convenience and necessity were duly filed by Kerr-McGee, Phillips and Jupiter. The issues of price level as to such applications were the subject of a Presiding Examiner's decision issued June 17, 1960, finding (1) a price of 16.4 cents per Mcf for the sales from Kerr-McGee and Phillips to Jupiter, *less* 2.4 cents per Mcf compensation to the latter, or a net of 14.0 cents per Mcf; (2) a price of 16.4 cents per Mcf plus tax reimbursement for sales from Jupiter to Tennessee; (3) a price of 16.4 cents per Mcf plus tax for the sales from the field next discussed.[40]

On December 5, 1962, the Commission in Docket No. RI63-212 instituted a Section 5 investigation of Jupiter's rates; the order reciting that "During 1961 it is estimated that Jupiter received an average of 2.3 cents per Mcf for its services to Phillips and Kerr-McGee." [41]

As to these sales from the Rollover Field, Staff recommends (Br. 48) prices of "18.5¢ per Mcf less the charges provided in their contracts with Jupiter" for Phillips and Kerr-McGee, and 18.5 cents per Mcf for Jupiter.

The Eastern Seaboard intervenors recommend that the Jupiter docket be "severed from this proceeding and set for prompt hearing, at which time Jupiter should be afforded an opportunity to submit the data required by the Commission's regulations of transmission companies under Section 7 of the Act"; noting the pendency of Docket No. RI63-212. (Br. 22.) Although the matter is not entirely clear, it seems that the Eastern Seaboard intervenors (except Long Island Lighting Company) would apply the 18.5 cents per Mcf price to the offshore Rollover field sales; Long Island Lighting, however, recommends a realization of 14 cents for such sales to Phillips and Kerr-McGee for no stated reason, but apparently in support of the Examiner's decision, *supra*.

Sales from Hog Bayou Field. This field is within the Louisiana taxing jurisdiction. Phillips and Kerr-McGee each own half of this field, and deliver the gas directly to Tennessee. In the first instance, during the relevant time period, deliveries were by displacement for Niagara, as in the case of sales from Rollover. All material facts, except for direct delivery and location from which the sales are made, are the same in the case of Hog Bayou as in the case of Rollover.

Staff contends for the general 20 cents per Mcf price for sales from Hog Bayou. The Eastern Seaboard intervenors also seem to accept the applicability of the general price line to this sale, except for Long Island Lighting (with NYPSC concurrence), which recommends certification at 17.9 cents per Mcf inclusive of tax reimbursement.

Analysis and Conclusions

We start with the premise that Jupiter is truly an independent gas collecting and transmitting corporation, dealing at arm's length with Tennessee and all other parties involved in the transactions under examination. There is nothing in the record, in the Examiner's decision on the prior hearing, or in the Commission's files indicating anything to the contrary.

As an independent pipe line company, Jupiter should be treated exactly like any other pipe line company with respect to the price which it must pay for offshore gas. This is because the price issue focuses on consumer protection rather

[40] On May 19, 1961, the proceedings were consolidated into AR61-2 for redetermination, see text and note 23, *supra*, from which they were subsequently severed for determination herein.

[41] Other recitals in the order give the impression that the investigation results from differential in charges to these producers from charges to another producer.

than producer realizations, as we have seen in detail with respect to the matter of taxes.[42]

Kerr-McGee and Phillips should be treated exactly the same as any other producers offshore Louisiana, all of whom deliver gas from the field (*i.e.*, at the central gathering point, which is the platform) to the pipe line transmission companies. The price line in every case except the Jupiter case is recognized both by staff and intervenors as the price applicable to the sale at the platform. Jupiter is in form the purchaser of the gas and Jupiter is in substance the purchaser for the purpose of determining the price line for sales to it. It is difficult to understand, and it is not explained, why Long Island Lighting takes an extreme position to the contrary.

The contrary result would discriminate against Phillips and Kerr-McGee without basis. Jupiter, as the transportation company, presumably will be treated like any other transportation company in respect to rate base and rate of return. In the pending Section 5 proceeding Jupiter will presumably receive just and reasonable rates sufficient to cover the investment in its facilities for getting the gas ready for transportation and transporting it to the delivery point onshore. Presumably these just and reasonable rates will be the exact equivalent of the rates which would have been applied to Tennessee in respect of this segment of line if Tennessee had actually built the line.[43] There is no prejudice to consumers in such an arrangement.

Of course, if Phillips and Kerr-McGee are to receive 18.5 cents per Mcf for the gas at the platform, as is here decided, Tennessee will pay 18.5 plus 2.4 cents per Mcf transportation charge in respect of the gas delivered into Tennessee's facilities onshore. For present purposes we must assume that the 2.4 cents per Mcf transportation charge is the proper rate, since the propriety of that rate is not at issue in these proceedings, but is at issue in the Section 5 proceeding instituted December 5, 1962, *supra*.

It should be restated very plainly that the proceeding at Docket No. RI63–212 involving Jupiter Corporation's sales to Tennessee under its Rate Schedule No. 8 are quite different proceedings, and that Jupiter is not subject to question in the proceedings at bar insofar as its rate is concerned. The 2.4 cents per Mcf collected by Jupiter is not an initial price nor any part of an initial price. The 2.4 cents per Mcf is a rate fixed as compensation for transportation charge which may or may not be found just and reasonable in Docket No. RI63–212. This rate is totally dissimilar in character from the initial prices at issue in the other dockets consolidated herein.

The solution of the Jupiter rate suggested by the Eastern Seaboard intervenors should be appealing to the Commission, in that it postpones definitive action in regard to a mattter where the record is somewhat deficient especially in the light of Jupiter's failure to appear in this hearing in support of its application.

On balance, however, Jupiter should be issued a certificate in Docket No. G–16679 in order to clear this docket from the number of cases long pending before the Commission. The application makes out a case for certification. Certification is entirely routine and formalistic. No question or issue is presented and no question or issue exists in this proceeding as to the propriety of Jupiter's rates. In the present proceeding, Jupiter presents itself as a pipe

[42] A full rationale is set out in *Panhandle Eastern Pipe Line Co.*, 27 FPC 35, Examiner's decision, p. 62 *et seq.*, concluding (p. 62) "The consumer is, for the present, adequately protected if 'the price is right' so far as the pipeline is concerned."

[43] In the case of the offshore deliveries from CATC and the MCN producers, Tennessee has built or proposes to build the subsurface laterals itself. These subsurface laterals will of course become part of Tennessee's rate base on which it will be entitled to earn a return.

line company transporting gas in interstate commerce, entitled to a certificate of public convenience and necessity in respect of its operations. The issuance of this certificate will clear the way for the rate determination to be conducted in the separate docket mentioned above.

The reasoning outlined above, relative to the pricing of sales from the Rollover Field, also applies to the onshore sales from the Hog Bayou Field. These sales should be conditioned to the generally applicable 20-cent price for onshore gas.

The lesser price determined by the Examiner's decision of June 17, 1960 has never become permanent and the considerations leading to that decision are outweighed by considerations adduced herein. Contentions advanced to the contrary are overruled.

With regard to return of monies collected as tax reimbursement in respect to Louisiana's invalid gathering tax, Staff brief p. 50, reimbursement will not be required in regard to the sales from Rollover in Docket Nos. G–16718 and G–16611, because no tax reimbursement has been collected in respect of these offshore sales. No return will be required with respect to Jupiter's resale to Tennessee because again, no tax was ever collected. Tax reimbursement collected in respect of sales from the Hog Bayou Field in Docket Nos. G–16612 and G–16719 should be refunded pursuant to the condition contained in the temporary authorization covering these sales.

4. *Abandonment of Two Sales*

Staff moves that the following applicants be authorized to abandon proposed sales, and that their temporary authorizations therefor be cancelled:

Herbert L. Dillon, Jr. (Operator), *et al.*, Docket No. CI61–841.

Midwest Oil Corporation, Docket No. CI60–745.

There is no objection in the case of Dillon, and Staff's motion in this docket will therefore be granted. In the case of Midwest, the application is opposed by the purchasing pipeline, and Staff's motion will therefore be denied.

5. *Termination of Three Dockets*

The property involved in the Irwin & Bess Docket No. G–19297 is now covered by the application of W. L. McKnight d/b/a La Gorce Oil Company in Docket No. CI61–1464. The property involved in the Drew Petroleum, Inc. Docket No. G–18461 is now covered by the application of Socony Mobil Oil Company, Inc. in Docket No. CI61–659. The property involved in the Reese E. Carter Docket No. G–17298 is now covered by the application of Williams Brothers Company in Docket No. CI61–104.

Upon motion of Staff and without objection, the temporary authorization issued to the named predecessors will be cancelled and the dockets will be terminated.

6. *Refund of Tax Reimbursement*

In addition to the tax reimbursement funds disposed of in item 3, *supra*, referring to the invalid Louisiana gathering tax, Marathon Oil Company (Staff Brief, Appendix A, Sheet 22, line 10) is liable for such refunds pursuant to the terms of its temporary authorization, and provision for such refund should be made herein.

7. *Requirement of Rate Filings*

Applicants Superior Oil Company in Docket No. CI61–1481 and Sun Oil Company in Docket No. CI60–490 have not filed their related rate schedules. The order for their certifications will require appropriate filings.

8. *Acceptance of Rate Filings*

The applications of Placid Oil Company in Docket No. CI61–511 (two acreage additions) and Sinclair Oil & Gas Company in Docket No. G–17917 (one acreage addition) involve prospective sales as to which applicants have not made rate filings. Appropriate rate filings at not more than the price line prices should be required by the order herein.

9. *Certain Certificates Subject to Section 4(e) Proceedings*

Applicant Sun Oil Company in Docket Nos. CI60–490 and G–15267 is a signatory co-owner of properties previously covered by certificates issued to the operators of the properties. See Appendix to Staff Brief, sheet 18, lines 2 and 10; footnotes 18 and 29. Rate increases proposed by the operator's covering Sun's interests have been suspended, and are subject to Section 4(e) proceedings. For reasons of consistency, see *Graridge* discussed *infra*, each certificate to Sun should be at the level of the last rate in effect under the operators' rate schedule which is not subject to refund obligation. Sun, like the operators, will then collect amounts over such "last clean rate" subject to future refund obligations as may be decided in the rate proceedings.

10. *Certain Succession Dockets*

We here consider six assignments of parts of given units of productive acreage, which units originally were covered by permanent certificates of public convenience and necessity issued to the assignor. The assigned parts of such acreage are now covered by temporary authorizations issued to the assignees which allow "each assignee to collect the rate in effect under the assignor's related rate schedule even though that rate might have been a rate subject to refund under Section 4 of the Act. The temporary certificates issued to the assignees were therefore subject to the condition that the assignees be under a possible refund obligation down to the level of the assignor's last rate not subject to refund." (Staff brief, pp. 55–56.)

The dockets in question and the price being collected under the temporary authorizations, are as follows:

Docket No.	Applicant	Price
CI61–452	J. C. Trahan Drilling Contractors, Inc. (Operator) *et al*	20.25
CI62–102	Shoreline Exploration, Inc	23.3
CI62–1028	Samedan Oil Corp. (Operator) *et al*	22.25
CI62–73	Shoreline Exploration, Inc	43.3
CI61–1280	General Crude Oil Co. (Operator) *et al*	20.4
CI61–586	Continental Oil Co. (Operator) *et al*	19.9

In each case, the price being collected is exactly the same as the predecessor's rate in effect subject to refund at the time of the assignment. In each case, the temporary authorization issued to the assignee provides that the price to be collected will be subject to refund of amounts in excess of the proper initial price for the given docket, which has been established herein for these onshore sales at 20 cents per Mcf.

Staff recommends certification at the "last rate of the assignor which was not subject to refund at the time the assignee's application was filed," but "conditioned to require that the assignee applicant will nevertheless remain liable to refund amounts collected above the assignor's last rate not subject to refund (assignee's initial rate) depending upon the outcome of the assignor's Section

4 proceeding, or Area Rate proceeding, AR61–2 * * *." See Staff brief, pp. 56–57; cf. Appendix B, column 18.

"Staff's recommended price," according to Appendix B of the Staff brief, "conditioned to refund to the level of rate determined to be proper in the predecessor's suspension docket or Docket No. AR61–2, et al.," is as follows—

Trahan	11.083
Shoreline CI62–102	14.497
Samedan	20.25
Shoreline CI62–73	11.047
General Crude	18.0
Continental	18.7

Examination of the temporary authorizations, however, discloses that the Commission has on the indicated dates issued the temporary authorizations to applicants with refund floors as follows:

		Cents
Trahan	10/6/60	11.047
Shoreline CI62–102	2/16/62	11.047
Samedan	4/19/62	20.25
Shoreline CI62–73	12/ 5/61	11.047
General Crude	5/ 3/61	20.0
Continental	3/28/62	18.2

Analysis and Conclusions. The situation is not entirely settled by *Graridge Corporation*, 30 FPC 1156, Opinion No. 408 issued October 31, 1963. *Graridge* decided the issue as to the proper price for successors who took over "either the initial rate of the predecessor, or a rate which has been increased but is not subject to refund or any longer the subject of any Section 4 rate proceeding." (P. 1159, fnt. 5.) The specific "initial rates" or "rates which have been increased" thus referred to do not appear in the text of *Graridge*, but were evidently at the erroneously high levels discussed under Sections A and B of the second main heading of the present decision.[4] *Graridge* in effect holds that the successor is entitled to an initial price the same as the predecessor's price, even though the predecessor's price was too high, because "* * * by treating the successor like the predecessor we obtain a consistency of administration and treatment. Each successor, by stepping into the shoes of his predecessor, takes the properties and sales subject to any benefits or infirmities inherent therein." (P. 1162.)

Ten of the dockets in *Graridge* were not contested. After one settlement, the nine remaining uncontested dockets were certificated at the "Last Rate Not Subject to Refund." *Cf. Graridge* opinion, footnote 3, and Exhibit 1 in that proceeding. So here, following the *Graridge* approach, the certificates should be issued at the prices listed above as "Staff's recommended price," *i.e.*, the last rate not subject to refund, in order that the applicants "be placed in the same positions occupied by their predecessors." (P. 1164.)

Applicant Samedan's price of 20.25 cents per Mcf is above the 20-cent proper price for this onshore sale. Samedan's predecessor, Tidewater Oil Company, was certificated at 20.25 cents per Mcf in Docket No. G–15103. The only distinction between the Samedan docket and the dockets disposed of in *Graridge* is that Samedan involves only a partial assignment of the particular produc-

[4] Examination of the Stipulation and Exhibit 1 referred to in the *Graridge* decision discloses that the "last rates (of the assignor) not subject to refund" were as follows: three at 23.25 cents per Mcf; two at 22.05; one each at 23.15, 22.8, 21.75 and 20.75.

tive acreage. This distinction is not a basis for differentiating this case from the *Graridge* rule. Under that rule, Samedan must be certificated at 20.25 cents per Mcf.

Staff recommends that conditions be imposed on the certification of these successors, requiring that the successors "remain liable" for the refund of amounts down to the last rate of their assignors which is not subject to refund—the refund being dependent upon the outcome of Section 4 proceedings pending against the assignors or the outcome of AR61–2. The successors contest this recommendation. Examination of the Commission's temporary authorizations does not disclose any such express imposition of liability for refunds on the successors. If the successors are liable for refunds down to the "last clean rate," that liability exists *dehors* the present proceeding, and the present proceeding cannot strengthen or weaken the liability. The matter should be resolved in the rate proceedings, not here.

In the *General Crude* case, the refund floor of 20.0 cents is above the last rate of the assignor not subject to refund of 18.0 cents. Accordingly, the refund ordered herein cannot go below 20.0 cents. As we have seen, the refund ordered herein in the case of Samedan cannot go below 20.25 cents.[45] Accordingly, the certificates will be issued to the assignees at the last rate not subject to refund. Refunds will be ordered herein in accordance with the temporary authorizations. The matter of the assignees' liability for further refunds will depend upon the outcome of rate proceedings with which we are not concerned.

11. *Succession to Temporarily Authorized Sales*

In Docket No. CI60–743, applicant Ocean Drilling and Exploration Co. (Operator) *et al.* is the assignee of a portion of certain acreage from which sales by Phillips Petroleum Company had been temporarily authorized at a price of 23.8 cents per Mcf. On June 23, 1960 Ocean Drilling was temporarily authorized to deliver gas at the same price, without refund condition.

Subsequently, pursuant to settlement, Phillips received a permanent certificate covering its remaining acreage, at a price of 19.0 cents per Mcf.

In accordance with Staff motion, this sale will be treated as a new sale, subject to the price line generally applicable.

12. *Assignments of Non-Productive Acreage*

Seven dockets still involved in these proceedings concern "farmouts." Applicants are the assignees of acreage which at the time of the assignment was non-productive. By like token, at the time of the assignment, no sales had been made from such acreage, and the certificate prices and rate schedules of the assignors are not relevant to such acreage.

After the farmout, the acreage became productive. The situation is the same as any other new production and new certificate application; *i.e.*, certification should be at the proper initial price as herein determined.

One of the farmouts has been abandoned, and there are no refunds involved. Accordingly, this farmout, C. H. Lyons, Sr. in Docket No. CI63–789, should be authorized for abandonment and cancellation of temporary certificate. The six remaining dockets are:

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[45] In the four other dockets here considered, the refund floors set by the temporaries are below the predecessors' last rate not subject to refund.

Docket No.	Applicant	Temporary authorized price	Price herein
CI61-1325	Earl G. Bateman	22.25	20.0
CI61-1571	N. Central Oil Corp.	23.25	20.0
CI61-1570	do	23.25	20.0
CI61-1708	Ocean Drl. & Exp. Co.	22.2625	18.5
CI61-1469	do	22.2625	18.5
CI61-236	John W. Mecom	20.25	20.0

The temporarily authorized price in the first three dockets is subject to refund down to a floor of 20.0 cents per Mcf, and refunds will be ordered accordingly. The two next dockets are subject to floorless refund, and refund of amounts over 18.5 cents per Mcf will be ordered accordingly. The last docket involves a temporarily authorized price without refund condition, and therefore, under current policy discussed *supra*, no refund will be ordered.

13. *Additions of Acreage*

After deleting three settled dockets,[46] seven dockets herein involve applications to make sales from acreage adjacent to acreage from which permanently certificated sales are being made. These dockets are:

Docket No.	Producer	Temporary authorization price	Price herein
G-3653	Sun Oil Co.	19.5	[1] 19.5
G-10022	Pan Amer. Pet. Co.	20.3	20.0
G-12308	Texas Gulf Prod. Co.	23.25	20.0
G-17657	Beck Oil Co.	16.0	[1] 16.0
G-2804	Forest Oil Corp.	([2])	20.0
G-11116	Sun Oil Co.	20.7	20.0
G-14835	Southwest Gas Prod. Co.	([2])	20.0

[1] Contract price is under price line.
[2] No temporary authorization requested.

These dockets involve new service and new gas from new acreage, and should be authorized on terms similar to those applicable to other new sales.

None of the above temporary authorizations contain refund conditions hinging refunds on the issue of permanently certificated price as determined herein; no refunds will be ordered. The matter of further refund relating to Section 4 proceedings will be left open for resolution in the Section 4 dockets.

In the Forest Oil and Southwest Gas dockets, no temporary authorization has been issued; accordingly, the rate filings related to these dockets reflecting the price determined herein should be accepted effective as of the date service commences under the temporary authorizations.

SUPPLEMENTARY GENERALLY APPLICABLE POINTS AND CONCLUSIONS

1. *Refunds Where No Provision Therefor Has Been Made*

As has been indicated in the foregoing discussion of specific cases, it is the Commission policy to require refunds only in those dockets where the temporary authorizations contain specific refund conditions. The reasons for this rule are fully set forth in the Commission's *Skelly* opinion, *supra*, and in the briefing of

[46] Sohio Petroleum Company and British American Oil Producing Company dockets. We have reflected herein settlements through December 20, 1963, and have deleted text applicable to issues raised in briefs concerning settled dockets.

that case on appeal to the District of Columbia Circuit, No. 17582 *et al.* The reasons need not be restated here.

By parity of reasoning, it necessarily follows that as a general rule applicable to all, producers should not be required to make refunds below the level of the refund floor set out in their temporary authorizations. In cases where the floor is lower than the 20.0-cent price line determined herein refunds will be ordered only down to the 20.0-cent level.

2. *Take-Or-Pay-For Provisions*

In accordance with *Skelly* and all other recent Commission decisions discussed above, a general requirement should be made as to all producer certificates containing take-or-pay-for provisions, subjecting such provisions to the determination to be made in Docket R–199, entitled "Non-Acceptability of Contracts Between Independent Producers and Interstate Natural Gas Companies Containing Certain Provisions in Daily-Contract-Quantity and Take-Or-Pay-For Clauses," as of the effective date of such determination. In accordance with Commission policy discussed in these recent cases, an 80 percent floor should be placed on this limitation.[47]

3. *Moratorium on Rate Filings*

In *Placid* the Commission determined that triggering of favored nations clauses and price redeterminations will take place in Southern Louisiana at prices in excess of 23.55 cents per Mcf. In accordance with Commission policy as set out in *Placid*, "a moratorium will be ordered on all price increases in excess of 23.55 cents per Mcf, inclusive of tax reimbursement, pending our final determination in that proceeding [*i.e.*, in Docket No. AR61–2] or until July 1, 1967, whichever is earlier." (P. 298.)

4. *Interest on Refunds*

In accordance with Order 215–A issued March 1, 1960, 23 FPC 474, interest payable on refunds pursuant to Section 154.102 of the Regulations under the Natural Gas Act, theretofore at the rate of 6 percent per annum, is to be increased March 1, 1960 to 7 percent per annum.

5. *The Hassie Hunt Trust Opinion No. 412*

Since the completion of the foregoing text, the Commission on December 9, 1963 issued its Opinion No. 412 in *Hassie Hunt Trust, Operator, et al.*, severing out for rehearing certain dockets involving the issue of the proper initial price for contracts entered into after the date of the Statement of General Policy No. 61–1, *i.e.*, September 28, 1960. The determination to rehear these dockets was predicated on the inability of the Presiding Examiner—

> to make a firm finding that the evidence shows that the situation after the ceiling prices went into effect, including the impact of the Policy Statement, either made or did not make a difference in determining the initial price under contracts executed after the ceiling prices were put into effect. In so holding, we state again that we do not imply that our announcement of the guideline rates, or other circumstances, necessarily had the effect of changing the "in-line" price level, but only that the evidence before us in the present proceeding does not permit us to make a valid finding as to such effect, if any. (P. 1442.)

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[47] Contrary to Gulf's claims, brief 28 *et seq.*, the record in these proceedings contains evidence justifying the imposition of this and other conditions, in that the reasons for the conditions are apparent on the face of the applications, contracts and rate schedules filed with the Commission and admitted into evidence as items by reference.

In the area involved in the proceedings at bar, we have seen that the October 25, 1960 Policy Statement price of 21.5 cents per Mcf plus tax reimbursement was on October 31, 1961 reduced to 21.25 cents per Mcf inclusive of tax reimbursement. We have discussed *supra* the issue of the effect of the Policy Statement on post-Policy Statement contracts. Because of the *Hunt* decision, an *addendum* is appropriate.

The case at bar involves many contracts entered into after October 25, 1960. For instance, Gulf on April 4, 1961 executed a contract with Transco at the Policy Statement level of 21.5 per Mcf covering gas produced from the Ship Shoal and South Marsh Island Reserve. The contract was entered into at this price for the specific reason that Gulf thought it could thereby obtain expeditious certification. Transco had actually offered a higher price for the gas (Tr. 629–630).

On September 1, 1962, Gulf executed a contract with Trunkline to sell gas produced from the South Mermentau Field under the terms of a contract theretofore entered into between Trunkline and another producer, California Company. Gulf's contract, however, provided for a price of 21.5 per Mcf plus 1.75-cent tax reimbursement, whereas the California Company contract provided for a price of 22 cents plus 2.05 cents tax reimbursement. Gulf accepted the lower price because it believed that the lower price would be expeditiously certificated (Tr. 638–639).

Gulf and other producers[*] argue that the Policy Statement price should be given weight in the determination of proper prices for contracts executed after the date of the Policy Statement.

Unlike the "situation" in the *Hunt* case, in the case at bar a determination can be made, and is made, that the "situation" after the issuance of the Policy Statement did not, so far as the Commission is concerned, make a difference in the determination of the proper initial price applicable to contracts executed after the ceiling prices were put into effect.

Gulf's personnel engaged in selling gas to pipelines and like personnel of other oil companies, presumably knew about the Policy Statement guideline prices after they were announced. We should be able to assume without specific testimony that the existence of the Policy Statement had some influence on these personnel. We should also know to a certainty that Gulf's legal personnel and like personnel of other producers were aware of the Policy Statement guideline prices, and knew perfectly well that these price determinations, arrived at *ex parte*, without notice, without hearings, without a record, without evidence, by a Commission sitting *in camera*, cannot *as a matter of law* be given substantive effect to control formal proceedings under Section 7 of the Natural Gas Act—either by way of raising prices or lowering prices. The guideline prices, as the Commission has held, are of importance in the Commission's *ex parte* Section 7 work—the determination of price conditions for temporary authorizations. The guideline prices in Southern Louisiana were erroneously high, and temporaries have been issued at erroneously high levels. It is the function of the present formal proceedings to correct such errors in respect of the permanent certifications.

The Policy Statement contains abundant expressions indicating that it is not intended as a substantive determination of prices necessary and convenient to the public. The Commission has in subsequent proceedings reiterated its policy that the guideline rates were not of substantive effect as ceilings or otherwise. This is, of course, the reason that the Policy Statement does not

[*] *E.g.*, Shell Oil Company reply brief, pp. 4 *et seq.*; Union Texas Petroleum brief, pp. 5–6.

aggrieve producers or consumer interests and thus is not appealable. See *Wisconsin* v. *F.P.C.*, 292 F. 2d 753 (CADC).

Section 7 of the Natural Gas Act specifically requires notice, hearings, and findings on matters related to the public convenience and necessity. The requirement is spelled out in three separate parts of Section 7. It should be very plain that as a matter of law the Commission could not by the First Amendment to the Policy Statement and the Fourth Amendment to the Policy Statement establish a substantive determination of the proper price line for South Louisiana gas which would have any effect in the determination of proceedings on the record. Substantive determinations involving the rights, duties, powers and obligations of producer and consumer interests involved in Commission proceedings are made on a record to which such interests are parties. This is the plain requirement of Section 7 of the Act and the plain requirement of procedural due process as it has been understood to date. There is no "in-between." To give Policy Statement prices "some" substantive weight in open hearings would *pro tanto* deprive all interests of their statutory right to have the price issue decided on the open record.

The first hint that substantive effect might be given to the *ex parte* Commission Policy Statement pronouncements came in the *Skelly* decision, issued on August 30, 1962. The order on rehearing in *Skelly* was issued December 18, 1962, 28 FPC 1065. This latter order confirmed the Commission's decision to sever out certain post-Policy prices for rehearing. It is interesting to note that, apparently with the possibility of appeal in mind, the Commission referred to this action as "not a final order" but as a "procedural step." (P. 1069.) Despite these hints there is in the present record, made in 1963, very little evidence backing up the idea that the producers relied on the Policy Statement prices in the negotiation of subsequent contracts. Considering the financial inducements which would motivate strong follow-up of *Skelly* in this respect, it may be that the producers share the understanding expressed herein as to the limited scope of the Policy Statement guideline prices.

FORMAL FINDINGS AND CONCLUSIONS

(1) Each of the applicants listed in the appendices hereto[40] except Appendix E applicants is engaged in the sale of natural gas in interstate commerce for ultimate public consumption and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sale of natural gas of each such applicant, as more fully described in the respective applications, is made in interstate commerce, subject to the jurisdiction of the Commission, and each such sale, together with the construction and operation of facilities necessary therefor, is subject to the requirements of Section 7 of the Natural Gas Act.

(3) The applicants described in the foregoing formal findings, except Appendix E applicants, are each (a) able and willing to perform the service proposed in the respective application, (b) a party to a gas sale contract negotiated at arm's length and in good faith, and (c) willing and able to do the acts and perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder. Appendix E applicants have shown good cause why their service should be abandoned and why their dockets should be terminated.

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[40] Appendix A, "Dockets Severed for Settlement or Other Disposition," is of course only a listing for purposes of convenient reference, and is not otherwise involved in this decision. In some connections, *e.g.*, arguments of counsel and general price line testimony, the dockets which have been settled are relevant to the dockets under consideration herein, and therefore may be mentioned in the text of this decision.

(4) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission, that:

(A) Permanent certificates of public convenience and necessity are hereby issued, or if already issued are appropriately amended, upon the conditions hereinafter prescribed, to authorize the sales and services, and the operations and construction reasonably necessary to effect such sales and services, proposed by each applicant listed in Appendices B, C and D hereto, as more fully described in the respective applications.

(B) Permission for and approval of the abandonment of the sales and services proposed by certain applicants listed in Appendix E hereto, as described in the respective applications and in the foregoing is hereby granted; and certain other applications listed in Appendix E hereto, as described in Staff motions and in the foregoing text, are hereby cancelled and closed, and the temporary authorizations issued in respect of cancelled and closed dockets are hereby terminated.

(C) Each certificate issued in paragraph (A) above is subject to the condition that the initial price prescribed in the particular rate schedule (contract) related to such certificate shall be not more than (1) 18.5 cents per Mcf if the certificate relates to a sale not subject to the taxing jurisdiction of Louisiana, and (2) 20 cents per Mcf if the certificate relates to a sale subject to Louisiana tax; provided that if it is finally determined that any subdivision (2) sale is not subject to Louisiana tax, refund shall be made of all amounts collected with respect to the 1.5 cents per Mcf differential, with interest. Within 30 days from the date of the final determination of these proceedings, each applicant proposing a rate schedule (contract) expressing an initial price or presently effective rate higher than the applicable price or rate ordered in the first sentence of this paragraph shall file a supplement to such rate schedule (contract) reflecting the applicable price or rate so ordered in substitution for the price or rate now expressed. The notice and detailed submittal provisions of Sections 154.94(b) and (f) of the Regulations under the Natural Gas Act are waived in respect of such supplementary filings.

(D) Each certificate issued in paragraph (A) above is subject to the condition that no change in rate providing for a price in excess of 23.55 cents per Mcf inclusive of tax reimbursement shall be filed prior to (1) the final determination of the Area Rate Proceeding, Docket No. AR61–2 or (2) July 1, 1967, whichever is earlier.

(E) Each certificate issued in paragraph (A) above is subject to the condition that the take-or-pay-for provisions in any related rate schedule (contract) are subject to the determination to be made by the Commission in Docket No. R–199, provided that such provisions shall not be reduced to less than 80 per cent of the annual contract quantities. Upon the determination of Docket No. R–199, each applicant for a certificate subject to the conditions imposed by this paragraph shall within 30 days file an amendment to the rate schedule (contract) reflecting prospectively the condition so imposed.

(F) Each of the applicants listed in Appendix C shall, prior to or within 60 days after the final determination of these proceedings refund to the purchasers the difference between the price charged and collected for gas covered by the respective applications and the price established by paragraph (C) hereof, except as other refund conditions have been established by prior order of the Commission and reflected in the text of this decision or in Appendix C. Interest shall be paid on all such refunds at the rate of 6 per cent per annum for all amounts

collected prior to March 1, 1961, and at the rate of 7 per cent per annum for all amounts collected thereafter.

(G) Within 10 days after the making of the refunds prescribed in paragraph (F), the refunders shall file with the Commission a statement of the refund, the computation thereof and the interest computation thereon, and the acknowledgement of the receipt thereof.

(H) The certificates issued in paragraph (A) above pursuant to applications which are deficient in regard to related rate filings, as specified in the text of this decision or in the appendices hereto, are subject to the further condition that such deficiencies be remedied by proper filings made within 30 days from the date of the final determination of these proceedings.

(I) The certificates herein issued are not transferable and shall be effective only so long as each of the applicants continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(J) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Regulations thereunder. Such grant is without prejudice to any findings or order which has been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants. Further, the action in this proceeding shall not foreclose nor prejudice any further proceedings or objections by the Commission relating to the operation of any price or related provision in the gas purchase contracts here involved.

ROBERT M. WESTON,
Presiding Examiner.

APPENDIX A

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.

DOCKETS SEVERED FOR SETTLEMENT OR OTHER DISPOSITION

Docket No.	Applicant	Date of severance
CI61-1564	Alladin Exploration, Inc.	Oct. 11, 1963
G-14116	Amerada Petroleum Corporation	Feb. 1, 1963
G-18346	do	Oct. 29, 1963
G-20200	do	Do.
CI60-688	Amerada Petroleum Corporation (Operator)	Feb. 1, 1963
CI61-727	do	Oct. 29, 1963
CI62-216	do	Do.
CI62-525	do	Do.
CI62-805	do	Do.
CI61-1246	American Natural Gas Production Co. (Operator)	Nov. 12, 1963
G-17207	Arnold, Agnes Cullen	Aug. 23, 1963
CI66-237	Arnold, Isaac, et al	Do.
G-11904	Atlantic Refining Company, The	Nov. 27, 1963
G-17411	do	Do.
G-18399	do	Do.
G-18804	do	Do.
CI61-450	do	Do.
CI61-652	do	Do.
CI62-8	do	Do.
CI62-416	do	Do.
CI62-435	do	Do.
CI62-1276	do	Do.
G-17563	Austral Oil Co., Inc.	Sept. 13, 1963
CI62-395	Austral Oil Co., Inc (Operator)	Do.
CI63-342	Austral Oil Co., Inc, Agent	Mar. 14, 1963
G-14515	British-American Oil Producing Co., The	Nov. 18, 1963
G-18445	do	Do.
G-18963	do	Do.
CI60-322	do	Do.
CI61-649	do	Do.
CI62-1016	do	Do.
CI60-414	Cabot Corporation (SW)	Oct. 25, 1963
CI60-499	do	Do.

APPENDIX A—Continued

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.

Docket No.	Applicant	Date of severance
G–16167	California Company, The, A Division of Allied Chemical Corp	July 19, 1963
G–19343	do	Do.
CI61–348	do	Do.
CI61–628	do	Do.
CI61–629	do	Do.
CI61–630	do	Do.
CI61–1285	do	Do.
CI60–721	Colorado Gas and Oil Corp	Dec. 18, 1963
CI63–813	do	Do.
G–17649	Continental Oil Co	July 15, 1963
CI62–1504	do	May 14, 1963
CI62–1507	do	Do.
CI62–1513	do	Do.
G–16907	Crown Central Petroleum Corp	Sept. 13, 1963
CI61–433	Falcon Seaboard Drilling Co. (Operator)	Oct. 25, 1963
CI63–225	Flaitz, J. M., *et al*	Sept. 13, 1963
G–19246	Graridge Corporation, *et al.* (Operator)	Mar. 14, 1963
CI61–54	General American Oil Co. of Texas	Do.
CI61–217	do	Do.
CI61–316	do	Do.
G–19062	Gulf Oil Corporation	Oct. 9, 1963
G–19467	do	Do.
CI60–54	do	Do.
CI60–440	do	Do.
CI60–824	do	Do.
CI61–716	do	Do.
CI61–1562	do	Do.
CI61–1630	do	Do.
CI62–62	do	Do.
CI62–411	do	Do.
CI62–412	do	Do.
CI62–859	do	Do.
CI62–905	do	Do.
CI63–123	do	Jan. 25, 1963
CI60–700	Halbouty, Michel T. (Operator), *et al*	Oct. 25, 1963
CP61–152	Hope Natural Gas Co	Nov. 12, 1963
G–8628	Hudson Gas & Oil Corp. (Operator), *et al*	Mar. 14, 1963
CP61–290	Humble Gas Transmission Co	Nov. 25, 1963
CP62–27	do	Do.
G–14967	Humble Oil & Refining Co	Aug. 7, 1963
G–15227	do	Do.
G–17349	do	Do.
G–17570	do	Do.
G–17772	do	Do.
G–18547	do	Do.
G–18714	do	Do.
G–18715	do	Do.
G–18716	do	Do.
G–19800	do	Do.
G–20019	do	Do.
CI60–96	do	Do.
CI60–177	do	Do.
CI60–531	do	Do.
CI60–623	do	Aug. 7, 1963
CI61–397	do	Do.
CI61–425	do	Do.
CI61–1176	do	Do.
CI62–69	do	Do.
CI62–70	do	Do.
CI63–129	do	Jan. 25, 1963
CI63–455	do	Aug. 7, 1963
CI63–635	do	Do.
CI63–755	do	Do.
G–14307	Jefferson Lake Sulphur Co. (Operator) *et al*	Mar. 14, 1963
G–19307	Kerr-McGee Oil Industries, Inc	Nov. 29, 1963
CI62–398	do	Do.
G–18136	Kellerman, R. E	Sept. 13, 1963
CI60–329	Lyons, Sr., C. H., *et al*	Aug. 23, 1963
CI63–789	do	Oct. 11, 1963
G–19957	Magna Oil Corporation	Mar. 14, 1963
G–19958	do	Do.
CI61–44	do	Oct. 25, 1963
CI62–582	McCain, M. F., *et al*	Aug. 23, 1963
CI63–179	Miller, Irwin (Operator) *et al*	Mar. 14, 1963
CP61–141	Mississippi River Fuel Co	Nov. 12, 1963
CI60–258	Mound Company (Operator) *et al*	Aug. 5, 1963
G–17765	Newmont Oil Co	July 15, 1963
CI61–1162	Ocean Drilling & Exploration Co	Nov. 12, 1963
CI62–479	O'Meara, Robert W. (Operator) *et al*	Sept. 13, 1963
CI60–505	Peltier, Harvey	Aug. 23, 1963

APPENDIX A—Continued

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–18221, ET AL.

Docket No.	Applicant	Date of severance
G–18375	Phillips Petroleum Co	Nov. 29, 1963
G–19714	do	Do.
G–18710	Prentice, Robert B. & The Murmanill Corp	Sept. 26, 1963
G–19292	Prentice, Robert B. (Operator) *et al*	Do.
CI61–1412	Seagram & Sons, Inc., Joseph E., d/b/a Frankfort Oil Co	Dec. 18, 1963
G–17917	Sinclair Oil & Gas Co	Oct. 28, 1963
G–20297	do	Mar. 26, 1963
CI61–390	do	Nov. 28, 1963
CI61–670	do	Do.
CI61–1257	do	Do.
CI62–463	do	Mar. 14, 1963
CI61–1419	Skelly Oil Co	Dec. 18, 1963
G–17625	Socony Mobil Oil Co., Inc	July 15, 1963
CI60–310	do	Oct. 9, 1963
CI60–311	do	Do.
CI60–392	do	Do.
CI61–290	do	Do.
CI61–659	do	Do.
CI61–674	do	Do.
CI61–1128	do	Do.
CI61–1640	do	Do.
G–14247	Sohio Petroleum Company	Nov. 13, 1963
G–14569	do	Do.
CI60–489	do	Do.
CI61–688	do	Do.
CI62–337	do	Do.
CI62–1396	Southeastern Public Service Co	Mar. 14, 1963
G–18129	Southern Natural Gas Co	Aug. 23, 1963
G–20103	Southwest Resources, Inc	Mar. 14, 1963
CI62–326	State Exploration Company	Oct. 25, 1963
G–8837	Shell Oil Company	Aug. 1, 1962
CI60–250	Sunray DX Oil Company	Aug. 23, 1963
CI63–377	Superior Oil Company, The, *et al*	Mar. 14, 1963
G–18980	Tenneco Corporation	Apr. 11, 1963
CP60–6	do	Do.
G–16694	Texaco Inc	Oct. 25, 1963
G–17779	do	Do.
G–20251	do	Do.
CI60–518	do	Do.
CI61–60	do	Do.
CI61–955	do	Do.
CI61–962	do	Do.
CI61–969	do	Do.
CI61–1416	do	Do.
CI61–1420	do	Do.
CI61–1438	do	Do.
CI61–1463	do	Do.
CI61–1713	do	Do.
CI62–16	do	Do.
CI62–407	do	Do.
CI63–449	do	Do.
CI63–756	do	Do.
G–20124	Texas Crude Oil Company (Operator) *et al*	Sept. 13, 1963
CI61–1125	Texas Gas Exploration Corp	Dec. 18, 1963
CI62–930	do	Do
CI61–1524	Tex-Star Oil & Gas Corp., *et al*	Nov. 12, 1963
G–17010	Union Oil Co. of California	Apr. 11, 1963
G–19333	do	Do.
G–19682	do	Do.
G–20568	do	Do.
CI61–165	do	Apr. 11, 1963
CI61–166	do	Do.
CI61–331	do	Do.
CI62–806	do	Do.
CI62–822	do	Do.
CI62–1120	do	Do.
CI60–344	Union Producing Co	Oct. 29, 1963
CI61–1111	do	Do.
G–14227	Union Texas Petroleum, a Division of Allied Chemical Corp	Dec. 18, 1963
CI61–462	Union Texas Petroleum (Operator) *et al.*, a Division of Allied Chemical Corp.	Aug. 23, 1963
CI61–173	U.S. Oil Company of Louisiana	Mar. 14, 1963
G–20126	Weiner, Ted (Operator) *et al*	Sept. 13, 1963
G–18369	Zapata Offshore Company (Operator)	Aug. 23, 1963

APPENDIX B

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.

DOCKETS NOT REQUIRING REFUNDS BUT CONDITIONED TO PRICES HEREIN AUTHORIZED

Docket No.	Applicant	Temporarily authorized price per Mcf	Price certificated
		Cents	*Cents*
CI61-406	Bass, Perry R. (Operator) *et al*	23.675	20.0
CI61-714	do	23.55	20.0
CI63-631	do	21.25	20.0
CI60-88	Brado Properties, Inc., *et al*	23.55	20.0
G-18131	Brown, George R., *et al*	23.55	20.0
CI60-580	Brown, George R. (Operator) *et al*	20.25	20.0
CI63-823	do	20.625	20.0
G-20243	Burton Industries, Inc., William T	21.75	20.0
G-20379	do	23.8	20.0
CI63-326	Cockrell, Jr., E. (Operator) *et al*	21.25	20.0
CI62-997	Christie, Mitchell & Mitchell Co., *et al*	21.25	20.0
CI62-135	Cities Service Production Co	21.4	18.5
CI62-1359	Clegg & Hunt, *et al*	21.25	20.0
CI62-1068	Columbian Carbon Co	21.25	20.0
G-16840	Continental Oil Co	22.8	20.0
CI62-147	do	21.4	18.5
CI60-645	Cyprus Oil Co	22.8333	20.0
CI61-42	Dixon Management Corp. Agent, *et al*	21.5	20.0
CI62-897	Dorn and Miller Co	19.5	18.5
G-2804	Forest Oil Corp. (Operator) *et al*	[1] 20.3	20.0
CI61-248	do	23.55	20.0
CI62-283	do	21.25	20.0
CI62-898	Forest Oil Corp	19.5	18.5
CI62-720	Freeport Oil Co	21.25	20.0
CI62-1410	Goodrich, Hugh	21.25	20.0
G-20123	General American Oil Co. of Texas	20.75	20.0
CI61-126	do	23.55	20.0
CI61-182	do	23.55	20.0
CI62-1502	do	21.25	20.0
CI62-400	do	21.25	20.0
G-18897	Hassie Hunt Trust	23.55	20.0
G-19249	do	23.6	20.0
CI62-702	Hibbert, R. E.	21.25	20.0
CI62-841	Hudson Gas & Oil Corp	21.25	20.0
G-18680	Huffington, Roy M	22.8	20.0
G-19460	Hunt, H. L., *et al*	23.55	20.0
G-18596	Hunt Oil Co	23.55	20.0
CI62-546	Jameson, F. E., *et al*	20.8	20.0
G-16679	Jupiter Corp., The	21.3333	[2] 20.9
G-16718	Kerr-McGee Oil Industries, Inc	21.3333	18.5
CI62-606	Lamson & Bennett, Inc. (Operator) *et al*	21.25	20.0
G-20182	Mayronne, Jr., Reuben W., d/b/a Riverside Oil Co	21.65	20.0
G-18053	McDermott & Co., Inc., J. Ray	23.05	20.0
CI63-301	do	21.25	20.0
CI61-236	Mecom, John W	20.25	20.0
CI60-745	Midwest Oil Corp	20.25	20.0
CI61-621	Midwest Oil Co., (Operator) *et al*	23.25	20.0
CI62-1317	do	20.3	20.0
CI62-313	North Central Oil Corp. (Operator)	21.25	20.0
CI60-743	Ocean Drilling & Exploration Co. (Operator) *et al*	22.0	20.0
CI60-8	Owen, J. P. (Operator) *et al*	21.8	20.0
CI62-538	do	20.3	20.0
CI62-1486	do	20.3	20.0
G-10022	Pan American Petroleum Corp	20.3	20.0
G-16946	do	23.55	20.0
G-17977	do	23.55	20.0
G-19223	do	23.55	20.0
G-20049	do	23.55	20.0
CI60-133	do	23.6	20.0
CI60-777	do	24.05	20.0
CI61-127	do		20.0
CI61-143	do	23.55	20.0
CI61-355	do	23.45	18.5
CI61-808	do	23.25	20.0
CI61-974	do	20.25	20.0
CI62-724	do	21.25	20.0
CI62-782	do	21.25	20.0
CI62-1341	do	19.5	18.5
C-17468	Petroleum, Inc. (Operator) *et al*., and Hunt Oil & Gas Corp	20.25	20.0
G-16611	Phillips Petroleum Co	21.3333	18.5
GI61-67	Pioneer Oil & Gas, Inc	20.675	20.0
G-18021	Placid Oil Co	20.25	20.0
G-18076	do	23.6	20.0
G-18502	do	23.6	20.0
I61-511	do [3]	23.6	20.0
CI63-305	do	21.25	20.0

See footnotes at end of table.

APPENDIX B—Continued

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.

Docket No.	Applicant	Temporarily authorized price per Mcf	Price certificated
		Cents	*Cents*
G-17632	Samedan Oil Corp.[4]	20.25	20.0
G-17632	do	21.25	[5] 20.0
CI62-378	Samedan Oil Corp. (Operator) *et al*	21.25	20.0
CI62-561	Samedan Oil Corp., *et al*	21.25	20.0
CI62-623	Shell Oil Co	20.8	20.0
CI62-625	do	21.25	20.0
CI60-356	Shoreline Exploration, Inc	20.25	20.0
CI61-1015	do	20.25	20.0
CI63-188	Skelly Oil Co., (Operator) *et al*	20.3	20.0
CI62-551	Southdown, Inc	21.25	20.0
G-14835	Southwest Gas Producing Co., Inc	[1] 21.75	20.0
G-20046	do	22.05	20.0
CI63-748	do	20.7	20.0
G-11116	Sun Oil Co	20.7	20.0
CI60-75	do	22.8333	20.0
G-19574	do	23.55	20.0
CI60-490	do [6]	19.9	[7] 18.0
CI62-1186	do	21.25	20.0
G-17412	Superior Oil Co	22.05	20.0
CI61-1481	do		20.0
G-18058	Sword Co., *et al*	23.55	20.0
CI63-772	Texas Gulf Producing Co	20.75	20.0
CI62-305	Texas Liberty Gas Corp	21.25	20.0
CI62-638	Tidewater Oil Co. (Operator) *et al*	21.25	20.0
CI62-137	Tidewater Oil Co	21.4	18.5
G-18287	Trahan Drilling Contractor, Inc., J.C	23.55	20.0
CI60-481	do	20.25	20.0
CI60-698	do	21.65	20.0
CI62-771	do	21.25	20.0
G-17467	Trice Production Co. (Operator) *et al*	22.05	20.0
CI60-17	do	20.15	20.0
CI62-1026	do	21.25	20.0
CP60-106	Trunkline Gas Co	22.8333	20.0
CI60-607	U.S. Oil of Louisiana, Inc. (Operator) *et al*	20.75	20.0
CI61-144	do	22.15	20.0
G-13221	Union Texas Petroleum, a Division of Allied Chemical Corp	21.25	[8] 20.0
CI60-483	Walker, W. E	22.8333	20.0
CI60-638	Walker, W. E. and Freedom Minerals, Inc	22.8333	20.0
CI63-885	Woodfin, Gene M., Trustee for the Jean Curry Glassel Trust	21.25	20.0

[1] Proposed initial price. No temporary authorization requested.

[2] The price of 20.9 cents per Mcf includes a 2.4 cents transportation charge subject to final determination in Docket RI63-212 or AR61-2.

[3] Prior rate filing is rejected; applicant shall within 30 days from the final determination hereof file the amendatory agreements to the related rate schedule reflecting a 20.0 cents price per Mcf.

[4] Covering deliveries under original contract acreage per order of January 29, 1959.

[5] Applicable to additional acreage covered by amendment to contract dated January 14, 1960, per order of December 20, 1962.

[6] Applicant shall within 30 days from the final determination hereof file the rate schedule (contract) related to this application.

[7] Last rate of assignor not subject to refund.

[8] Applicable to additional acreage covered by Supplement No. 7 to Union Texas' FPC Gas Rate Schedule No. 8 For price certificated under original contract acreage, see Appendix D.

APPENDIX C

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.

DOCKETS REQUIRING REFUND BY APPLICANTS

Docket No.	Applicant	Temporarily authorized price per Mcf.	Refund floor (Tax Included)	Price certification	Rate Schedule No. (S—Supplement)
		Cents	*Cents*	*Cents*	
CI61-1325	Bateman, Earl G., (Operator) *et al*	23.25	20.0	20.0	5
CI61-709	Brown, Herman	23.25	20.0	20.0	
G-17521	Continental Oil Co	23.675	None	20.0	166
G-20242	do	22.175	20.0	20.0	186 S1
CI61-1492	Cordell, J. H	21.5	20.0	20.0	1
CI61-1230	General American Oil Co. of Texas	22.25	20.0	20.0	43
CI61-1280	General Crude Oil Co. (Operator) *et al.*	20.4	20.0	[3]18.0	9
CI61-1519	Geological Geophysical Associates, Inc., (Operator) *et al.*	23.09167	20.0	20.0	
CI61-645	Hassie Hunt Trust	23.25	20.0	20.0	29
G-17775	Hurley Oil and Gas Co	23.05	20.0	20.0	8
G-16719	Kerr-McGee Oil Industries, Inc	22.08333	[2]	20.0	57
G-15542	Marathon Oil Co	22.95	[2]	20.0	39
CI60-659	McDermott & Co., Inc., J. Ray	21.5	20.0	18.5	15
CI61-1570	North Central Oil Corp	23.25	20.0	20.0	9
CI61-1571	do	23.25	20.0	20.0	8
CI61-1469	Ocean Drilling & Exploration Co., (Operator) *et al.*	22.2625		18.5	5
CI61-1708	do	22.2625	[2]	18.5	6
G-16612	Phillips Petroleum Co	22.08333		20.0	330
CI61-1362	Placid Oil Co	23.25	20.0	20.0	31
CI62-1028	Samedan Oil Corp., (Operator) *et al*	22.25	20.25	20.25	13
CI62-73	Shoreline Exploration, Inc	28.3	11.047	11.047	3
CI62-102	do	23.3	11.047	[1]11.047	4
G-16754	Superior Oil Co., The	20.25	[2]	20.0	563
CI60-681	do	21.5	20.0	18.5	104
CI61-167	do	23.25	20.0	20.0	97
CI61-168	do	23.25	20.0	20.0	96
CI61-537	do	21.25	20.0	20.0	[3]103
CI61-1436	do	23.25	20.0	20.0	[3]102
G-14832	Texas Gulf Producing Co	[1]20.25		20.0	30
CI61-452	Trahan Drilling Contractors, Inc., (Operator) *et al.*	20.25	11.047	[1]11.047	15
CI61-173	U.S. Oil of Louisiana, Inc	23.15	[4]20.0	20.0	4
CI61-1809	Whitehall Oil Co., Inc	23.25	20.0	20.0	2
CI61-1042	Williams Brothers Co	20.25	20.0	20.0	1

[1] Last rate of assignor not subject to refund. Subject to refund herein of the difference between temporarily authorized price per Mcf and 20.0¢ per Mcf.

[2] Refund only of amounts collected and refunded by the State in respect of invalid Louisiana Gas Gathering Tax.

[3] Refund not applicable to Supplement No. 2.

[4] Refund applicable only on sales from reservoir CC-9.

APPENDIX D

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.

DOCKETS NOT REQUIRING PRICE CONDITION

Docket No.	Applicant	Price certificated
		Cents
CI61-973	Bass, Perry R. (Operator) *et al*	19.5
G-17657	Beck Oil Co., *et al*	16.0
CI61-586	Continental Oil Co. (Operator) *et al*	18.7
G-19284	General American Oil Co. of Texas	10.497
CI63-291	Hawthorne, Hugh A	19.75
CI63-299	do	19.25
G-18379	Helis Petroleum Corp	19.75
CI62-1197	Huffington, Inc., Roy M., *et al*	18.8
G-17197	McDermott Co., Inc., J. Ray, *et al*	19.05
CI61-1464	McKnight, W. L. d/b/a La Gorce Oil Co	19.75
CI61-289	Owen, J. P., *et al*	20.0
G-14358	Pioneer Oil & Gas Co., Inc., *et al*	20.0
G-8837	Shell Oil Co	18.5
G-3653	Sun Oil Company	19.5
G-15267	do	17.5
CI63-469	Texas Pacific Coal and Oil Co	14.5
CI62-951	Texstar Corporation, The, *et al*	19.75
CI63-823	Tidewater Oil Co	19.75
CI63-824	do	19.25
G-13221	Union Texas Petroleum, a Division of Allied Chemical Corp	19.5
CI62-1320	Wacker Oil Company, Inc	19.75
G-13265	Walker, W. E. and Meeker, J. R	18.0
CI62-1282	Whitehall Oil Co., Inc., *et al*	19.75
CI62-1019	Woodfin, Gene M., *et al*	18.0
G-17635	Trice Producing Co. (Operator)	19.05
G-14307	Jefferson Lake Sulfur Co	[1] 17.5

[1] Certificate and price applicable only to Rate Schedule 3.

APPENDIX E

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.

DOCKETS AUTHORIZING ABANDONMENT OR TERMINATION OF SALES

Docket No.	*Applicant*
G-17298	Carter, Reese E. (Operator) *et al.*
CI61-841, CI63-410	Dillon, Jr., Herbert L.
G-18461	Drew Petroleum, Inc.
G-19297	Irwin & Bess
G-12308	Texas Gulf Producing Company, *et al.*[1]

[1] Covering non-operator interests in additional acreage, pursuant to Supplement No. 4 to applicants' Rate Schedule No. 26 and related application of November 7, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

CAROLINA POWER & LIGHT COMPANY, PROJECT NO. 2206

ORDER DETERMINING ACTUAL LEGITIMATE ORIGINAL PROJECT COST, NET CHANGE THEREIN, ACCRUED DEPRECIATION AND PRESCRIBING ACCOUNTING THEREFOR

(Issued July 24, 1964)

Carolina Power & Light Company, Licensee for Project No. 2206[1] on May 2, 1960, filed a statement pursuant to Section 4.20 of the Commission's Regulations under the Federal Power Act claiming an actual legitimate original cost of the project as of May 1, 1958, in the amount of $11,489,661.81, accrued depreciation to that date of $3,611,102.02, and a claimed net investment of Licensee in the amount of $7,878,559.79, as of that date, the effective date of the license.

Licensee by supplemental statement filed May 17, 1961, claims for the period May 1, 1958 through December 31, 1960, gross project additions of $2,306,592.28, and gross project retirements of $2,410.00. Included within these amounts is the claimed cost of an additional generating unit installed at the Tillery development.

Licensee's claimed net change in project accrued depreciation for the period May 1, 1958, through December 31, 1960, is $339,833.35.

The Commission's staff made an examination of the books and records of Licensee and other data for the purpose of ascertaining the correctness of the claimed and recorded project costs and reserves for depreciation, and thereafter proposed certain adjustments with respect thereto. By letter of February 27, 1962, Licensee confirmed its agreement to staff's proposed adjustments and accounting dispositions. Those adjustments would: decrease Licensee's claimed actual legitimate original project cost as of May 1, 1958 in the amount of $264,929.72 (includes the amount of $15,237.44 reclassified within project plant accounts); effect a net increase of $243,166.63 in Licensee's claimed initial project accrued depreciation as of May 1, 1958; all as more fully set forth in attached Schedule III. No adjustments are proposed with respect to Licensee's recorded net changes in actual legitimate original project cost and accrued depreciation for the period from May 1, 1958 to December 31, 1960.

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[1] The license for Project No. 2206 issued pursuant to order of the Commission issued May 19, 1958 (19 FPC 704), is for a 50-year period. By order of the Commission issued July 7, 1959 (22 FPC 9), the license was amended to include certain transmission lines and appurtenant facilities. The project consists of two developments, Blewett and Tillery. The Blewett development is located on the Yadkin-Pee Dee River approximately 7 miles northwest of Rockingham, North Carolina, and was placed in operation in 1912 by a predecessor of the licensee. The Tillery development is located about 25 miles up-river, and was placed in operation in 1928 by a predecessor of the licensee.

These adjustments and the accounting disposition of all amounts involved therein are summarized in the following composite journal entry:

No.[1]	Account	Debit	Credit
101	Electric Plant in Service-Project No. 2206		$264,929.72
101	Electric Plant in Service-nonproject	$35,574.75	
108	Accumulated Provision for Depreciation of Electric Plant in Service-Project No. 2206		243,166.63
108	Accumulated Provision for Depreciation of Electric Plant in Service-nonproject	295,727.85	
435	Miscellaneous Debits to Surplus	176,793.75	
	Totals	508,096.35	508,096.35

[1] Account references are to account numbers and titles of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees, effective January 1, 1961.

Upon application of the proposed adjustments, the resulting actual legitimate original cost of the project as of May 1, 1958 would be $11,224,732.09, the accrued depreciation as of that date would be $3,854,268.65 and the net investment of Licensee in Project No. 2206 as of that date would be $7,370,463.44 ($2,122,360.26 applicable to the Blewett development and $5,248,103.18 applicable to the Tillery development). Since no adjustments are proposed with respect to claimed net changes in project cost and accrued depreciation the resulting actual legitimate original project cost as of December 31, 1960, is $13,528,914.37 and the accrued depreciation applicable to in-service project properties as of that date is $4,194,102.00.

The North Carolina Utilities Commission by letter of July 2, 1963, indicated no objection to the proposed adjustments, accounting disposition and resulting project costs and reserve for accrued depreciation.

The Commission finds:

(1) Licensee by its letter of February 27, 1962, confirming its agreement with staff's proposed adjustments, and the North Carolina Utilities Commission by its letter dated July 2, 1963, have obviated the necessity for notice and opportunity to protest provided by Sections 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act.

(2) The proposed adjustments, including accounting dispositions, are reasonable and appropriate for purposes of the Federal Power Act and therefore should be approved and directed as hereinafter ordered.

(3) The actual legitimate original cost of Project No. 2206 as of May 1, 1958, the effective date of the license, is $11,224,732.09 of which $3,781,884.51 is applicable to the Blewett development and $7,442,847.58 is applicable to the Tillery development, as shown in attached Schedule I.

(4) The reserve for accrued depreciation applicable to in-service project properties of Project No. 2206 as of May 1, 1958, the effective date of the license, is $3,854,268.65, of which $1,659,524.25 is applicable to the Blewett development and $2,194,744.40 is applicable to the Tillery development as shown in attached Schedule II.

(5) The net investment of Licensee in Project No. 2206 as of May 1, 1958, the effective date of the license, is $7,370,463.44, of which $2,122,360.26 is applicable to the Blewett development and $5,248,103.18 is applicable to the Tillery development.

(6) The net increase or change in the actual legitimate original cost of Project No. 2206 for the period from May 1, 1958 through December 31, 1960 is $2,304,182.28 of which $6,752.53 is applicable to the Blewett development and $2,297,429.75 is applicable to the Tillery development; and the resulting actual legitimate original project cost as of December 31, 1960 is $13,528,914.37, of which $3,788,637.04 is applicable to the Blewett development and $9,740,277.33 is applicable to the Tillery development, as shown in the attached Schedule I.

(7) The net increase or change in accrued depreciation for Project No. 2206, for the period from May 1, 1958 through December 31, 1960 is $339,833.35 and the reserve for accrued depreciation applicable to in-service project properties as of December 31, 1960, is $4,194,102.00 of which $1,770,702.89 is applicable to the Blewett development and $2,423,399.11 is applicable to the Tillery development, as shown in the attached Schedule II.

The Commission orders:

(A) The provisions of Sections 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act are hereby waived for purposes of this order.

(B) The adjustments, including the accounting dispositions, as proposed by the staff and agreed to by Licensee are hereby approved and directed to be made by Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed plant accounts for Project No. 2206 showing the debit balance of $11,224,732.09, as of May 1, 1958, the debit amount of $7,370,463.44 as net increase in project cost for the period from May 1, 1958 through December 31, 1960 and the debit balance of $13,528,914.37 as the actual legitimate original cost of the project as of December 31, 1960, all classified by development and by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees as shown in the attached Schedule I.

(D) Licensee, to the extent it has not already done so, shall establish and maintain a reserve for project accrued depreciation showing the credit balance of $3,854,268.65, the credit amount of $339,833.35 as the net increase in project depreciation reserve for the period from May 1, 1958 through December 31, 1960, and the credit balance of $4,194,102 as the reserve for project accrued depreciation applicable to in-serve project properties as of December 31, 1960, all classified by developments and by functional classification of the Commission's Uniform System of Accounts as shown in attached Schedule II.

(E) Licensee shall, within 90 days from the issuance of this order, file FPC Form No. 7 and three certified copies of the adjusting journal entries showing compliance with this order.

SCHEDULE I

CAROLINA POWER & LIGHT COMPANY, LICENSEE, PROJECT NO. 2206 (BLEWETT-TILLERY)

SUMMARY OF CLAIMED ORIGINAL COST AS OF MAY 1, 1958, RECORDED CHANGES FOR THE PERIOD MAY 1, 1958, TO DECEMBER 31, 1960, WITH ADJUSTMENTS THERETO AND BALANCES ALLOWED AS OF DECEMBER 31, 1960

Account No.	Description	Initial cost at May 1, 1958			Net changes[1] from May 1, 1958 to Dec. 31, 1960	Allowed original cost at Dec. 31, 1960
		Claimed	Adjustments	Allowed		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
	BLEWETT DEVELOPMENT					
	HYDRAULIC PRODUCTION PLANT					
330	Land and land rights	$517,484.00	($40,959.86)	$476,524.14		$476,524.14
331	Structures and improvements	375,512.25	(5,091.27)	370,420.98	$7,424.15	377,845.13
332	Reservoirs, dams and waterways	2,088,318.06	(39,158.17)	2,049,159.89		2,049,159.89
333	Water wheels, turbines and generators	642,450.00	(9,880.19)	632,569.81		632,569.81
334	Accessory electric equipment	122,039.51	(4,859.58)	117,179.93		117,179.93
335	Miscellaneous power plant equipment	33,941.22	(684.10)	33,257.12	(671.62)	32,585.50
	Total production plant	3,779,745.04	(100,633.17)	3,679,111.87	6,752.53	3,685,864.40
	TRANSMISSION PLANT					
353	Station equipment	85,165.00	15,211.36	100,376.36		100,376.36
	DISTRIBUTION PLANT					
362	Station equipment	15,237.44	(15,237.44)			
	GENERAL PLANT					
397	Communication equipment	2,404.00	(7.72)	2,396.28		2,396.28
	Total Blewett Development	3,882,551.48	(100,666.97)	3,781,884.51	6,752.53	3,788,637.04

	TILLERY DEVELOPMENT					
	HYDRAULIC PRODUCTION PLANT					
330	Land and land rights	1,079,163.89	(22,995.79)	1,056,168.10		1,056,168.10
331	Structures and improvements	831,815.44	(17,236.22)	814,579.22	155,879.79	790,459.01
332	Reservoirs, dams and waterways	3,644,483.20	(78,736.14)	3,565,747.06	172,641.29	3,738,388.35
333	Water wheels, turbines and generators	1,338,611.18	(28,201.32)	1,310,409.86	1,756,575.09	3,066,984.95
334	Accessory electric equipment	252,310.42	(5,195.63)	247,114.79	106,112.97	353,227.76
335	Miscellaneous power plant equipment	43,947.20	(804.09)	43,143.11	6,521.24	49,664.35
	Total production plant	7,190,331.33	(153,169.19)	7,037,162.14	2,197,730.38	9,234,892.52
	TRANSMISSION PLANT					
353	Station equipment	400,389.00	(8,392.22)	391,996.78	99,996.37	491,606.15
	DISTRIBUTION PLANT					
362	Station equipment	2,691.00	(2,691.00)			
	GENERAL PLANT					
397	Communication equipment	13,699.00	(10.34)	13,688.66		13,688.66
	Total Tillery Development	7,607,110.33	(164,262.75)	7,442,847.58	2,297,429.75	9,740,277.33
	Total project	11,489,661.81	(264,929.72)	11,224,732.09	2,304,182.28	13,528,914.37

[1] No adjustments proposed to the claimed net changes.
( ) Denotes credit.

SCHEDULE II

PROJECT NO. 2206 (BLEWETT-TILLERY) CAROLINA POWER & LIGHT COMPANY, LICENSEE

SUMMARY OF ACCUMULATED PROVISION FOR DEPRECIATION OF ELECTRIC PLANT IN SERVICE—PROJECT NO. 2206, BY DEVELOPMENTS, AS OF MAY 1, 1958, INCREASES FOR THE PERIOD MAY 1, 1958, TO DECEMBER 31, 1960, AS CLAIMED, WITH ADJUSTMENTS THERETO, AND BALANCES ALLOWED AS OF DECEMBER 31, 1960

Particulars	Accrued Depreciation						
	Initial at May 1, 1958					Claimed [1] Changes from May 1, 1958, to Dec. 31, 1960	Allowed as of Dec. 31, 1960
	As Claimed	Revisions			Allowed		
		Total	Adjustments	Accounting Disposition			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
PROJECT NO. 2206							
DEVELOPMENTS							
Blewett:							
Hydraulic	$1,352,182.84	$264,514.22	$301,274.36	($36,760.14)	$1,616,697.06	$102,183.09	$1,718,880.15
Transmission	71,723.50	(30,077.62)	(30,051.54)	(26.08)	41,645.88	8,835.79	50,481.67
General	1,415.82	(234.51)	(226.79)	(7.72)	1,181.31	159.76	1,341.07
Total Blewett	1,425,322.16	234,202.09	270,996.03	(36,793.94)	1,659,524.25	111,178.64	1,770,702.89
Tillery:							
Hydraulic	1,883,217.85	48,007.88	93,572.88	(45,565.00)	1,931,225.73	203,100.70	2,134,326.43
Transmission	298,025.05	(38,364.26)	(32,730.98)	(5,633.28)	259,660.79	24,641.43	284,302.22
General	4,536.96	(679.08)	225.50	(902.58)	3,857.88	912.58	4,770.46
Total Tillery	2,185,779.86	8,964.54	61,065.40	(52,100.86)	2,194,744.40	228,654.71	2,423,399.11
Total Project No. 2206:							
Hydraulic	3,235,400.69	312,522.10	394,847.24	(82,325.14)	3,547,922.79	305,283.79	3,853,206.58
Transmission	369,748.55	(68,441.88)	(62,782.52)	(5,659.36)	301,306.67	33,477.22	334,783.89
General	5,952.78	(913.59)	(3.29)	(910.30)	5,039.19	1,072.34	6,111.53
Total	3,611,102.02	243,166.63	332,061.43	(88,894.80)	3,854,268.65	339,833.35	4,194,102.00

[1] No adjustments proposed to claimed changes from May 1, 1958 to December 31, 1960.
( ) Denotes debit.

SCHEDULE III

PROJECT NO. 2206 (BLEWETT-TILLERY) CAROLINA POWER & LIGHT COMPANY, LICENSEE

SUMMARY OF ADJUSTMENTS TO CLAIMED COST, BY DETAILED PLANT ACCOUNTS, AS OF MAY 1, 1958, AND RECORDED NET ADDITIONS FOR THE PERIOD MAY 1, 1958, THROUGH DECEMBER 31, 1960,[1] AND ACCOUNTING DISPOSITION THEREOF

Adjustments		Plant Accounts Affected									
No. (1)	Description (2)	Total (3)	330 (4)	331 (5)	332 (6)	333 (7)	334 (8)	335 (9)	353 (10)	362 (11)	307 (12)
	BLEWETT										
	Initial cost at May 1, 1958:										
1	Eliminate receivers costs	$(50,160.39)	$(10,356.63)	$(1,136.65)	$(32,028.15)	$(6,531.30)	$(103.27)				$(4.39)
2	Duplication of interest during construction	(11,983.33)		(2,935.07)	(5,588.58)	(2,624.89)	(770.14)	$(41.60)	$(20.44)		(2.61)
3	Land and health damage claims	(8,638.54)	(8,638.54)								
4	Health damage test costs	(21,964.69)	(21,964.69)								
5	Retirement improperly recorded	2,547.25					2,547.25				
6	Correction of retirement on ER 1094	(6,531.00)		(210.00)			(6,321.00)				
7	Ebasco inter-company profits	(3,305.25)		(809.55)	(1,541.44)	(724.00)	(212.42)	(11.48)	(5.64)		(72)
8	Reclassification between accounts								15,237.44	$(15,237.44)	
9	Unrecorded retirements	(631.02)						(631.02)			
	Total Blewett	(100,666.97)	(40,959.86)	(5,091.27)	(39,158.17)	(9,880.19)	(4,859.58)	(684.10)	15,211.36	(15,237.44)	(7.72)
	TILLERY										
	Initial cost at May 1, 1958:										
10	Excessive interest during construction	(942,65.83)	(13,584.59)	(10,182.17)	(45,331.31)	(16,659.72)	(3,069.28)	(475.01)	(4,957.64)		(6.11)
11	Contract deposit not refunded	(2,000.00)			(2,000.00)						
12	Transfers to nonproject plant	(2,691.00)								(2,691.00)	
13	Ebasco inter-company profits	(65,305.92)	(2,411.20)	(7,054.05)	(31,404.83)	(11,541.60)	(2,126.35)	(329.08)	(3,434.58)		(4.23)
	Total Tillery	(164,262.75)	(22,905.79)	(17,236.22)	(78,736.14)	(28,201.32)	(5,195.63)	(804.09)	(8,392.22)	(2,691.00)	(10.34)
	Total project	(264,929.72)	(63,955.65)	(22,327.49)	(117,894.31)	(38,081.51)	(10,055.21)	(1,488.19)	6,819.14	(17,928.44)	(18.06)
	Accounting disposition:										
101	Electric plant in service—Nonproject	35,574.75									
108	Accumulated provision for depreciation of electric plant in service: Project No. 2206—Blewett $36,793.94 Tillery $52,100.86	88,894.80									
	Nonproject	(36,333.58)									
435	Miscellaneous Debits to Surplus	176,793.75									
	Total	264,929.72									

[1] No adjustments in this period. ( ) Denotes credit.

Before Commissioners: Joseph C. Swidler; Chairman, L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

CENTRAL MAINE POWER COMPANY, PROJECT NO. 2335

ORDER ISSUING LICENSE (MAJOR)

(Issued July 24, 1964)*

Application was filed on January 3, 1963 by Central Maine Power Company (Applicant) of Augusta, Maine, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2335, known as the Williams Project, located on the Kennebec River, in the towns of Embden, Bingham, and Solon, and the Township of Concord, in Somerset County, Maine.

According to the application, the project site was initially developed for power purposes in 1830. A project was intermittently operated on the site until the spring of 1937 when Applicant purchased the site. The existing mill buildings and the dam were in ruins at that time and Applicant began a rehabilitation of the project in the fall of 1937, and the first generator of 7,000 kilowatts went into operation in 1939. The powerhouse was finished and the second generator of 6,000 kilowatts went into operation in 1950. The pond level was raised to the designed elevation in 1961. The power generated by the Williams Project is delivered to Applicant's distribution system for public utility purposes.

Applicant requests a 50 year license effective from the date of its issuance. In its order issued May 21, 1954,[1] the Commission found the Kennebec River to be a navigable water of the United States. In accordance with the criteria set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of January 1, 1938 and a termination date of December 31, 1987, since neither a declaration of intention nor a timely application for license was filed with respect to the aforesaid construction.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, have advised that the plans of the project structures affecting navigation have been approved pursuant to Section 4(e) of the Act.

The Department of the Interior recommended for inclusion in any license for the project certain conditions in the interest of fish and wildlife resources.

The Department of Health, Education and Welfare, has advised that: the project does not constitute a source of pollution; removal of the project dam or flow regulation is not warranted at this time; and it is not envisioned that the granting of a license for the project will create or intensify vector problems.

The Commission finds:

(1) The project affects navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of Maine, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given as required by the Act. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

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*Rehearing denied by order issued September 11, 1964, 32 FPC 733. Affirmed, *Central Maine Power Co.* v. *F.P.C.*, 345 F. 2d 875 (CA1–1965).

[1] Docket No. E–6456 (13 FPC 1076).

(5) Upon the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The substation containing two 3 phase, 6.9/115 kv transformers located adjacent to the powerhouse mentioned in paragraph (B) below, which were included in the application for license, are parts of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project.

(7) The 6.9 kv generator leads and the 115 kv transmission line from the 6.9/115 kv substation to the Wyman-Gulf Island 115 kv line, while not included in the application for license, are parts of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project as hereinafter provided.

(8) The installed horsepower capacity of the project for the purpose of computing the capacity component of the administrative annual charge is 17,300 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(9) The exhibits designated and described in pargaraph (B) below conform to the Commission's rules and regulations and should be approved as part of this license.

The Commission orders:

(A) This license is hereby issued to Central Maine Power Company (Licensee) of Augusta, Maine, under Section 4(e) of the Federal Power Act (Act) for a period of 50 years, effective as of January 1, 1938, and terminating December 31, 1987, for the continued operation and maintenance of Project No. 2335 on the Kennebec River, Maine, a navigable water of the United States, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2335 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: General Map.

Sheet 1 (FPC No. 2335–1) Flowage, Dam and Power Plant Areas.

Sheet 2 (FPC No. 2335–2) Transmission System.

Exhibit K: Detail Maps.

Sheet 1 (FPC No. 2335–3) Tailrace.

Sheets 2, 3, 4, 5 (FPC Nos. 2335–4, –5, –6 and –7) Reservoir.

(ii) Project works consisting of: *a dam* comprising: (a) a 202 foot concrete core earth dike (crest elevation 325 feet) extending from the eastern shore to the gate section, (b) a concrete gate section, 243 feet 6 inches long and 15 feet high (maximum) composed of one split vertical lift car wheel gate and five tainter gates, each 32 feet 6 inches wide and 20 feet 6 inches high, (c) a 230 foot 4 inch long stanchion section, (d) an angled bulkhead section connecting the stanchion and intake section and containing a deep sluice gate and a log sluice tainter gate 6 feet wide by 12 feet 4 inches high, (e) a steel lined

concrete log sluice 6 feet wide, 8 feet deep and 160 feet long, (f) an intake section 85 feet wide (along dam) and 160 feet long containing four gate openings for two power units (two each) serving as the powerhouse substructure; and (g) a concrete cutoff wall, 48 feet long, extending into the westerly river bank; *a 426 acre reservoir* (pool elevation 320 feet) extending 7.5 miles up-river to the Licensee's Wyman Project No. 2329; *a powerhouse* containing two hydraulic turbines rated at 10,950 hp and 8,800 hp connected, respectively, to two generators rated at 7,000 kw and 6,000 kw; *a substation* containing two 3 phase 6.9/115 kv transformers located adjacent to the powerhouse; *and appurtenant electrical and mechanical facilities*, the location, nature, and character of which are more specifically shown and described by the following described exhibits:

Exhibit L: General Design Drawings.

Sheet 1 (FPC No. 2335–8) Dam and Powerhouse—Plan—Sections

Sheet 2 (FPC No. 2335–9) Dam—Elevations & Sections

Sheet 3 (FPC No. 2335–10) Powerhouse (Plan—Elevation—Sections)

Sheet 6 (FPC No. 2335–13) Substation—General Design

Exhibit M: Nine typewritten pages entitled, "General Description and Specifications of Equipment and Appurtenances".

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–3 (Revised November 1, 1963), entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States", (30 FPC 1658), which terms and conditions, designated as Articles 1 through 27, are attached hereto and made a part hereof; except for Article 4 thereof; and subject to the following special conditions set forth herein as additional articles:

Article 28. The Licensee shall pay to the United States the following annual charges:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with its regulations, in effect from time to time. The authorized installed capacity for such purposes is 17,300 horsepower.

Article 29. The Licensee shall, within six months from the date of this license, file with the Commission an application for amendment of this license to include the following described transmission facilities: the 6.9 kv generator leads and the 115 kv transmission line from the 6.9/115 kv substation to the Wyman-Gulf Island 115 kv line.

Article 30. The Licensee shall, within one year from the date of issuance of this license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 31. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest,

maintenance, and depreciation thereon as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States the licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the costs of making the determinations pursuant to the then current Commission Regulations under the Federal Power Act within 60 days from the date of rendition of a bill therefor and, upon failure to do so, shall thereafter be subject to the payment of the penalties specified in the then current Regulations. The Licensee shall have the right to pay such amounts under protest within the 60-day period and to reconsideration of the amounts billed or a hearing as provided by the then current Regulations under the Act.

Article 32. The project, including its operation and maintenance and any work incident to additions or alterations authorized by the Commission whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and of any such alteration thereof, and shall notify him of the date upon which work with respect to any alteration will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any features thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of the license for the project.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

DUKE POWER COMPANY, PROJECT NO. 2332

ORDER ISSUING LICENSE (MAJOR)

(Issued July 24, 1964)

Application was filed on December 20, 1962, by Duke Power Company, of Charlotte, North Carolina (a New Jersey corporation) for license under Sec-

tion 4(e) of the Federal Power Act (Act) for license for constructed Project No. 2332, known as the Gaston Shoals Station, located on the Broad River in Cherokee County, South Carolina, and Cleveland County, North Carolina. On April 8, 1964, a supplement to the application was filed, being a joint application by Duke Power Company a New Jersey corporation, and Duke Power Company of North Carolina, to substitute the latter company as Applicant for the license.

In a separate order issued May 18, 1964,[1] we approved the disposition by Duke Power Company of the whole of its facilities to Duke Power Company of North Carolina.[2]

The Gaston Shoals development, which is located on the Broad River at river mile 110, was placed in operation in 1908. An additional spillway (middle spillway) was built in 1916 and 1917. There has been no project construction since the latter date. The project has an installed capacity of 15,280 horsepower connected to generators having a total rated capacity of 9,140 kilowatts.

The project develops a gross head of about 51 feet and is a run-of-river plant using the natural flows available for power generation. The hydraulic capacity of the project is about 3,300 cfs. The average flows of the Broad River at the upstream Boiling Springs, gage and the downstream Gaffney gage of the USGS are 1,408 cfs and 2,379 cfs, respectively.

The average flow at the Gaston Shoals project is estimated to be about 2,010 cfs. The usable reservoir capacity is not sufficient to allow the plant to operate with any substantial degree of flexibility.

Studies made by the U.S. Corps of Engineers on the comprehensive development of the Santee-Congaree-Board River[3] include the Greater Gaston Shoals project which, if constructed, would be located at river mile 106 with a maximum power pool at elevation 680 feet, and would completely inundate the subject Gaston Shoals project. While recent consultation between Commission staff and the Corps disclosed that present studies by the Corps of the Santee River Basin do not include the Broad River, provision is hereinafter made in the interest of a more comprehensive plan of development of the Santee-Congaree-Broad River system.

In its order issued November 21, 1963,[4] the Commission found that the Broad River is a navigable waterway of the United States from its mouth at Columbia, South Carolina, at least to a point in the State of North Carolina about 28 miles northerly from the North Carolina-South Carolina boundary, and about 141 miles upstream from Columbia. The Gaston Shoals project, at river mile 110, is within this 141-mile reach.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, advised that the plans of the project structures affecting navigation are satisfactory and had been approved pursuant to Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, recommended, for inclusion in any license for the project, certain conditions in the interest of the conservation and development of fish and wildlife resources.

For the reasons set forth in Opinion No. 357 (27 FPC 830), the license herein granted shall have a termination date of December 31, 1993, and an effective date of April 1, 1962.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of North Carolina, is authorized to do business within the States of North and South

[1] Duke Power Company and Duke Power Company of North Carolina, Docket No. E-7156.

[2] On the effective date of merger, June 15, 1964, Duke Power Company of North Carolina, the surviving corporation became "Duke Power Company."

[3] House Document No. 187, 28th Congress, 2d Session.

[4] South Carolina Electric & Gas Company, project No. 2315 (30 FPC 1346).

Carolina, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(2) No conflicting application is before the Commission. Public notice of the filing of the application has been given as required by the Act. No protests or petitions to intervene have been received.

(3) The issuance of a license as hereinafter provided will not affect a Government dam or the development of any water resources for public purposes which should be undertaken by the United States.

(4) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(5) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 12,200 horsepower, and the amount of such charges, based upon such capacity, to be paid under the license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(6) The step-up transformers and appurtenant mechanical and electrical facilities referred to in paragraph (E) below, which were included in the application for license, are parts of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project as hereinafter provided.

(7) While not included in the application for license, the 200 foot 2.3 kv generator leads, the 2.3/33 kv step-up substation, and the 5-mile long 33 kv Gaston Shoals to Gaffney transmission line and appurtenant facilities are parts of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project as hereinafter provided.

(8) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to Duke Power Company (Licensee), under Section 4(e) of the Federal Power Act (Act), for a period effective as of April 1, 1962, and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2332, located on the Broad River, North and South Carolina, a navigable water of the United States, subject to the terms and conditions of the Federal Power Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Constructed Project No. 2332 consists of:

(1) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purposes of the project, whether such lands or interests therein are owned or held by the applicant or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J–1: (FPC No. 2332–2) entitled, "Gaston Shoals Station—General Map and Profile."

Exhibit J–2: (FPC No. 2332–3) entitled, "Gaston Shoals Station—Transmission System Map."

Exhibit J–3: (FPC No. 2332–4) entitled, "Gaston Shoals Station—Transmission System Details."

Exhibit K: (FPC No. 2332–5) entitled, "Gaston Shoals—Project Area."

(ii) The project, which is constructed, and known as the Gaston Shoals Station, is located on the Broad River in Cherokee County, South Carolina, about four miles west of Blacksburg, South Carolina, at a point 110 miles above the mouth of the Broad River and consists of the following:

Two gravity type spillway sections, one of rubble masonry 707 feet long with a main overflow section 503.95 feet long, the other being concrete and 363.14 feet in length; a concrete gravity type powerhouse bulkhead section 472.2 feet long of which the powerhouse and intake section is 169.9 feet long and included in the total length of 472.2 feet; a reservoir of undetermined surface area with a normal pool elevation of 605.2 feet (USGS datum); a powerhouse containing eight turbines (two per unit) rated at 2,820 hp per unit connected to four generators having a total capacity of 6,640 kilowatts and one 4,000 hp turbine connected to a 2,500 kw generator, and appurtenant mechanical and electrical facilities: the location, nature and character of which are more particularly shown and described by the exhibits hereinbefore cited and by certain other exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit L–1: (FPC No. 2332–6) entitled, "Gaston Shoals Station—Plan, Profile & Spillway Rating Curve."

Exhibit L–2: (FPC No. 2332–7) entitled, "Gaston Shoals Station—Sections and Details."

Exhibit M: Three typewritten sheets entitled, "General Descriptions of Mechanical, Electrical and Transmission Equipment", filed with the Commission December 20, 1962.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–3 (Revised November 1, 1963), entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States," (30 FPC 1658) which terms and conditions, designated as Articles 1 through 27, are attached and made a part hereof except for Article 4 thereof; and subject to the following special conditions set forth herein as additional articles:

Article 28. The project, including its operation and maintenance and any work incident to additions or alterations authorized by the Commission whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and of any such alteration thereof, and shall notify him of the date upon which work with respect to any alteration will begin, and as far in advance thereof as said representative

may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 29. The Licensee shall pay to the United States the following annual charge:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with its regulations, in effect from time to time. The authorized installed capacity for such purposes is 12,200 horsepower.

Article 30. The Licensee shall within one year from the date of issuance of the license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 31. The Licensee shall, within one year from the date of issuance of this license, file in conformity with the Commission's rules and regulations an application for amendment of license to include the following transmission facilities: the 200 foot 2.3 kv generator leads, the 2.3/33 kv step-up substation, and the 5-mile-long 33 kv Gaston Shoals to Gaffney transmission line.

Article 32. Whenever the Licensee is directly benefited by the construction work of another Licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States the licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the costs of making the determinations pursuant to the then current Commission Regulations under the Federal Power Act within 60 days from the date of rendition of a bill therefor and, upon failure to do so, shall thereafter be subject to the payment of the penalties specified in the then current Regulations. The Licensee shall have the right to pay such amounts under protest within the 60-day period and to reconsideration of the amounts billed or a hearing as provided by the then current Regulations under the Act.

Article 33. The right, power, and authority is reserved to the United States to construct or to the Commission to issue a license authorizing the construction, operation and maintenance of a hydroelectric project which will more completely utilize the water resources of the reach of the Broad River in which the project is located.

Article 34. The acceptance of this license by the Licensee shall constitute its stipulation, consent and agreement made upon its own behalf and upon the behalf of its successors and assigns for the benefit of the United States, or the person or persons hereinafter constructing, operating and maintaining such

more complete hydroelectric project or his or their successors and assigns, that said Licensee, its successors or assigns, shall surrender its license at such time as the project becomes inoperative by reason of inundation by such more complete hydroelectric project; Provided that Licensee shall be paid the net investment in Project No. 2332 upon surrender of its license; and Provided further that Licensee shall not be entitled to any compensation for severance damages sustained by reason of inundation or destruction of the project or project works of Project No. 2332.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of the license for the project.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

IDAHO POWER COMPANY, PROJECT NO. 1971

ORDER AMENDING LICENSE TO AUTHORIZE TRANSMISSION LINES

(Issued July 24, 1964)*

Idaho Power Company, licensee for Project No. 1971 on the Snake River, Idaho and Oregon, filed an application on September 26, 1963, to amend its license to authorize transmission lines from the Brownlee switchyard to the Boise Bench substation, serving Boise, Idaho, and environs.

The proposed lines, designated Brownlee-Boise Bench Nos. 3 and 4, are 230 kv double-circuit lines with a length of approximately 101.7 miles. They will be carried on newly-constructed galvanized steel towers. They will cross about twenty-seven miles of United States' lands, of which some 1.75 miles are in the Boise and Payette National Forests.

The proposed lines will be fully loaded with project power by about 1967.

Notice was given on November 6, 1963, and no protests or petitions to intervene were received.

The Department of the Interior on February 14, 1964, commented that the lines are "necessary and proper," and the Department of Agriculture on March 26, 1964, reported that they would "not interfere or be inconsistent with the purposes for which the Boise and Payette National Forests were created or acquired * * *."

The Department of the Interior recommended that the Commission, as a condition of authorizing the lines, make wheeling provisions that would enable the United States to utilize excess capacity and increase the capacity in the licensee's main transmission system from La Grande, Oregon, to Goshen, Idaho.

The Department of Agriculture, reciting its interest in having Federal power made available to rural electric cooperative financed by the Department's Rural Electrification Administration, requested that the Commission make "appropriate provisions for wheeling of Federal power over the applicant's transmission system."

The licensee on March 6, 1964, answered the Department of the Interior's proposal: "a wheeling provision attached to the lines involved in the present application could cover only a fraction of the entire transmission system be-

*Rehearing denied, 32 FPC 762. Affirmed, *Idaho Power Co.* v. *F. P. C.*, 346 F. 2d 956 (CA9–1965); cert. denied, 382 U.S. 957 (1965).

tween La Grande and Goshen, and the request does not present a situation upon which the Commission could effectively act." On April 24, 1964, the licensee responded to the Department of Agriculture's remarks that it presently fulfilled and would continue to fulfill the requirements of rural electric preference customers at rates established by the Bonneville Power Administration.

We have provided in the amendment authorizing the proposed lines that the licensee be required to wheel power for use of the United States or for sale to preference customers under Federal power marketing policies on the excess capacity of all transmission lines under license for Project No. 1971 and to increase the capacity of such lines at the expense of the United States. Such lines extend from the Quartz substation, Oregon, through Brownlee and Boise Bench to Brady, Idaho. Thus, to use these lines for wheeling from La Grande to Goshen, the United States has to construct connection lines or make other provisions for transmission for the relatively short distance from La Grande to the Quartz substation and from Brady to Goshen. With minor exceptions, the wheeling provisions set forth below are like those in the license for the company's Bliss project, Project No. 1975.

The Commission finds:

It is appropriate and in the public interest in administering Part I of the Federal Power Act (16 U.S.C. 791–823) that the license for the Idaho Power Company's Project No. 1971 be amended as hereinafter provided.

The Commission orders:

(A) Paragraph (5)(a) of the license is amended by adding thereto the following:

Brownlee-Boise Bench Nos. 3 and 4 Transmission Lines

Exhibit	FPC No.	Showing
J	1971–202	General map.
K	1971–203 and –204	Detail map.

(B) Paragraph (5)(b)(4) of the license is amended by adding thereto the following:

A 230 kv double-circuit transmission line extending from the Brownlee switchyard approximately 101.7 miles in a southeasterly direction to the Boise Bench switchyard.

Exhibit M portion of Exhibit M–N–O in one sheet (dated 8–20–63) General Description and Specifications of Equipment.

(C) Sub-paragraph (b) of Article 44 of the license is further amended to read as follows:

(b) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands used for transmission line right-of-way only $2,208.07 effective November 1, 1960, and $2,417.99 effective the first day of the month in which the Commission acts on the application.

(D) Article 49 of the license is added to read as follows:

Article 49. The construction and operation of the Brownlee-Boise Bench Nos. 3 and 4 transmission lines shall be subject to the following special conditions:

(i) The Licensee shall make surplus transmission capacity on all lines under license for the project available on a reasonable cost basis to the Federal Government.

(ii) The Licensee shall not convert said lines to permit operation at a greater capacity without prior approval of the Commission. Upon the request of the Secretary of the Interior under appropriate authority, the Licensee shall, after

notice of at least one year from the Commission and within the time fixed by the Commission, convert said lines for operation at a greater capacity at the expense of the United States.

(iii) After the initial construction of the lines or upon conversion of the lines to a greater capacity as herein provided, the Licensee shall permit the United States, and the United States shall have the right, to interconnect any of its transmission facilities with said lines in a manner conforming to approved standards of practice for the interconnection of transmission circuits provided there is capacity available in said line or lines in excess of the needs of the Licensee. The expense of such interconnection, including the expense of additional switching, relaying, and other protective devices, shall be borne by the United States, provided, however, that no such interconnection may be made without the prior approval of the Commission.

(iv) Upon completion of any such interconnections, the United States shall have the right to transfer energy over said lines as initially or ultimately constructed in such amounts as will not unreasonably interfere with the Licensee's use of said lines provided that the Licensee shall be obligated to allow the transmission over the said lines by the United States of electric energy only to consuming facilities of the United States and to public bodies and cooperatives entitled to statutory preference in connection with the distribution and sale of electric energy by the United States.

(v) After any such interconnection of the facilities of the United States with said lines, the Licensee shall, except in emergencies, maintain in a closed position all connections under the Licensee's control between the Licensee's lines and the interconnecting facilities provided by the United States.

(vi) Any interconnected power systems of the United States and the Licensee shall be operated in parallel and in such manner as to render good and adequate service. Any inadvertent flow of energy from the lines of the United States into said lines or from said lines into the lines of the United States which may occur while the lines of both the Licensee and the United States are electrically interconnected shall be mutually compensated for by later return in kind. Any scheduled transfer of energy over said lines for the account of the United States shall be settled for, or any investment in said lines made by the United States shall be liquidated, on reasonable terms under agreements which shall be negotiated between the Licensee and the United States, said agreements to the subject to approval by the Commission.

(vii) Until such agreements are completed, settlement for any such scheduled transfers of power shall be made on the following basis: If power and energy from the lines of the United States is transmitted over these lines, the monthly payment for such transmission shall be the amount of dollars representing that part of the monthly cost to the Licensee of the section of the line or lines over which the power and energy is transmitted which the maximum transmission by the United States in kilowatts during the month bears to the kilowatt capacity of such section of line or lines. The monthly cost to the Licensee referred to herein shall be computed in conformity with the uniform system of accounts prescribed by the Commission.

(viii) If, at any time subsequent to the date upon which the Licensee commences the transmission of energy over said lines for the United States, the Licensee notifies the Commission that the Licensee needs for the transmission of electric energy in connection with its operations the whole or any substantial part of the capacity of the said lines, or part thereof, then being utilized by the United States, and the Licensee makes satisfactory provision for reimbursement to the United States of the original cost, or a proportional part of the original cost if only a part of the additional capacity is involved, to the United

States of the facilities desired by the Licensee, less accrued depreciation on the investment of the United States, the Licensee may modify or revoke the then existing agreement to remain interconnected and to transmit energy for the United States by giving to the Commission 36 months' notice, of the Licensee's intention to utilize additional capacity or the entire capacity of the lines, or part thereof, as the case may be.

(ix) If at any time in the future the said lines of the Licensee are proposed for alteration or are altered, the Commission reserves the right, after 30 days' notice and opportunity for hearing, to make a determination as to whether the lines after such alteration, either proposed or actual, will be subject to licensing by the Federal Power Commission under the then existing laws and regulations, and in the event that the Commission finds that the said alteration in the lines, either proposed or actual, so changes the functions served by said lines and the source of energy transmitted over said lines as to make them, or any part of them, not subject to the licensing authority of the Commission under the then existing laws and regulations, the Licensee hereby agrees to secure authority for the continued operation and maintenance of the lines, or such part of the lines, from the appropriate agency of the United States then having jurisdiction over the lands of the United States occupied by the lines, or part thereof, and upon securing said authority the Licensee hereby agrees to surrender the license insofar as it authorizes operation and maintenance of the lines, or such parts thereof, which are found to be no longer subject to the Commission jurisdiction. In the event that the Licensee should fail to surrender the license insofar as it is applicable to the lines, or parts thereof, which may then be found by the Commission not to be subject to its jurisdiction, the Commission reserves the right to take appropriate action to have the license terminated with respect to said lines, or parts thereof, as provided in the then existing laws and regulations.

(x) Any agreement between the Licensee and the United States in connection with said transmission lines or related facilities shall be effective only upon approval by the Commission. In the event the Licensee and any agent of the United States are unable to agree with respect to any matter arising in connection with said transmission lines or related facilities, the question thereby raised shall be submitted to the Commission for determination after notice and opportunity for hearing.

(E) This order is effective from the first day of the month in which it is issued.

(F) In acknowledgment of the acceptance of this amendment of license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of the issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

IOWA POWER AND LIGHT COMPANY, DOCKET NO. E-7169

ORDER AUTHORIZING ACQUISITION AND MERGER OR CONSOLIDATION OF FACILITIES

(Issued July 24, 1964)

Iowa Power and Light Company (Applicant) organized under the laws of the State of Iowa and doing business in that State with its principal office at Des Moines, Iowa, filed an application on June 8, 1964, as supplemented on July 2 and 10, 1964, requesting authorization, pursuant to Section 203 of the Federal

Power Act to acquire the electric facilities of the Incorporated Town of Grimes, Iowa (Town). Applicant is engaged in the generation, transmission, distribution and sale of electric energy in the central and southwest sections of Iowa in an area having an estimated aggregate population, as of December 31, 1963, of 520,000. Both electric and natural gas service is furnished in and around Des Moines and in 44 other municipalities (estimated 1963 population 300,000); electric service only is furnished in Council Bluffs, 66 other municipalities, 75 unincorporated communities and rural territory (estimated 1963 population 200,000); and natural gas service only is furnished in 12 municipalities (estimated 1963 population 20,000).

Town maintains its own electric light plant and distribution system used to supply electric energy to consumers in and adjacent to the Town which includes a street lighting system. According to the application, Town's generating plant is inadequate to supply the needs of the Town and its customers and is operated only as standby. At the present time, Applicant has two contracts to supply the total eletcric requirements to the Town Municipal System.

Pursuant to a contract of sale between the Town of Grimes and Applicant, entered into on May 11, 1964, Applicant proposes to acquire from the Town and merge or consolidate with its own facilities the entire municipal light plant (production plant) and distribution system used and useful in supplying electric energy to consumers in and adjacent to the Town, including the street lighting system, but excluding the lot or lots on which the electric light plant is located and the building housing such plant and the oil tank located on the premises.

Applicant plans to operate and maintain the existing distribution and street lighting system as an integral part of its facilities. After the installation of a second feed line to serve the Town, the production plant will be dismantled and removed from the plant building.

Applicant proposes to acquire the facilities for a cash payment of $190,000. The Town does not have any property records and Applicant has made the following estimate of cost based on its records for the cost of similar plant:

	Original cost	Accumulated depreciation	Original cost less depreciation
Production plant	$51,536	$23,722	$27,814
Distribution plant	86,657	21,842	64,815
Materials and supplies	1,880	457	1,423
Total	140,073	46,021	94,052

The acquisition of the facilities will be recorded by a debit of $190,000 to Account 102, Electric Plant Purchased or Sold, and a credit of the same amount to Account 131, Cash.

To clear Account 102, Electric Plant Purchased or Sold, and also to provide for the retirement of the production plant in the immediate future, Applicant has agreed to make the following entry:

Account 101, Electric Plant in Service (Production Plant, $51,536; and Distribution Plant, $86,657)	$138,193
Account 154, Plant Materials and Operating Supplies (net amount)	1,423
Account 114, Electric Plant Acquisition Adjustments	123,762
Account 108, Accumulated Provision for Depreciation of Electric Plant in Service (applicable to Production Plant and to Distribution Plant)	73,378
Account 102, Electric Plant Purchased or Sold	190,000

The credit of $73,378 to Account 108, Accumulated Provision for Depreciation of Electric Plant in Service, will include $51,536 for complete depreciation of the production plant to be acquired and then retired and $21,842 for depreciation applicable to the distribution plant to be acquired.

Applicant proposes to eliminate the acquisition adjustment of $123,762 by a debit to Account 435, Miscellaneous Debits to Surplus.

According to the application, after the acquisition, Applicant will charge rates in the Town of Grimes in accordance with its standard residential, commercial and industrial rates now on file with the Iowa State Commerce Commission that will be the same as its rates generally applicable throughout its system for towns of comparable size, area and utilization as the Town of Grimes. According to the application, this will result in an overall reduction of about 12 percent in the cost of electric energy to the Town customers with all classes of customers benefiting.

Applicant has also agreed to provide street lighting service and provide electric service for water and sewage pumping on terms agreeable to the Town. In an election held on June 23, 1964, a majority of the electors in the Town of Grimes approved the contract of sale and authorized a 25-year franchise for the Applicant in the Town area.

Written notice of the application has been given to the Iowa Commerce Commission and to the Governor of that State. Notice of the application also was published in the Federal Register on June 23, 1964 (29 F.R. 7950), stating that any person desiring to be heard or to make any protest with reference to said application should on or before July 6, 1964, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described and set forth in the Commission's order issued October 9, 1958, *Iowa Power and Light Company*, Docket No. E-6841 (20 FPC 473).

(2) By the proposed transaction, Iowa Power and Light Company will acquire and merge or consolidate with its facilities subject to the jurisdiction of the Commission, all of the facilities of the Town of Grimes, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of the Town of Grimes' facilities by Iowa Power and Light Company as described above, upon the terms and conditions specified in the application, and subject to the provisions of this order, will be consistent with the public interest, as expressed in Section 203 of the Act, for the reasons set forth in the recital above.

The Commission orders:

(A) The proposed acquisition and merger or consolidation of the facilities of the Town of Grimes by Iowa Power and Light Company, all as described above, is hereby authorized and approved upon the terms and conditions set forth in the application, subject to the provisions of this order.

(B) Iowa Power and Light shall record the transaction herein authorized and the facilities and properties referred to above, as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees. Iowa Power and Light shall dispose of the Electric Plant Acquisition Adjustment from the proposed transaction by a debit to Account 435, Miscellaneous Debits to Surplus.

(C) The authorization shall expire unless the transaction herein authorized is consummated within 90 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward, and David S. Black.

MERCED IRRIGATION DISTRICT, PROJECT NO. 2179

ORDER PRESCRIBING CLEARING PLAN OF PROJECT RESERVOIR AREAS

(Issued July 24, 1964)

Article 46 of Merced Irrigation District's license for Project No. 2179 reads as follows:

> *Article 46.* The Licensee shall, prior to impounding water, dispose of all temporary structures, unused timber, brush, refuse, or other inflammable material resulting from the clearing of the land or from the construction and maintenance of the project works, and shall clear all lands in the reservoir areas up to normal water levels; except that all lands in the reservoir areas shall be cleared according to a plan to be prescribed by the Commission upon the recommendation of the California Department of Fish and Game and the Bureau of Sport Fisheries and Wildlife. The clearing of the lands and the disposal of the material shall be done with due diligence by Licensee and to the satisfaction of the authorized representative of the Commission.

By letter of May 26, 1964, as supplemented by letter of June 4, 1964, the California Department of Fish and Game has advised us that through the cooperative efforts of the Merced Irrigation District, the Bureau of Sport Fisheries and Wildlife, and the Department, recommendations have been developed by the Department for retention of vegetative cover in enlarged Exchequer Reservoir and McSwain Afterbay Reservoir in conjunction with Project No. 2179.

By letter dated June 17, 1964, Merced Irrigation District advises us of its concurrence with the above-mentioned recommendations.

By letter dated July 9, 1964, the Department of the Interior recommended, in the interest of fish and wildlife resources and related public recreational use benefits, that clearing of vegetative cover within and contingent to the project reservoirs be executed as hereinafter set forth which is identical with the recommendations of the California Department of Fish and Game.

The Commission finds:

The reservoir clearing plan recommended by the California Department of Fish and Game and concurred in by the Bureau of Sport Fisheries and Wildlife and Merced Irrigation District is consistent with the purposes of Article 46 of the license for Project No. 2179.

The Commission orders:

The clearing plan for the enlarged Exchequer Reservoir and the McSwain Afterbay Reservoir of Project No. 2179, as set forth in *Appendix A*, which is attached hereto and made a part hereof, is hereby approved.

APPENDIX A

(1) *New Exchequer Reservoir*

Vegetative cover shall be retained in the following areas:

(a) T. 4 S., R. 16 E., MDM,
Sec. 6, NW¼SE¼SW¼, NE¼SW¼;

Sec. 7, E½;
Sec. 8, all;
Sec. 16, all;
Sec. 17, all;
Sec. 18, SE¼NW¼, E½SW¼, and E½;
Sec. 19, all;
Sec. 20, all;
Sec. 21, all.

(b) T. 4 S., R. 15 E., MDM,
Sec. 1, SW¼NW¼, W½NW¼NW¼, and NE¼NE¼;
Sec. 2, NE¼.

(c) T. 3 S., R. 15 E., MDM,
Sec. 9, all;
Sec. 10, all;
Sec. 15, all;
Sec. 22, all;
Sec. 23, N½, NW¼SW¼;
Sec. 24, SE¼SE¼;
Sec. 25, SE¼SW¼;
Sec. 35, W½NE¼, NW¼SE¼, NW¼;
Sec. 36, NE¼NE¼NW¼, SE¼SE¼SE¼.

(d) T. 3 S., R. 16 E., MDM,
Sec. 19, NE¼NW¼, NW¼NE¼;
Sec. 21, All areas upstream from NW¼NW¼ (vegetation shall be retained in the remainder of the reservoir upstream from section 21).

(2) *McSwain Afterbay Reservoir*

A zone 20 feet below maximum normal water surface elevation shall be cleared with the following exception, where vegetation should be retained to the water surface:

T. 5 S., R. 16 E., MDM,
Sec. 2, NE¼SE¼.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP64-18

ORDER MODIFYING AND ADOPTING INITIAL DECISION OF PRESIDING EXAMINER

(Issued July 24, 1964)*

Syllabus

1. Contention that applicant could more economically render proposed service by extending existing storage *rejected*. PP. 350; 355.
2. Arguments relating to pending St. Louis area case do not go beyond scope of instant proceeding. P. 351.
3. Record does not support contention that Panhandle will be unable to make both deliveries proposed here and those to St. Louis Area. P. 351.
4. Even if claims of incompatibility were correct, Mississippi would not be aggrieved by certification of instant project– –its competitive position in St. Louis market would be enhanced, not impaired, should Panhandle be unable to compete there as result of making sales herein proposed. P. 351.
5. Commission *issues* certificate of public convenience and necessity under Section 7 of the Natural Gas Act.

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*Initial decision appears on p. 351.

Raymond N. Shibley and *William J. LeBuhn* for Panhandle Eastern Pipe Line Company.

Cleon L. Burt and *Gaylord C. Burke* for Mississippi River Fuel Corporation.

Joseph T. Morrow for Northern Indiana Public Service Company.

Patrick J. Smith and *John M. Pratt* for City of Indianapolis (Citizens Gas & Coke Utility).

Sherman S. Poland for Central Illinois Electric and Gas Company.

Lewis Carroll for City of Montgomery, Missouri.

C. V. O'Hern, Jr. for Central Illinois Light Company.

J. Phillip Bahn, Thomas P. Peacock, and *James B. Falahee* for Michigan Gas Storage Company.

Q. P. Dorschel and *Robert S. Hunt* for Illinois Power Company.

David B. Ward and *Charles Brown* for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

This proceeding is before us by virtue of a brief on exceptions to the presiding examiner's initial decision in the above-captioned proceeding filed by Mississippi River Fuel Corporation (Mississippi) on June 19, 1964.[1] On May 20, 1964, the presiding examiner issued his initial decision which would grant, pursuant to Section 7(c) of the Natural Gas Act, a certificate of public convenience and necessity to Panhandle Eastern Pipe Line Company (Panhandle) and authorize Panhandle to construct and operate facilities and to increase sales to some fifty of its presently existing customers. The amount of increased sales to these customers is based upon a total increase in winter contract demands of 130,748 Mcf and lesser increases in contract demands for other seasons.

The sole contested issue at the hearing was whether Panhandle could render the proposed additional service at a lower cost by expanding the capacity of Howell Storage Field rather than constructing much of the compressor and loop line facilities originally proposed by Panhandle. In rebuttal, Panhandle introduced evidence purporting to show that Panhandle would be unable to meet the requirements on its system during the "fringe" months of April, May, September and October if it adopted the Mississippi proposal and, further, that it would be unable to meet its annual requirements.

Mississippi's principal contention, both in its brief to the presiding examiner[2] and in its brief on exceptions, is that Panhandle's rebuttal evidence clearly demonstrates that Panhandle will be unable to make both the deliveries proposed herein and the deliveries to the St. Louis market proposed in another currently pending case, *Natural Gas Pipeline Company of America, et al.*, Docket No. CP62-243, *et al.*

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[1] Briefs opposing the exceptions of Mississippi were filed by the following parties on the dates indicated.

Party filing	*Date filed*
Panhandle Eastern Pipe Line Co	June 25, 1964
Illinois Power Co	June 29, 1964
Illinois Light Co	June 29, 1964
Central Illinois Light Co	June 29, 1964
Central Indiana Gas Co	June 29, 1964
Indiana Gas & Water Company, Inc	July 1, 1964

[2] Filed on April 20, 1964.

The examiner held that "Mississippi's arguments about the 'St. Louis case' go beyond the scope of this proceeding." We do not agree, but this does not affect the validity of the examiner's ultimate conclusion because Mississippi's contentions are not supported by the evidence of record. Mississippi did not present any evidence attempting to prove the alleged incompatibility of the two projects and its arguments in its brief on exceptions do not successfully refute the expert testimony presented by Panhandle with respect to this issue. Furthermore, even if Mississippi's contentions concerning incompatibility were correct, it would not be aggrieved by the issuance of a certificate to Panhandle in the instant case. Its competitive position in the St. Louis market would not be impaired but enhanced should Panhandle undertake to make the sales proposed herein and then be unable to compete with Mississippi in the St. Louis area.

Mississippi's brief on exceptions to the examiner's initial decision essentially restates the arguments contained in its initial brief to the examiner. All of the other arguments presented by Mississippi in its brief on exceptions were fully considered by the examiner in his initial decision.

The Commission finds:

Upon consideration of the entire record in this matter including the oral and documentary evidence adduced and the decision of the presiding examiner such decision should be adopted as modified above.

The Commission orders:

The initial decision of the presiding examiner issued herein is modified as hereinabove set forth and as so modified is adopted as the decision of the Commission in these proceedings.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON AN APPLICATION TO CONSTRUCT FACILITIES AND TO DELIVER ADDITIONAL GAS

(Issued May 20, 1964)

LANDE, *Presiding Examiner:* This proceeding deals with an application filed by Panhandle Eastern Pipe Line Company (Panhandle) on July 23, 1963, seeking authorization to construct and operate additional facilities costing some $23,133,000 and to increase its sales to some 50 resale customers. The amount of increased sales to these customers is based upon a total increase in winter contract demand of 130,748 Mcf and lesser increases in contract demands for other seasons. Under subsection (e) of Section 7 of the Act a certificate shall be issued to an applicant authorizing the whole or any part of its proposal provided that it is found that applicant is able and willing to properly proceed with its proposal and that such proposal is required by the present or future public convenience and necessity.

Petitions to intervene were filed by 16 of Panhandle's resale customers. The Michigan Public Service Commission filed a notice of intervention and the Public Service Commission of Indiana filed a petition to intervene. Mississippi River Fuel Corporation (Mississippi) filed a petition to intervene. Fuels Research Council, Inc., National Coal Association, United Mine Workers of America and Mid-West Coal Producers Institute, Inc. (Coal Interests), filed a joint petition to intervene. However, on January 20, 1964, the Coal Interests filed a notice of withdrawal of the joint petition. By order of February 26, 1964, the Commission allowed the withdrawal of the Coal Interests' petition to inter-

vene and allowed the intervention of all other petitioners. The hearing commenced March 17, 1964, when Panhandle presented the prepared testimony and exhibits of six witnesses. Northern Indiana Public Service Company also presented one witness. Cross-examination of the applicant's witnesses commenced on March 24, 1964. During that session Mississippi also presented a witness, and Panhandle presented two rebuttal witnesses, after which the hearing concluded on March 26, 1964. In all, 49 exhibits and 6 items by reference were offered and received in evidence. Applicant's brief was due on April 6, 1964, answers—on April 20, 1964, and the reply brief on April 27, 1964.

THE CONTESTED ISSUE

In this proceeding it is incontroverted: (1) that Panhandle has a market for the proposed sales, (2) that public convenience and necessity require the market to be served, (3) that the original proposal presented by Panhandle is engineeringly and economically feasible, (4) that the proposed expansion is adequately financed, and (5) that Panhandle has sufficient supply of gas to support the proposed additional service. The only contested issue herein is whether Panhandle can render the proposed additional service at a lower cost by expanding the capacity of its Howell Storage Field and using it for the additional gas sales. Mississippi claims that utilization of the Howell Storage Field would reduce the cost of Panhandle's construction from $23,133,000 to $13,903,000, while Panhandle alleges that the total cost of the alternative facilities suggested by Mississippi would be $24,321,000, and it would produce a decidedly inferior project. The staff favors utilization of the Howell Storage Field. It is necessary to discuss specifically Panhandle's application, Mississippi's alternative proposal, staff's position and finally applicant's reply.

PANHANDLE'S APPLICATION

Applicant seeks certification to construct and operate facilities costing $23,133,000 which would increase the winter peak day capacity of its system by approximately 130,000 Mcf per day.

The proposal contemplates the construction and operation of the following facilities:

(a) Approximately 92 miles of 30'' main line loop, representing a continuation of Panhandle's fourth main transmission pipeline.

(b) A total of 24,500 additional horsepower to be installed at various locations in Panhandle's system.

(c) Lateral line facilities to be installed at various points along Panhandle's main line.

(d) Additional storage facilities, including production and gathering facilities and 2,000 horsepower of compression at Panhandle's Waverly Storage Field to increase the capacity of this field to 100,000 Mcf per day.

(e) Certain appurtenances in conjunction with the increased capacity of its main line system.

Panhandle estimates that the proposed main line facilities will expand the peak day capacity of its system by approximately 56,000 Mcf per day. The balance of the expanded capacity (or 75,000 Mcf) would be provided by the proposed storage facilities. In addition, Panhandle seeks authorization to increase the annual sales to 50 of its existing resale customers by approximately 15,851,000 Mcf in the first year. These increased sales volumes are based on the contract demands. The daily increase in contract demand during the five winter months amounts to 130,748 Mcf.

MISSISSIPPI'S POSITION

Mississippi submits that in another currently pending case, namely the *Natural Gas Pipeline Company of America, et al.*, Docket No. CP62-243, *et al.* in which it is attempting to enter the Greater St. Louis market, Panhandle claims that its Howell Storage Field can be expanded to 130,000 Mcfd at a modest cost. Without conceding the validity of this claim, Mississippi argues that the alleged savings from Howell should be used to lower the cost of the expansion proposed in this proceeding. Accordingly, Mississippi suggests an alternative project which would require Panhandle to construct facilities costing only $13,908,000 instead of the $23,133,000 estimated by the applicant. More specifically, this plan calls for the construction of 19.8 miles of 30" main line loop; 3,400 horsepower compression at Pleasant Hill; 4,000 horsepower compression at Glenarm; 1,000 horsepower compression at Bartonville, the necessary lateral line facilities and additional storage at Howell Field as well as the storage facilities proposed by Panhandle for the expansion of Waverly Field. It is noted that Mississippi's alternative plan would eliminate much of the compressor and pipeline facilities originally proposed by Panhandle. Specifically it would omit the pipeline additions that Panhandle proposes between: Liberal and Greensburg, Greensburg and Haven, Haven and Olpe, Olpe and Louisburg, Houstonia and Centralia, Centralia and Pleasant Hill, and Pleasant Hill and Glenarm. The compressor additions at the McAtee, Ulysses, Liberal, Greensburg, and Houstonia Stations would similarly be omitted. Mississippi contends that the capacity of Howell could be increased to 130,000 Mcf per day if Panhandle constructed facilities costing approximately $2,769,000. The Mississippi plan assumes that most of the expanded capacity would be obtained from storage. This plan anticipates that Panhandle's annual west end requirements will total 397,000,000 Mcf. To meet these requirements the Mississippi plan assumes that Panhandle will maintain the inputs on the western end of its system at a level of 1,174,000 Mcf during the 150-day winter season, 1,029,000 Mcf per day during the 90-day summer season and 1,097,000 Mcf per day during the remainder of the year. Further, this plan assumes that the transmission capacity of Panhandle's system will be sufficient to transport the aforementioned volumes on each day of the appropriate seasons mentioned above.

STAFF POSITION

The Staff concurs in the conclusion that under Mississippi's plan Panhandle would have enough gas available from the west end sources to enable it to meet its annual requirements of up to 405,000,000 Mcf, assuming it continued to take 160,000,000 Mcf annually from Trunkline. The Staff, submits that even if Panhandle might have to curtail its interruptible customers on a few days during March and April, the over-all economy aspects of the alternative plan make it worth adoption. Staff states, and with that contention the Presiding Examiner concurs, that in determining whether the public convenience and necessity require the Commission to certificate Panhandle's application, the Commission must consider reasonable alternatives irrespective of its power to order Panhandle to implement the alternative proposal. *City of Pittsburgh* v. *Federal Power Commission*, 237 F. 2d 741 (1956). However, as detailed in the next chapters, the reasonableness of Mississippi's alternative plan is effectively rebutted by the applicant. It is concluded that the Staff's premise has not been adequately supported by the evidence.

THE REBUTTAL TESTIMONY

Panhandle's witness testified that Mississippi's plan is deficient.

> Yes, there is a very serious error in Mr. Shattuck's presentation with respect to facilities required on the system west of Liberal. He has eliminated completely the McAtee station and the Ulysses station. Without these stations we would be unable to move the gas from the western part of Kansas which we are required to take into our system. Mr. Shattuck testified at transcript 317 that his examination of the conditions west of Liberal was limited to a peak day study, and that he had made no annual study of this part of our system. Regardless of the peak day situation, these facilities are badly needed for annual supply purposes, as I have testified both in my direct examination and under cross-examination. This would be equally true under the program suggested by Mr. Shattuck because he undertook to schedule the same annual volumes from the West end sources as those required under Panhandle's program. [4: 336, 337.]

On recall Panhandle's engineer Schomaker enumerated deficiencies in Mississippi's plan.

> Q. Now, will you please state the horsepower deficiencies at each of Panhandle's main line stations as shown by Exhibit 47 if Panhandle were to attempt to meet its requirements with the facilities proposed by Mr. Shattuck?
>
> A. Yes. At the Liberal station, on line 300, we would be deficient 2,780 horsepower. At the Greensburg station, on line 300, we would be deficient 4,110 horsepower. At Haven station, on line 300, we would be deficient 2,150 horsepower. At Olpe station, on line 300, we would be deficient 2,070 horsepower. At Louisburg station, on line 300, we would be deficient 1,640 horsepower. At Houstonia station, on line 300, we would be deficient 1,600 horsepower. At Centralia station, on line 300, we would be deficient 1,750 horsepower. At Pleasant Hill station, on line 300, we would be deficient 6,930 horsepower. At Glenarm station, on line 300, we would be deficient 3,280 horsepower, and also at Glenarm station, on the line 300 to 200 service, we would be deficient 770 horsepower. [4: 343, 344.]

Mississippi argues that if Panhandle's rebuttal testimony about the gas deficiencies under the alternative plan is accepted as correct, a finding must be made that Panhandle will not have the required ability to render the service it here proposes if its St. Louis application should be granted; and its application herein should either be denied or conditioned upon the denial or withdrawal of its St. Louis proposal. To this Panhandle replies that but for the now pending "St. Louis case" neither Mississippi nor the staff would have opposed the expansion proposed in this proceeding. Panhandle urges, and properly so, that the decision in this case be based entirely on the evidence presented herein, and that conjectural consideration of the St. Louis case have no place in this proceeding.

The staff and Panhandle agree in principle that it is inequitable to hold out "cheap expansibility" for specific areas (*cf. Battle Creek Gas Company* v. *F.P.C.*, 281 F. 2d 42) and that rates should not be based on specific use of utility property by specific customers. However, the parties differ with respect to the treatment of Howell Field. The staff says that Panhandle's existing customers have shared the cost of initial development of Howell Field and they should also get the benefits of its cheaper incremental expansibility. Panhandle replies that the company as a whole rather than some particular customers paid for Howell

Field. Moreover, the storage facility is neither suitable nor economical for the expansion under consideration herein.

> Q. Mr. Schomaker, what is your estimate of the total cost of additional facilities, including those proposed by Mr. Shattuck and the compressors which would be needed to cure the deficiency in capacity applicable to Exhibit No. 48?
>
> A. The total cost is $24,321,000.
>
> Q. Does Exhibit 48 reflect your judgment as to the proper method for providing capacity to deliver the volumes involved in the expansion program?
>
> A. No, this exhibit is simply a summary of the facilities and costs which would be necessary to make Mr. Shattuck's program even workable. We would not conduct an expansion program on the basis of Mr. Shattuck's proposal or on the basis of Exhibit 48. The proper facilities for meeting Panhandle's requirements are shown in the exhibits and testimony which Panhandle presented on the first day of this hearing. Our proposed facilities will enable us to meet the contract requirements of our customers in a sound economic manner through a balanced utilization of storage and pipeline facilities (4: 346, 347).

Mississippi argues that if this is so there would be a horsepower deficiency at every station from Liberal through Centralia if Panhandle were granted a certificate herein and also permitted to make its proposed St. Louis deliveries. The Staff also remains dubious about Panhandle's claim that the Mississippi plan is the less economical one. Nevertheless, neither Mississippi nor the staff presented specific evidence to refute Panhandle's rebuttal testimony. Similarly, no adequate answer was given to Panhandle's argument that according to the ruling of the Court of Appeals in the *Michigan Consolidated Gas Co.* v. *F.P.C.*, 246 F. 2d 904, the burden of "ascertaining the feasibility of an alternative proposal offered by an opposing party in a proceeding before the Commission" must be met by that party. The staff properly points out that according to that same ruling "* * * the burden of proving the feasibility of an alternative proposal offered by an opposing party is not upon the Commission". However, the fact remains that Mississippi's proposal does not stand up against Panhandle's rebuttal testimony. While Mississippi did manage to cast doubt on the composition of some of the cost estimates contained in applicant's rebuttal testimony the defects are minimal. The Presiding Examiner finds that all told Panhandle did adequately meet the burden of proof to support its proposal, while Mississippi failed to make a convincing showing that its alternative proposal is either practical or economical. Mississippi's arguments about the "St. Louis case" go beyond the scope of this proceeding. Accordingly, it is concluded that a certificate for the facilities and service herein applied for should be issued to Panhandle.

FURTHER FINDINGS AND CONCLUSIONS

Upon consideration of the application filed herein, the evidence of record and the briefs filed, it is found and concluded, in addition to the findings and conclusions hereinbefore stated, that:

(1) Panhandle Eastern Pipe Line Company, a Delaware Corporation, having its principal offices in New York, New York, and Kansas City, Missouri, is engaged in the transportation of natural gas in interstate commerce for resale for ultimate public consumption and is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) That the service proposed to be rendered by Panhandle, *i.e.*, the transportation and sale of up to 130,748 Mcf per day of gas for delivery to its existing resale customers as set forth in the application as amended herein is required by the public convenience and necessity.

(3) The facilities which Panhandle proposes to construct and operate as described in its application are adequate and appropriate to render this service which Panhandle proposes and which Panhandle is hereby authorized to provide.

(4) Panhandle is willing and able to finance the construction of the facilities herein authorized in the manner set forth in its application.

(5) Panhandle is able and willing properly to do the acts and to make the sale and to perform the services proposed by it in this proceeding and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission, that:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Panhandle to construct with reasonable dispatch the proposed facilities hereinbefore described, and as more fully described in the application in this proceeding and to operate such facilities for the transportation and sale of natural gas in interstate commerce for resale, all as more fully described in said application subject to the jurisdiction of the Commission and upon the terms and conditions of this Order.

(B) The certificate issued in paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in pararaphs (a), (b), (c)(3) and (e) of Section 157.20 of the Regulations.

(C) The certificate issued in paragraph (A) shall be deemed accepted and of full force and effect, unless refused in writing and under oath by Panhandle.

(D) Panhandle shall report to the Commission in writing, under oath, the date of commencement of service to be rendered to the various customers herein named.

ALLEN C. LANDE,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

PORTLAND GENERAL ELECTRIC COMPANY, CROWN ZELLERBACH CORPORATION, AND PUBLISHERS' PAPER COMPANY, PROJECT NO. 2233

ORDER MODIFYING ORDER ON REHEARING

(Issued July 24, 1964)

This order amends our license order issued June 21, 1960,[1] under Part I of the Federal Power Act[2] to the Portland General Electric Company, Crown Zellerbach Corporation, and Publishers' Paper Company, joint applicants for the constructed Willamette Falls hydroelectric project, Project No. 2233, in and along the Willamette River, Oregon. In their petitions for rehearing, the joint applicants

[1] 23 FPC 831.
[2] 16 U.S.C. 791–823.

requested the deletion from the tendered license of Articles 9 and 10,[3] concerning navigation facilities. The Commission, on December 3, 1962, denied this request.[4] On appeal, the joint applicants objected also to Article 20, respecting facilities for the protection of fish.[5]

The United States Court of Appeals for the Ninth Circuit on February 7, 1964, remanded the cause to the Commission for further proceedings.[6] The joint applicants subsequently offered to accept the tendered license if the Commission would give certain assurances in connection with Articles 9 and 10 and make certain modifications in Article 20.[7]

The assurances sought with respect to Articles 9 and 10 were that if at some future time the United States should desire to improve navigation facilities at the project, the joint licensees would be entitled to a hearing and the Commission would be required to find that the navigation improvements would be reasonably necessary to promote the present and future needs of navigation and that the cost to the joint licensees would be reasonably consistent with their investment in the project.

These assurances, of course, are not germane to Article 10 insofar as it relates to the United States' existing navigational facilities at the Willamette Falls project. However, these assurances, we believe, are inherent with respect to obligations under Article 9 and are given with respect thereto and in connection with any obligations under Article 10 attributable to additional United States navigational facilities.[8]

In addition, the Crown Zellerbach Corporation in its letter received on May 15, 1964, requested assurance that its acceptance of the license would not be deemed a waiver of its right to a court determination as to whether the United States must pay compensation in the event it takes any of Crown's property above the

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[3] These articles read:

Article 9. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of costs, such of its lands and its rights-of-way and such right of passage through its dams or other structures, and permit such control of pools as may be required to complete and maintain such navigation facilities.

Article 10. The Licensee shall furnish free of cost to the United States power for the operation and maintenance of navigation facilities at the voltage and frequency required by such facilities and at a point adjacent thereto whether said facilities are constructed by the Licensee or by the United States.

[4] 28 FPC 924.

[5] As it appeared in the initially-tendered license, this Article read:

Article 20. Until further order of the Commission, the Licensees shall so operate the project as to continue the operating practices now in effect in the interest of fish resources at Willamette Falls, and shall cooperate with interested Federal and State fishery agencies in making studies for enhancement of the fish resources at the project. The Licensees shall construct, maintain, and operate or shall arrange for the construction, maintenance and operation of such fish ladders, fish screens, or other fish protective devices for the purpose of conserving the fishery resources and comply with such reasonable modifications of the project structures and operation in the interest of fish life as may hereafter be prescribed by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the Fish Commission of Oregon or the Oregon State Game Commission, after notice and opportunity for hearing.

[6] *Portland General Electric Company* v. *F.P.C.*, 328 F. 2d 165 (9th Cir. 1964).

[7] The offers of settlement were filed on the following dates: Portland General Electric Company, May 15, 1964; Crown Zellerbach Corporation, May 15, 1964; Publishers' Paper Company, May 19, 1964.

[8] On May 11, 1964, Lt. Colonel Joseph F. Garbacz, Assistant Director of Civil Works for Pacific Divisions of the United States Army Corps of Engineers, wrote:

No change has been made in plans to improve the navigation facilities on Willamette River at Willamette Falls, Oregon, nor have any plans been prepared since the plans described in the Corps' letter of 19 August 1960.

highwater mark of the river for navigation pursuant to Article 9 of the license. Without comment on the substantive questions involved, Crown's acceptance of the license, as the Ninth Circuit indicated, will not prejudice Crown's right to raise later the question of compensation for fast lands if the occasion should ever require.[9]

Portland General Electric Company on February 28, 1964, proposed certain revisions in Article 20. The Fish Commission of Oregon, the Oregon State Game Commission, and the Secretary of the Interior [10] accepted the company's proposals subject to various changes. On May 15, 1964, the company submitted its second proposal, incorporating virtually all of the recommended changes and making certain further changes.[11]

It appears that the interested parties are in substantial agreement on the content of Article 20. By letter dated May 20, 1964, the Oregon State Game Commission concurred in the language proposed by Portland General Electric Company on May 15, 1964, and reported that early action by the Commission will expedite the solution of the upstream fish passage problem at Willamette Falls.

The Commission finds:

It is appropriate and in the public interest in administering Part I of the Federal Power Act that the following modifications be made in Article 20 of the license tendered on June 21, 1960, to the Portland General Electric Company, Crown Zellerbach Corporation, and Publishers' Paper Company as joint licensees for the constructed Willamette Falls project on the Willamette River, Oregon.

The Commission orders:

(A) Article 20 of the license tendered on June 21, 1960, for the constructed Willamette Falls Project on the Willamette River, Oregon, is modified to read:

Article 20. Until further order of the Commission, the Licensees shall so operate the project as to continue the operating practices now in effect in the interest of fish resources at Willamette Falls, and shall cooperate with interested Federal and State fishery agencies in making studies for protection, perpetuation, and enhancement of the fish resources at the project. Whenever the United States or the State of Oregon shall decide to construct facilities for the upstream passage of fish over Willamette Falls, the Licensees shall pay 16.3 percent of the cost thereof, and shall permit the United States or its designated agency or the State of Oregon to use, free of cost, such of Licensees' lands and interests in lands and structures as may be reasonably required for such upstream fish passage facilities, upon a finding based on substantial evidence that such facilities and modifications should be made or installed under applicable laws and regulations. With respect to downstream fish passage, the Licensees shall continue to consult and cooperate with the fishery agencies in studies looking to the improvement of downstream fish passage. If the Licensees and fishery agencies are unable to agree upon the methods to be used to improve downstream fish passage, the Commission may on its own motion or upon recommendation of the fishery agencies direct the construction, maintenance, and operation of such facilities within the project boundaries and such modifications of project structures as may be reasonably necessary after notice and an opportunity for hearing and upon a finding based on substantial evidence

[9] 328 F. 2d 176.

[10] These parties submitted their comments on April 3, 1964, April 13, 1964, and April 6, 1964, respectively.

[11] A further change in proposed Article 20 was agreed to by the applicants by letter dated July 22, 1964.

that such facilities and modifications should be made or installed under applicable laws and regulations.

(B) The afore-mentioned Commission order issued on June 21, 1960, as modified by this order, shall be accepted by each of the joint Licensees and returned to the Commission within 60 days from the date of issuance of this order, and the order issued on June 21, 1960, shall not become effective without such acceptance of the provisions of that order as modified by the provisions of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP64-193

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 24, 1964)

On March 2, 1964, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP64-193 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to sell and deliver natural gas to Viginia Pipe Line Company (Virginia Pipe), formerly Lynchburg Pipe Line Company and a subsidiary of Lynchburg Gas Company, to alleviate an estimated peak day deficiency on Virginia Pipe's system and the system of its parent, Lynchburg Gas Company, all as more fully set forth in the application.

Lynchburg Gas Company (Lynchburg), an existing customer of Applicant, has a current allocation of 4500 Mcf of natural gas daily, substantially all of which is required by that company. Deliveries are made into the facilities of Virginia Pipe for the account of Lynchburg at Altavista-Hurt Meter Station in Pittsylvania County, Virginia, at Lynchburg Meter Station in Appomattox County, Virginia, at Scottsville Meter Station in Fluvana County, Virginia, and at Gordonsville Meter Station in Louisa County, Virginia, which deliveries, with the exception of deliveries made at Lynchburg Meter Station, are purchased by Virginia Pipe from its parent and sold to local communities and nearby industrial customers. Under proposed arrangements Virginia Pipe will purchase gas directly from Applicant while continuing to purchase small volumes from Lynchburg and transporting Lynchburg's allocation of gas from Applicant at the named delivery points.

Virginia Pipe has requested and applicant proposes to sell and deliver up to 2500 Mcf daily of firm gas under Applicant's CD-2 Rate Schedule and to render 50-day storage service of 500 Mcf daily under Rate Schedule GSS, to alleviate an estimated peak day deficiency of 2125 Mcf for the winter of 1964-65, increasing to 5225 Mcf for the winter of 1967-68 on its system and the system of its parent, Lynchburg Gas Company. Virginia Pipe estimates peak day requirements of 3900 Mcf for the winter of 1964-65, which can only partially be supplied by Lynchburg Gas Company. No additional facilities will be required of Applicant to render the proposed service.

Due notice of the subject application was published in the Federal Register on June 9, 1964 (29 F.R. 7442). On June 25, 1964, Virginia Pipe Line Company filed a petition to intervene in this proceeding consenting to the use of the shortened procedure in the disposition of the application but preserving its rights in the event of formal hearing in the matter. Since the shortened

procedure is being used, no further action on said petition to intervene appears necessary. No other petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 23, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued May 29, 1948, in Docket No. G–704 (7 FPC 24).

(2) The proposed transportation and sale of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed transportation and sale of natural gas in interstate commerce are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Transcontinental Gas Pipe Line Corporation, authorizing the transportation and sale of up to 2500 Mcf daily of firm gas and the rendition of 50-day storage service of 500 Mcf daily of natural gas in interstate commerce, as hereinbefore described, all as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above, and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

FIRST UTILITY DISTRICT OF TIPTON COUNTY, TENNESSEE, DOCKET NO. CP64–212

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE AND DELIVERY OF NATURAL GAS

(Issued July 27, 1964)

First Utility District of Tipton County, Tennessee, (Applicant) filed an application on March 23, 1964, and a supplement thereto on May 4, 1964, in

Docket No. CP64-212, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Texas Gas Transmission Corporation (Texas Gas) to establish physical connection of its transmission facilities with the proposed facilities of and to sell natural gas to Applicant for distribution and resale in the communities of Burlison, Gilt Edge and Garland, and their respective environs, in Tipton County, Tennessee, all as more fully set forth in the application and supplement thereto.

Applicant proposes to construct and operate distribution systems within the borders of the three communities, transmission lines connecting the communities and approximately 7.5 miles of 4-inch lateral line extending from Applicant's proposed master regulator station to the transmission lines connecting the communities. The proposed interconnection with the system of Texas Gas will be located east of Covington, Tennessee, adjacent to Applicant's proposed master regulator station.

Applicant has received the necessary authorizations and franchises from state and local authorities.

Applicant estimates the third-year annual and peak day requirements for the communities it proposes to serve to be 36,529 Mcf and 489 Mcf, respectively, which will be purchased from Texas Gas under Texas Gas' Rate Schedule SG-1.

The estimated total over-all cost of constructing the proposed distribution system and the transmission and lateral lines is $209,750, which Applicant proposes to finance from the issuance and sale of 30-year revenue bonds in the amount of $125,000 bearing interest at the rate of 5½-per cent per annum. The Housing and Home Finance Agency has authorized a public works grant of $84,750 to Applicant.

Texas Gas filed an answer to the application on April 23, 1964, stating it has no objection to the rendering of the requested service provided Applicant's third year peak day requirement for the communities does not exceed 489 Mcf and the necessity for the service is established to the satisfaction of the Commission.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on June 20, 1964 (29 F.R. 7898). No protest, petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order dated March 30, 1948, in Docket No. G-855 (7 FPC 213).

(2) Applicant, First Utility District of Tipton County, Tennessee, is a legal entity duly authorized to sell and distribute natural gas in the State of Tennessee, and has received the necessary local franchises to render the services proposed.

(3) It is necessary and desirable in the public interest to direct Texas Gas to establish physical connection of its transmission facilities with those proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under its appropriate rate schedule and a service agreement to be executed by Applicant with Texas Gas in accordance with the Commission's Regulations, up to 489 Mcf of natural gas per day and 36,529 Mcf annually for distribution and resale as hereinbefore described.

(4) The requirement that Texas Gas serve Applicant, as hereinafter ordered, will not (a) place an undue burden upon Texas Gas, (b) require Texas Gas to

enlarge its transportation facilities or (c) impair Texas Gas' ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Texas Gas for distribution in the communities of Burlison, Gilt Edge and Garland and their respective environs in Tipton County, Tennessee, within one year from the date of the issuance of this order.

The Commission orders:

(A) Texas Gas Transmission Corporation be and is hereby directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, as hereinbefore described, and to sell and deliver up to 489 Mcf of natural gas per day and 36,529 Mcf annually to Applicant under a service agreement to be executed by Applicant with Texas Gas in accordance with the Commission's Regulations, for the transportation, distribution and resale as hereinbefore described. Such service shall be rendered pursuant to Texas Gas' presently filed appropriate rate schedule.

(B) Texas Gas shall report to the Commission the date of commencement of service to Applicant within 15 days after such service begins.

(C) Applicant shall be prepared to receive service from Texas Gas as directed herein within one year from the date of issuance of this order.

Before Commissioners: Harold C. Woodward, Acting Chairman; Charles R. Ross and David S. Black.

GEORGE MITCHELL & ASSOCIATES, INC.,[1] DOCKET NO. G-17728, ET AL.[2]

ORDER ACCEPTING OFFERS OF SETTLEMENT, REQUIRING FILING OF NOTICES OF CHANGE AND CONTRACT AMENDMENTS, AND TERMINATING PROCEEDINGS

(Issued July 27, 1964)

On May 11, 1964, George Mitchell & Associates, Inc. (Mitchell), submitted offers of settlement in these proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offers involve proposed increased rates for sales of natural gas made to Tennessee Gas Transmission Company (TGT) by Mitchell. The offer relates to sales made under Mitchell's FPC Gas Rate Schedule Nos. 3, 4, 5, 6, 14, 26, 27, and 28 in Texas R.R. Com. Districts Nos. 2 and 3. Each of the proposed increased rates were suspended by order of the Commission for the statutory period, and were made effective by Mitchell by appropriate motion.

Under the terms of the offers, Mitchell proposes to eliminate the favored-nation, price redetermination and the periodic escalation provisions from its rate schedules and to establish 15 cents per Mcf rates for the subject sales. Mitchell's annual revenues will be decreased about $101,851 from the presently effective rates. No protests or objections have been filed to the offers.

Mitchell, in its offers, proposes to refund all amounts collected, subject to refund, for sales of natural gas to TGT under the subject rate schedules in

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[1] Agent for Oil Drilling Inc., *et al.*, formerly Christie, Mitchell & Mitchell Company, Agent for Oil Drilling Inc., *et al.*

[2] The additional dockets involved herein are set forth in the Appendix hereto.

excess of the settlement rates.[3] The estimated total dollars to be refunded approximates $191,800, exclusive of interest.

The proposed settlements are consistent with the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, and their acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Mitchell's offers of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservation of the right to file increases to cover future tax increases, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Mitchell's rates and rate schedules.

The Commission finds:

The proposed settlements of each of the above-designated proceedings, on the basis described herein, as more fully set forth in the offers of settlement filed with the Commission by Mitchell on May 11, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offers of settlement filed with the Commission by Mitchell on May 11, 1964, are hereby approved in accordance with the provisions of this order.

(B) Mitchell shall file, within 30 days from the date of issuance of this order, notices of changes in rates providing for the 15 cents per Mcf rates specified in its offers of settlement, and executed contractual amendments to its FPC Gas Rate Schedule Nos. 3, 4, 5, 6, 14, 26, 27 and 28, eliminating the favored-nation price redetermination, and the periodic escalation provisions therefrom. The notices of change and the contractual amendments shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Mitchell shall refund to TGT to the date of issuance of this order the difference between the rates collected subject to refund under the rate schedules herein and the settlement rates, making account for proper charges, with simple interest at the applicable percentage, and shall report to the Commission, in writing, within 30 days from the date of issuance of this order, the amount of such refund, showing separately the amount of principal and interest, and the bases for determination, together with a copy of a release from TGT with respect to such refunds.

(D) Upon notification by the Secretary of the Commission that Mitchell has complied with the terms and conditions of the order, the rate and charge of 15 cents per Mcf at 14.65 psia, specified in its offers of settlement, subject to any applicable contract deductions, shall be effective as of the date of issuance of this order, the above designated proceedings shall be deemed terminated, and Docket Nos. G–17080, G–17081, G–17082, G–17592, G–17718, and G–17728 shall be deemed severed from the consolidated area rate proceeding (Texas Gulf Coast Area) in Docket No. AR64–2 without further order of the Commission.

(E) The acceptance by the Commission of Mitchell's offers of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Mitchell, including area rate or other similar proceedings.

[3] Mitchell's FPC Gas Rate Schedules 3, 5, 14, 26 and 27 are subject to a dehydration charge by TGT, for which allowance must be made in computing the refunds thereunder.

APPENDIX

Docket No. G-17728, et al. George Mitchell & Associates, Inc.

Producer	Rate schedule and supp. No.	Docket No.	County (R.R. Dist.)	Effective date	Last accepted rate[1]	Suspended rate[1]	Settlement rate[1]
George Mitchell & Associates, Inc., Agent for Oil Drilling, Inc., et al.	3-12 -15	G-17728 RI64-445	Austin (Dist. 3)	7-2-59 6-1-64	[2] 13.49751	[2] 16.16947 [2] 19.33333	[2] 15.0
George Mitchell & Associates, Inc., Agent for Sohio Petroleum Co., et al.	4-7 -9	G-17592 RI64-446	Montgomery & Harris (Dist. 3)	7-2-59 6-1-64	13.49751	16.16947 19.33333	15.0
George Mitchell & Associates, Inc., Agent for Johnny Mitchell, Trustee, et al.	5-6 and 7 -10	G-17082 RI64-445	Colorado (Dist. 3)	6-1-59 6-1-64	[2] 13.49751	[2] 16.16947 [2] 19.33333	[2] 15.0
George Mitchell & Associates, Inc., Agent for B. V. Christie, et al.	6-6 -8	G-17082 RI64-445	Victoria (Dist. 2)	6-1-59 6-1-64	10.80887	[2] 15.33333 [2] 18.0	[2] 15.0
George Mitchell & Associates, Inc., Agent for Oil Drilling, Inc., et al.	14-3 -5	G-17081 RI64-446	Harris (Dist. 3)	6-1-59 6-1-64	[2] 13.49751	[2] 16.16947 [2] 19.33333	[2] 15.0
George Mitchell & Associates, Inc., Agent for Stephen C. Clark, et al.	26-2 -4	G-17080 RI64-447	Colorado (Dist. 3)	6-1-59 6-1-64	[2] 13.49751	[2] 16.16947 [2] 19.33333	[2] 15.0
George Mitchell & Associates, Inc., Agent for Stephen C. Clark, et al.	27-1 -3	G-17080 RI64-447	Colorado (Dist. 3)	6-1-59 6-1-64	[2] 13.49751	[2] 16.16947 [2] 19.33333	[2] 15.0
George Mitchell & Associates, Inc., Agent for Oil Drilling, Inc., et al.	28-2	G-17718	Harris (Dist. 3)	7-2-59	13.49751	16.16947	15.0

[1] Cents per Mcf at 14.65 psia, inclusive of tax reimbursement.
[2] Rate subject to deduction of 0.21931 cent per Mcf dehydration charge by buyer.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. CP64-210

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, AND DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE AND DELIVERY OF NATURAL GAS

(Issued July 27, 1964)

On March 23, 1964, Kansas-Nebraska Natural Gas Company, Inc. (Applicant, filed in Docket No. CP64-210 an application pursuant to Sections 7 (a) and (c) of the Natural Gas Act for (1) an order directing Northern Natural Gas Company (Northern) to establish physical connection of its transmission facilities with the proposed facilities of, and to sell natural gas to Applicant, for distribution and resale in the town of Western, Nebraska, and (2) a certificate of public convenience and necessity authorizing the construction and operation of facilities to serve two small communities in Nebraska, all as more fully set forth in the application on file with the Commission.

Applicant proposes to construct and operate (a) a distribution system in the community of Milligan, Nebraska, and to install a town border metering and regulating station together with 1.3 miles of 2-inch connecting lateral extending from Milligan to Applicant's transmission line, and (b) a distribution system in the community of Western, Nebraska, and approximately 0.5-mile of 2-inch connecting lateral extending to the measuring station of Northern on Northern's 10-inch transmission line.

Applicant estimates that the number of customer connections for Milligan and Western will increase from 64 for 1964 to 169 at the end of three years, and will reach 182 in 1968, requiring an estimated peak day demand of 135 Mcf for the winter season of 1964–65, 205 Mcf for the winter of 1965–66, and 255 Mcf for the winter of 1966–67. The annual requirements are estimated to be 4720 Mcf for 1964 and 16,850 Mcf for 1965, reaching 22,915 Mcf in 1966. Third year rate of return is estimated to be 3 percent for Milligan, reaching 4.9 percent in the fifth year, and 5.1 percent for Western, reaching 7.5 percent in the fifth year. The required volumes will be within the present total contract demand of 15,250 Mcf daily supplied by Northern.

The estimated cost of jurisdictional facilities is $9,000 for the Milligan lateral and border station, and $2,250 for the Western lateral.

Northern filed an answer to the application on May 1, 1964, and stated therein it has no objection to the granting of the application.

Since the requested service will require an additional delivery point Northern should file a superseding service agreement reflecting the additional delivery point for service to Applicant.

After due notice, no petition or notice to intervene or protest to the granting of the application has been filed.

At a hearing held on July 23, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) Applicant, Kansas-Nebraska Natural Gas Company, Inc., a Kansas corporation having its principal place of business in Phillipsburg, Kansas, is a corporation legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Northern to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant with Northern in accordance with the Commission's Regulations, natural gas for distribution and resale as hereinbefore described.

(4) The requirement that Northern serve Applicant, as hereinafter ordered, will not (a) place an undue burden upon Northern (b) require Northern to enlarge its transportation facilities, or (c) impair Northern's ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Northern for distribution in the towns of Milligan and Western, Nebraska, and environs within one year from the date of the issuance of this order.

(6) The proposed construction and operation of facilities and transportation of natural gas in interstate commerce by Applicant as hereinbefore described. and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(7) The aforesaid construction and operation of facilities and transportation of natural gas in interstate commerce by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(8) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(9) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Northern Natural Gas Company, be and is hereby directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, Kansas-Nebraska Natural Gas Company, Inc., as herein described, and to sell and deliver natural gas to Applicant under a service agreement to be executed by Applicant with Northern in accordance with the Commission's Regulations, for transportation, distribution and resale as hereinbefore described. Such service shall be rendered pursuant to Northern's presently filed appropriate rate schedule.

(B) Northern shall report to the Commission, in writing the date of commencement of service to Applicant within 15 days after such service begins.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

(D) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Kansas-Nebraska Natural Gas Company, Inc., authorizing the construction and operation of facilities and the transportation of natural gas in interstate commerce, as hereinbefore described, all as more fully described in the application and exhibits filed in this proceeding, upon the terms and conditions of this order.

(E) The certificate issued by paragraph (D) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(F) The facilities hereby authorized shall be constructed and placed in actual operation, as provided in paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

LOWER VALLEY POWER AND LIGHT, INC., PROJECT NO. 1198

ORDER ACCEPTING SURRENDER OF LICENSE

(Issued July 27, 1964)

Application was filed on August 12, 1960 by Lower Valley Power and Light, Inc., (Licensee) under Section 6 of the Federal Power Act (Act) for surrender of its license for major Project No. 1198 located on Flat Creek, a tributary of the Snake River, in Teton County, Wyoming, and affecting lands of the United States within the Teton National Forest and lands of the United States reserved for Elk Refuge.

The license was issued on October 19, 1932 for a period of 50 years.

The application states that due to the high cost of operation, the project has not been in operation since November 1956, and no plans are being considered by the Licensee to rehabilitate the project.

The Forest Service has reported that restoration of the National Forest lands occupied by the project was completed on October 3, 1963.

Annual charges under the license for the project have been paid through December 31, 1962, and the license instrument has been returned.

The Commission finds:

(1) Public notice of the application has been given. No protests or petitions to intervene have been received.

(2) Acceptance of surrender of the license for the project is appropriate, as hereinafter provided.

The Commission orders:

Surrender of the license for Project No. 1198 is hereby accepted, effective as of October 3, 1963, subject to the payment of annual charges through said date in the amount of $76.44.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

MICHIGAN GAS STORAGE COMPANY, DOCKET NO. CP64-277

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 27, 1964)

On May 18, 1964, Michigan Gas Storage Company (Applicant) filed in Docket No. CP64-277 an application pursuant to Section 7(c) of the Natural Gas Act

for a certificate of public convenience and necessity authorizing Applicant to establish and operate a new interchange and delivery point with Consumers Power Company (Consumers) at the Mount Clemens regulator station, Clinton Township, Macomb County, Michigan, and to operate Applicant's existing facilities to transport natural gas for and in behalf of Consumers, all as more fully set forth in the application.

The purpose of the proposed project is to connect Consumers' St. Clair gas supply to the integrated gas transmission system of Applicant, resulting in a wider distribution of said St. Clair gas supply and facilitating delivery of natural gas by Applicant to Consumers' storage facilities and market area in St. Clair County, Michigan, and vicinity.

The proposed interchange will eliminate the necessity for Consumers to construct new pipelines to carry on functions that could be performed with Applicant's existing facilities.

Applicant will not be required to construct any new facilities for the proposal. Consumers will pay the entire cost of making the proposed interconnection.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 23, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Michigan Gas Storage Company, a Michigan corporation having its principal place of business in Jackson, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 3, 1946, in Docket No. G–731 (5 FPC 965).

(2) The proposed new interchange and delivery point and the existing facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the operation thereof and the transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed new interchange and delivery point, the operation of existing facilities and the transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Michigan Gas Storage Company, to establish and operate a new interchange and delivery point, to operate existing facilities and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3) and (e) of Section 157.20 of such Regulations.

(C) The transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 3 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. CP63-149

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 27, 1964)

On November 29, 1962, as supplemented on July 22, 1963, and September 18, 1963, Midwestern Gas Transmission Company (Applicant) filed in Docket No. CP63-149 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to sell and deliver an additional 25,000 Mcf daily, or a total of 100,000 Mcf per day, of contract demand natural gas to Northern Illinois Gas Company (Northern Illinois), an existing customer on Applicant's southern system, all as more fully set forth in the application and supplement thereto.

The additional deliveries requested of Applicant by Northern Illinois will be made pursuant to the terms of Applicant's effective CD-1 Rate Schedule. No additional facilities will be required for the sale and delivery of the requested additional volumes.

The Commission granted the Applicant a temporary certificate on October 11, 1963, and authorized the sale and delivery to Northern Illinois a total of 100,000 Mcf daily contract demand. Deliveries were commenced pursuant to the temporary certificate on November 1, 1963.

Due notice of the subject application was published in the Federal Register on January 21, 1964 (29 F.R. 513). On January 31, 1964, Northern Illinois Gas Company filed a petition to intervene in this proceeding in support of the application and consenting to the use of the shortened procedure in the disposition of the application but preserving its rights in the event of a formal hearing in the matter. Since the shortened procedure is being used, no further action on the petition to intervene appears necessary. No other petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 23, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplements and exhibits, submitted in support of the authorization sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Midwestern Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by

the Commission in its order of May 12, 1959, in Docket No. G–16841 (21 FPC 653, 663).

(2) The proposed sale and delivery of natural gas by Applicant to Northern Illinois Gas Company, as hereinbefore described, and as more fully described in the application, as supplemented, in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale and delivery of natural gas is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Midwestern Gas Transmission Company, authorizing the sale and delivery of natural gas to Northern Illinois Gas Company, as hereinbefore described and as more fully described in the application, as supplemented, in this proceeding upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP64–162

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 27, 1964)

On January 22, 1964, as supplemented on April 7, 1964, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP64–162 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities necessary to increase the daily design sales capacity of Applicant's pipeline system by 70,000 Mcf and to sell and deliver additional volumes of natural gas to existing customers, all as more fully set forth in the application, as supplemented.

Applicant proposes to construct the following facilities concurrently with or subsequent to the facilities for which Applicant seeks authorization in Docket Nos. CP62–243 and CP63–99:

Approximately 96.64 miles of 30-inch pipeline partially looping Applicant's existing Gulf Coast Line between existing Compressor Station No. 300 and Joliet, Illinois, and approximately 17.77 miles of 24-inch pipeline partially

looping that part of Applicant's Amarillo Line which terminates at Volo, Illinois. The estimated cost of these proposed facilities is $13,713,000.

Alternatively, Applicant proposes, in the event authorization is not granted in Docket Nos. CP62-243 and CP63-99[1] in time to permit such subsequent or contemporaneous construction, to construct the following facilities:

(a) Approximately 107.27 miles of 30-inch pipeline partially looping Applicant's Gulf Coast Line between Compressor Station No. 300 and Joliet, Illinois, including a single 30-inch submerged pipeline river crossing of the Arkansas River;

(b) Approximately 17.77 miles of 24-inch pipeline partially looping that portion of Applicant's Amarillo Line in northern Illinois which terminates at Volo, Illinois;

(c) 3,000 compressor horsepower at Applicant's existing Compressor Station No. 300;

(d) A new compressor station with 4,000 horsepower at the junction of Applicant's existing 26-inch and 20-inch pipelines in Nueces County, Texas, and

(e) Miscellaneous facilities necessary or convenient to the operations herein proposed.

The estimated cost of the facilities described immediately above is $16,111,000.

The additional volumes of gas Applicant proposed to sell to existing customers are:

Rate Schedule CD-1 customers:	*Additional daily contract quantity (Mcf)*
Central Illinois Electric & Gas Company	6,982
Interstate Power Company	600
Iowa Electric Light & Power Company	2,516
Iowa-Illinois Gas & Electric Company	3,767
Iowa Southern Utilities Company	442
North Shore Gas Company	10,000
Northern Indiana Public Service Company	17,907
The Peoples Gas Light & Coke Company	25,000
Wisconsin Southern Gas Company, Inc.	1,812
Total CD-1	69,026

Rate Schedule G-1 customers:	*Additional daily contract quantity (Mcf)*
American Gas Company	534
Village of Bethany, Illinois	116
Monarch Gas Company	160
City of Perryville, Missouri	204
City of Pinckneyville, Illinois	52
City of Salem, Illinois	300
United Cities Gas Company	100
Total G-1	1,466
Unallocated	1,815
Total	72,307

[1] Docket Nos. CP62-243 and CP63-99 are presently before the presiding examiner awaiting his decision.

Applicant will finance the cost of its proposals initially with funds obtained from its parent company, The Peoples Gas Light & Coke Company. Permanent financing will be by the sale and issuance of first mortgage pipeline bonds.

A number of petitions to intervene have been filed herein by various interested companies. In all cases, the burden of such filings has been that the petitioners do not request formal hearing in this proceeding and do not object to the hearing and disposition of the subject application under the shortened procedure provided for by the Commission's Rules, but that each petitioner desires to preserve its rights to appear and participate fully in the event that this matter should be set for formal hearing. Inasmuch as the shortened procedure is being used herein, no further action on the various intervention petitions appears necessary.

After due notice, no other petition to intervene, notice of intervention or protest to the granting of the application, as supplemented, has been filed.

At a hearing held on July 23, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G–235 (3 FPC 830).

(2) The alternative facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sales of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed alternative facilities and the proposed transportation and sales of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Natural Gas Pipeline Company of America, to construct and operate the proposed alternative facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sales and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

OPINION NO. 438

SHREWSBURY MUNICIPAL LIGHT DEPARTMENT v. NEW ENGLAND POWER COMPANY, DOCKET NO. E-7021

OPINION AND ORDER REQUIRING THE SALE OF ELECTRIC ENERGY

(Issued July 27, 1964)*

Syllabus

1. Section 202(b) of the Federal Power Act provides Commission with ample authority to order requested interconnection. P. 376.
2. There is no merit to suggestion that Commission cannot order public utility to sell directly to Shrewsbury [Municipality] because latter already receives adequate "service" and interconnection powers under Section 202(b) are not applicable where issue is solely one of rate for service. P. 376.
3. Under Section 202(b) Commission is empowered to order interconnection whenever it determines that for any reason "such action is necessary or appropriate in the public interest." P. 376.
4. Direct sales by New England Power will be of benefit to Municipality and its consumers and will not burden NEPCO or its affiliate Massachusetts Electric. P. 377.
5. Record supports Shrewsbury's contention that direct service will benefit it and its customers; Municipality pays additional amount for electric energy because it is carried by middleman- -no reason exists why middleman should not be eliminated. P. 377.
6. Interconnection which is in the public interest should not be denied because it will result in loss of income to middleman. P. 377.
7. Direct sale by NEPCO to Shrewsbury would benefit latter by reducing energy costs to consumers and in encouragement to industrial expansion and greater use of electric service; Massachusetts Electric would not be injured appreciably and NEPCO would be slightly benefited. P. 377.
8. Public interest dictates that NEPCO be required to serve Municipality directly under authority of Section 202(b). P. 377.
9. It is desirable for achievement of most efficient system of power supply at wholesale that wholesaler maintain control over equipment such as transformers here in question which are integrally related to rendering reliable and adequate service. P. 380.
10. In instant circumstances, where there is no present or clearly contemplated need for power at 69 Kv for distribution, Commission *holds* that order requiring duplication of wholesaler's facilities has not been shown to be in the public interest. P. 380.
11. On this record NEPCO is not required to relinquish its transformation function in favor of Shrewsbury; it is required to be responsible for providing firm 13.8 Kv service under its W-3 rate. P. 380.

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*Initial Decision appears on p. 383. Opinion No. 438-A and order denying rehearing and stay issued September 25, 1964, 32 FPC 846. Affirmed, *New England Power Co. v. F.P.C.*, 349 F. 2d 258 (CA1-1965).

12. In view of history of previous negotiations, Commission retains jurisdiction herein; should Shrewsbury experience delay in obtaining necessary increments of power or higher voltage, appropriate action will be taken to assure adequate service to Shrewsbury. P. 381.
13. In proceeding arising under Section 202(b) of the Federal Power Act, Commission *requires* direct sale of electric energy.

Commissioners Ross and O'Connor *concurring.*

Reuben Goldberg and *George Spiegel* for Shrewsbury Municipal Light Department

D. G. Allen, P. H. R. Cahill, and *Joel R. Kaswell* for New England Power Company and Massachusetts Electric Company

Daniel Goldstein and *Sandra J. Strebel* for the Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

SWIDLER, *Chairman:*

This is a proceeding arising from a complaint by the Municipal Light Department of the Town of Shrewsbury under Section 202(b) of the Federal Power Act requesting that New England Power Company (NEPCO) be required to connect its facilities with those of Shrewsbury and sell the city power directly. Shrewsbury presently receives its requirements from NEPCO's affiliate, Massachusetts Electric Company (Mass. Electric), which does not originate the power supply but merely transmits to Shrewsbury the power it obtains from NEPCO. Shrewsbury seeks to eliminate the middleman.

There is a secondary question whether, if direct service is ordered, NEPCO should be required to deliver energy at 69 kv or continue service at 13.8 kv.

The Town of Shrewsbury with a population of over 17,000 is located in Massachusetts just east of the City of Worcester. Since 1908 it has owned and operated an electric system. From the beginning it has purchased all of its power requirements from Mass. Electric or its predecessor companies and has never generated its own power supply. In 1962 its peak demand amounted to 10,800 kw, and it purchased 42,028,800 kwh of electrical energy.

NEPCO and Mass. Electric are both subsidiaries of the New England Electric System (NEES), a holding company. NEPCO operates in Vermont, New Hampshire and Massachusetts. It sells 82 percent of its power to Mass. Electric and also supplies the distributing companies of NEES, two non-affiliated resale customers (the Fitchburg Gas and Electric Light Company and the Town of Littleton, New Hampshire), and 22 industrial customers.

Mass. Electric sells energy at wholesale and retail wholly within Massachusetts. Resale customers include Shrewsbury and 23 other small utilities serving Massachusetts towns and cities. All of the resale customers are municipal light departments with the exception of the Manchester Electric Company.

NEPCO makes deliveries to Mass. Electric in Shrewsbury over 69 kv lines that run from Millbury to Pratt's Junction at its 69/13.8 kv substation. NEPCO has three 69/13.8 kv transformers in its substation which have a combined nameplate rating of 22,500 kv. Mass. Electric receives delivery at the low voltage terminals of these transformers and transmits the power to its adjacent switching station at which delivery is made to Shrewsbury all within the same substation area. Shrewsbury then transmits the 13.8 kv power across an alley to its new Worthington Avenue substation. Underground cables also extend to Mass. Electric's Grafton Street Substation and can be used to provide backup service to Shrewsbury and other portions of the Worcester District during outages.

Mass. Electric purchases nearly all of its energy requirements under NEPCO's W-3 rate, on file with the Commission. Mass. Electric's present contract with Shrewsbury, executed July 5, 1955, is also on file with the Commission. The original term of the contract was for five years (February 15, 1956 through February 14, 1961), and it was renewed for a subsequent five-year term to terminate on February 14, 1966.

Shrewsbury had been seeking to improve its power supply long before February 5, 1962, when it filed with the Commission the complaint which initiated this proceeding. Shrewsbury first requested direct service from NEPCO in 1957. In response to that request NEPCO in 1958 offered to sell power directly to Shrewsbury at the uniform wholesale rate but demanded an additional surcharge of $43,000 a year based upon 22 percent of the $195,000 of additional facilities claimed to be necessary. The total cost to Shrewsbury under this arrangement would have been greater than what it was paying Mass. Electric. The city then offered instead to build the additional facilities itself, but NEPCO did not reply to Shrewsbury's offer. In 1961 NEPCO again agreed to sell electric energy to Shrewsbury at its filed wholesale rate subject to payment of an unspecified surcharge but no specific offer was made. Subsequently NEPCO has refused to serve Shrewsbury directly.

Shrewsbury's complaint requested relief under Section 202(b) of the Act, and also an investigation under Sections 205(a), 206(a) and 207. On April 2, 1962, NEPCO filed an answer and a motion to dismiss in which it contended that Shrewsbury was not a proper party. By order of May 2, 1963, we denied NEPCO's motion to dismiss for the reasons set forth therein. The Massachusetts Department of Public Utilities filed a notice of intervention but was not represented at the hearing and took no part in the proceeding. Mass. Electric was permitted to intervene and has combined its presentation with NEPCO's in opposing the relief sought by Shrewsbury, and where convenient we shall refer to the arguments of NEPCO and Mass. Electric as those of NEES. Hearings were held in July of 1963; the examiner's decision was issued on February 13, 1964; and the proceedings are before us upon the exceptions filed by NEPCO and Mass. Electric and by our staff.

Should NEPCO Be Required To Serve Shrewsbury Directly?

The basic issue in this proceeding is whether Shrewsbury is entitled to direct service from NEPCO under Section 202(b) of the Federal Power Act, which provides:

> Whenever the Commission, upon application of any State commission or of any person engaged in the transmission or sale of electric energy, and after notice to each State commission and public utility affected and after opportunity for hearing, finds such action necessary or appropriate in the public interest it may by order direct a public utility (if the Commission finds that no undue burden will be placed upon such public utility thereby) to establish physical connection of its transmission facilities with the facilities of one or more other persons engaged in the transmission or sale of electric energy, to sell energy to or exchange energy with such persons * * *

Our staff and, of course, Shrewsbury, urge that the Commission require direct service, and the examiner so held. The examiner finds that direct service would result in a reduction in Shrewsbury's wholesale power costs which would be in the public interest because it would stimulate expanded use of electricity in Shrewsbury with resulting industrial expansion and benefits to residential consumers. Shrewsbury points out that although NEPCO's 69 kv lines run through the town, it must now receive service at substantially greater cost through the

middleman, Mass. Electric, which receives the energy in Shrewsbury and transmits it only a few feet before delivery to Shrewsbury.

Our staff concluded that in considering whether to order an interconnection under Section 202(b) we should weigh the resulting benefit to the purchaser against the cost to the wholesaler of making the interconnection and that we should also consider the effect on the overall rate of return of the company losing the customer as well as the company gaining a new customer. On this basis the staff could see very little engineering or economic justification for the interposition of Mass. Electric between Shrewsbury and NEPCO.

NEES stresses the importance of Mass. Electric in power pooling and in the distribution and sale of electric energy by NEES. Under Section 202(b), it says the Commission can order an interconnection or a second interconnection between two companies where the service is not adequate, but since the service is adequate here, the Commission should not take action. It also argues that to supply Shrewsbury through a direct connection with NEPCO would give it an advantage over other distributors served by Mass. Electric because of its geographical situation and that it would be a deeply unsettling precedent for the Commission to set aside a wholesale purchase contract at the instance of a distributor who wants to obtain cheaper service elsewhere.

Section 202(b), while it has been rarely referred to in past proceedings,[1] provides us with ample authority to order the interconnection here requested. Admittedly NEPCO and Mass. Electric are "public utilities" subject to the Federal Power Act, and both NEPCO's sale to Mass. Electric at Shrewsbury and Mass. Electric's sale to Shrewsbury are subject to our jurisdiction. *F.P.C.* v. *Southern California Edison Co.*, 376 U.S. 205, March 2, 1964, October Term 1963, Nos. 71 and 73.

There is no merit in the suggestion that we cannot order NEPCO to sell directly to Shrewsbury because Shrewsbury is already receiving adequate "service" and our interconnection powers under Section 202(b) are not applicable where the issue is solely one of the rate for the service. Section 202(b) does not speak in terms of any one aspect of electric power service and certainly does not limit the Commission's interconnection powers to situations in which the quality of electric service, as contrasted with the rates therefor, are inadequate; instead, the Commission is empowered to order an interconnection whenever it determines that for any reason "such action is necessary or appropriate in the public interest."

The issue here, as we see it, is not one of our jurisdiction, which is clear, but rather of applying the public interest standard of Section 202(b) of the Federal Power Act to the facts of this case. The problem comes down to whether Mass. Electric constitutes a useless middleman with respect to electric service to Shrewsbury, or a reasonable means by which NEES serves Shrewsbury as it does other New England areas.

In reaching a judgment in this initial proceeding under Section 202(b) it is useful to re-examine our experience in the cases involving the related question of wholesale service under the Natural Gas Act. The desirability of direct sales is illustrated in *Kentucky Natural Gas Corp.* v. *F.P.C.*, 159 F. 2d 215 (CA6), where the Commission was upheld in granting a certificate to the resale distributor to take gas directly from Panhandle rather than through an intervening pipeline. The court pointed out that the elimination of an unnecessary middleman is of material benefit to the ultimate consumer. The benefit to the consumer of a direct purchase was also noted in *Home Gas Co.* v. *F.P.C.*, 231 F. 2d 253 (CADC).

[1] See *Pennsylvania Water & Power Co.*, 8 FPC 170, 177.

We are of the opinion that direct sales by NEPCO will be of benefit to Shrewsbury and its consumers and will not burden either NEPCO or Mass. Electric. The rate saving to Shrewsbury will be large and of growing importance. In 1962 Shrewsbury paid Mass. Electric $620,508 for electric energy at rates averaging 1.476 cents per kilowatt hour. Under NEPCO's W–3 rate to its direct wholesale customers the total charge would have been $577,897 or an average price of 1.375 cents per kilowatt hour. Thus the savings to Shrewsbury would have been $42,611. The saving would increase in subsequent years, and even more so if Shrewsbury's load factor improves.

With the lower rates that direct service from NEPCO would make available, Shrewsbury will be able to compete with surrounding areas for industrial loads. Mass. Electric's industrial customers in the area can now purchase under the same G–11 rate that Shrewsbury must pay at wholesale. It is thus extremely difficult for Shrewsbury to compete for industry loads. Both Mass. Electric and NEPCO have special contract rates for industrials in and about Worcester County which Shrewsbury cannot match under existing circumstances. Under the W–3 rate Shrewsbury would be able to offer rates to industry comparable to the rates in nearby areas served by NEPCO.

The record thus supports Shrewsbury's contention that direct service to it will benefit it and its customers. Shrewsbury must pay an additional amount for electric energy because it is carried by a middleman. We see no reason why the middleman should not be eliminated here.

The impact of our action on Mass. Electric must of course be considered. We do not believe, however, that an interconnection which is in the public interest should be denied because it will result in a loss of income to a middleman. In any case there is no reason why Mass. Electric should not enter into an arrangement with NEPCO to receive compensation for the use of any Mass. Electric facilities used to serve Shrewsbury. Moreover, the amount of loss here is very small.

In 1962 Mass. Electric's actual bill to Shrewsbury was $620,508. If Shrewsbury had not been a customer Mass. Electric's purchase power expense would be reduced by $540,830. The income lost in the amount of $79,678 would be reduced by taxes to about $37,000 or about ¼ of one percent of the company's net operating income. On the other hand, NEPCO would benefit financially from making a direct sale to Shrewsbury rather than through a middleman. Based upon sales for 1962 NEPCO's revenues would be decreased by $540,830 for sales to Mass. Electric, but because of treating Shrewsbury's demand separately, revenues would be increased $577,897 or a net gain of $37,067, amounting to $17,792 after tax.

In considering this question we take note of the prevailing industry practice whereby generating utilities prohibit resale of power by distributors to other utilities which they could serve directly. One of the supporting reasons for such provisions is that it eliminates the possibility of a distributor becoming an unnecessary intermediary between the generating utility and the ultimate distributor of the electricity. The same considerations are important to our determination here.

A direct sale by NEPCO to Shrewsbury would benefit Shrewsbury by reducing energy costs to consumers and in the encouragement to industrial expansion and greater use of electric service; Mass. Electric would not be injured appreciably and NEPCO would be benefited to a slight degree. Under these circumstances the public interest dictates that NEPCO be required to serve Shrewsbury directly under the authority of Section 202(b).

In reaching this result we are not determining whether the other Mass. Electric customers are entitled to direct service should they desire it because any such request would have to be considered on its merits with particular reference to the functions of NEPCO and Mass. Electric in NEES. NEPCO already sells power directly to the Fitchburg Gas and Electric Light Company and the Town of Littleton, New Hampshire and in the past it also sold power directly to Central Vermont Public Service Corporation and Green Mountain Power Corporation. It might well be that other wholesale customers of Mass. Electric could show that they were likewise entitled to purchase electric energy directly from NEPCO but that would depend upon a record that is not before us now. Here we are ordering NEPCO to connect its facilities with those of Shrewsbury and meet its growing demands for electricity directly, based on what we believe to be the public interest under Section 202(b) as applied to the facts of this case.

Should NEPCO Serve Shrewsbury at 69 kv?

The remaining question is whether NEPCO should be required to serve Shrewsbury at the transmission line voltage of 69 kv instead of the present stepped-down voltage of 13.8 kv. Shrewsbury claims the higher voltage connection is necessary to enable it to plan for the future without such frequent and protracted negotiations with NEPCO as have occurrred in the past, and the resulting uncertainty as to the circumstances of future power deliveries.

The examiner agreed with Shrewsbury, emphasizing that Shrewsbury needs an assured source of supply that will permit the expansion of its system and convince industry that adequate electric service at reasonable cost is available in the town. The examiner thereupon ordered a 69-kv interconnection, providing in his order that NEPCO would pay for the necessary looped tap to its 69-kv lines, but requiring Shrewsbury to pay for the transformers and other necessary facilities. Shrewsbury, in fact, has said that it is willing to pay the full cost of the connection as well as termination charges with respect to facilities of NEPCO and Mass. Electric that would be left partly unused.

NEES excepts to the examiner's finding, contending that Shrewsbury uses no voltage in excess of 13.8 kv, that the lower voltage would provide Shrewsbury with substantially the same firm capacity, that 69 kv would be required only if there were large industrial development, and that the 69-kv interconnection would not add to the capacity available to Shrewsbury but rather involves an obvious duplication of facilities representing unnecessary investments by both NEPCO and Shrewsbury. Contrary to the examiner, NEES submits that the wholesale supplier, rather than his numerous distribution customers, is best equipped to engineer its system to meet expected demands.

The staff contends that Shrewsbury has not demonstrated its present need for a 69-kv source of supply although a higher voltage interconnection might be needed in the future. Staff suggests that 69-kv service would leave NEPCO's present Shrewsbury substation operating at much less than full capacity. The staff therefore recommends that NEPCO be required to serve Shrewsbury at the present 13.8 kv. This plan would involve an additional investment by Shrewsbury and the payment by Shrewsbury to Mass. Electric of a charge for the proportionate use of its intervening facilities.

Stripped to its essentials, the question here is whether NEPCO or Shrewsbury should perform the function of transforming the electric energy at transmission voltage of 69 kv down to a lower level. The record shows that Shrewsbury would be able to receive approximately as much capacity at 13.8 kv as it would under the 69-kv interconnection it proposes. The present 13.8 kv interconnection would provide firm capacity of 26,400 kva at the time of the winter

peak and 22,600 kva under summer conditions, representing as a limiting factor the capacity of Mass. Electric's cables to Grafton Street. The 69-kv interconnection proposed by Shrewsbury, while rated at 30,000 kw, is limited to less than 25,000 kva of transformer capacity.

Either of the two methods of interconnection would provide reasonably reliable service to Shrewsbury. The proposed 69-kv interconnection would require a looped tap so that power could be received from the 69-kv line even if there were an outage to the north or south of the interconnection. At 13.8 kv the normal power supply received from NEPCO's 69/13.8 kv transformers is supported by the cables extending to Mass Electric's Grafton Street Substation. While, as Shrewsbury shows, there has been a history of outages of the cables and of the transmission lines during the previous ten-year period, Shrewsbury's manager testified that during the previous five years that he was in office, there had been no outages caused by NEPCO or Mass. Electric. The outages that had occurred were caused by squirrels on Shrewsbury's transformers. Shrewsbury did, however, allege an outage of about an hour occurring in September of 1963 after the close of the record as a result of the failure of Mass. Electric's equipment, seemingly also caused by squirrels.

We do not think that the record shows that the risk of outages with the present equipment is unreasonable. Furthermore, the record shows that the NEES system will install an additional circuit breaker and associated equipment, costing $58,000, in its Shrewsbury substation so that service to Shrewsbury may be extended on a firm basis.

In determining Shrewsbury's needs its load growth is an important factor. Thus, between 1950 and 1962 the maximum demand tripled from 3,334 kw to 10,800 kw while the energy purchases quadrupled from 10,500,000 kwh to 42,000,000 kwh. This reflected an increase from 3,303 residential customers in 1950 to 5,055 in 1962 and a corresponding increase in commercial and industrial customers from 288 to 394. The maximum demand was estimated by NEPCO to increase from 12,000 kw in 1963 to 14,500 kw in 1965 and 19,100 kw in 1968. Shrewsbury's engineering witness testified that a load of 30,000 kva could develop by 1973. It may be observed that even with this growth it would not be until the 1970's that the capacity made available by the present 13.8 kv interconnection would be exceeded.

The significant point is that even under Shrewsbury's proposal additional transformation equipment would be required when the load reaches 30,000 kva and the basic issue remains the same—whether Shrewsbury or NEPCO the wholesale supplier will furnish the additional capacity.

An important consideration is the fact that if we require NEPCO to serve Shrewsbury at 69 kv, NEPCO's transformers and other equipment in its Shrewsbury substations as well as Mass. Electric's adjacent switching facilities will be left largely unused. As of January 1, 1963, NEPCO's net investment in its Shrewsbury substation facilities, including transformers, amounted to $86,164 while Mass. Electric's net investment amounted to $82,950. Although there is some controversy on the point, we think that the greater part of this investment is allocable to the service to Shrewsbury and would be rendered idle. Shrewsbury states that it is prepared to pay to Mass. Electric and NEPCO whatever termination charges the Commission considers equitable, but this does not solve the problem, for whichever party pays for these unused facilities the burden will inevitably fall upon consumers.

Furthermore, the record shows that, regardless of who meets it, the investment cost of the duplicating transformation equipment and other expenses of a 69-kv interconnection would be substantially higher than continuing the present interconnection as a firm basis. The 69-kv interconnection would cost at least $235,-

000 (NEPCO estimates $340,000) while firming the existing arrangements would cost $138,000 at the most and probably less. In any event additional expenditures of upwards of $100,000 would be required with no appreciable increase in the capacity of the interconnection.

Shrewsbury's own engineering witness did not testify unambiguously in favor of the delivery of power at 69 kv, and Shrewsbury makes it perfectly clear that the prospects of industries needing large blocks of power are not the chief reasons for requesting 69 kv service. What Shrewsbury seeks is to get clear of entanglement with Mass. Electric's 13.8 kv facilities, and free of the prospect of lengthy negotiations with NEPCO in a few years when additional capacity may be needed.

The record supports Shrewsbury's contention that obtaining additional power or power at higher voltage could be delayed by negotiations. Seven years of such negotiations elapsed before Shrewsbury could replace its 2.4-kv service with service at 4.16 kv and four years (running concurrently) were required to obtain 13.8-kv service needed for a new substation and load center within the town limits. We do not ascribe the delay to either party, but merely recognize the reasonableness of Shrewsbury's apprehensions that the need for frequent negotiations in order to obtain an expansion of power deliveries could result in a serious handicap to Shrewsbury's plans to promote a greater use of electricity and to encourage industrial growth.

We do not think that the immediate solution to burdensome and time-consuming negotiations is a requirement that delivery be made at 69 kv, for Shrewsbury would have to enter into agreements with NEPCO with respect to increases in deliveries even at 69 kv. Furthermore, there are very real disadvantages to ordering 69 kv service at this time.

NEPCO is now using its 69 kv system to move power between communities and is stepping down the voltage to 13.8 kv to make deliveries, but it contends that in the future it may supply the Worcester-Shrewsbury area at 115 kv. While the examiner excluded the evidence relating to this plan on the ground that it was not adequately supported, we can take notice that the trend in the electric industry is toward higher voltages. If NEPCO should desire to change to 115 kv or to some other voltage, it should be free to do so. We believe it is desirable for the achievement of the most efficient system of power supply at wholesale that the wholesaler maintain control over equipment such as the transformers here in question which are integrally related to rendering reliable and adequate service. We do not mean to suggest that wholesale service must invariably be at the low tension side of the transformer in question or that in many cases it may not be mutually advantageous for the distributor to own the transformation equipment associated with the interconnection with its wholesale supplier. We merely hold that in all the circumstances of this case where there is no present or even clearly contemplated need for power at 69 kv for distribution that a Commission order requiring the duplication of the wholesaler's existing facilities has not been shown to be in the public interest.

Based on this record we shall not require that NEPCO relinquish its transformation function in favor of Shrewsbury, but shall require that it be responsible for providing firm 13.8 kv service under its W-3 rate. Whether it purchases or leases Mass. Electric's intervening facilities, we shall not specify, nor shall we specify which of these companies shall purchase the additional circuit breaker which the record shows to be necessary. The responsibility for providing firm service to Shrewsbury rests with NEPCO. Shrewsbury on its part must expend any amounts required to increase the capacity of its facilities interconnecting with those of Mass. Electric or NEPCO so that service may continue on a firm basis, and the annual costs of these facilities would, of course,

have to be met by Shrewsbury. However, we do not think that Shrewsbury should meet the annual costs of the Mass. Electric facilities used by NEPCO to effect its deliveries to Shrewsbury although the staff brief contemplated such a payment. The responsibility here is NEPCO's to provide this direct service and the cost of the facilities become a cost of NEPCO's system.

While denying Shrewsbury its request that NEPCO be ordered to deliver power at 69 kv, we are of the opinion that Shrewsbury should have every opportunity to obtain the power that it needs for expanding loads and promoting industrial development. We expect that in the light of this decision NEPCO will provide adequate facilities in the future to encourage a rapid growth in the sale of electricity by Shrewsbury. However, in view of the history of previous negotiations to which we have referred we shall retain jurisdiction in this docket, and if Shrewsbury experiences delays in obtaining any necessary increments of power or a higher voltage when necessary, we will entertain an application to modify our order herein or for further relief, and will take appropriate action promptly to assure adequate service to Shrewsbury.

The Commission further finds:

(1) NEPCO and Mass. Electric are public utilities within the meaning of Section 201(e) of the Federal Power Act.

(2) Shrewsbury is a "person" within the meaning of Section 202(b) of the Federal Power Act.

(3) NEPCO's sales of electric energy to Mass. Electric at the Shrewsbury substation and Mass. Electric's sales of electric energy to the Town of Shrewsbury are, and NEPCO's sales of electric energy to the Town of Shrewsbury would be, sales of electric energy at wholesale in interstate commerce within the meaning of Section 201 of the Federal Power Act and subject to the jurisdiction of the Commission.

(4) Upon application by Shrewsbury it is necessary or appropriate within the meaning of Section 202(b) of the Federal Power Act that the Commission direct NEPCO to sell energy direct to Shrewsbury as ordered in paragraph (A) below. Such sale will not place any undue burden upon NEPCO nor require NEPCO to enlarge its generating facilities for such purpose, nor impair its ability to render adequate service to its customers.

The Commission orders:

(A) Within two months of the issuance of this order NEPCO is ordered to sell electric energy to Shrewsbury under its standard wholesale rate, W-3, at 13.8 kv. In effecting such sale NEPCO may employ the present facilities of Mass. Electric but shall be responsible for providing firm service in accordance with good utility practice and shall meet any costs necessary to do so. Shrewsbury shall meet any costs necessary to increase the capacity of its facilities on a firm basis needed to effect the sale here ordered.

(B) Before commencing the service required in paragraph (A) NEPCO and Shrewsbury shall enter into NEPCO's standard form of contract for the service to be provided pursuant to this order, and NEPCO shall file the executed agreement with the Commission before commencing services.

(C) The contract under which Shrewsbury has been receiving service from Mass. Electric is hereby cancelled immediately upon commencement of service by NEPCO to Shrewsbury, and Shrewsbury, from and after that time, is freed from any further obligations or service thereunder.

(D) NEPCO shall report to the Commission the date of commencement of service provided for herein within thirty days following the commencement of such service.

(E) The present record shall remain open in case Shrewsbury at a future time should apply for modification of this opinion and order or further relief on the ground that it is not receiving reliable service or sufficient capacity at the necessary voltage from NEPCO.

(F) The examiner's decision to the extent not inconsistent herewith is hereby adopted as part of this opinion.

(G) Exceptions not expressly granted are hereby denied.

Ross and O'Connor, *Commissioners, concurring:*

We agree with the majority's decision affording Shrewsbury the benefit of NEPCO's W–3 rate, but disagree with the reasoning.

NEPCO is a wholly owned subsidiary of the NEES system which generates, distributes and sells electric energy at wholesale and retail. It makes wholesale sales under its W–3 rate schedule, the availability provision of which reads as follows:

> Service under this rate is available to any wholesale customer which purchases primary electricity for resale and which has entered into a contract with the company.

At the present time, NEPCO makes sales under the W–3 tariff to the town of Littleton, N.H. and to Fitchburg Gas & Electric Co. in Massachusetts. NEPCO also makes sales under the W–3 tariff to three other wholly owned subsidiaries of NEES.[1] One of these affiliates, Massachusetts Electric Co., which like NEPCO owns generating facilities and distributes and sells at wholesale and retail, has a general service rate schedule, G–11, under which it makes sales to 23 other Massachusetts municipalities and to large industrial users. Shrewsbury, the complainant in this proceeding, is one of the 23 Massachusetts municipalities served under the G–11 rate, and happens to be located very close to the NEPCO line. Most of the other 22 municipalities are not so located. Service under the G–11 rate schedule is more costly to Shrewsbury than would prevail under the W–3 rate schedule.

Shrewsbury contends that it qualifies for the W–3 rate under the terms of that tariff and that the multiple wholesale rate structure employed by the NEES system violates Section 205(b) of the Federal Power Act which forbids the maintenance of any "unreasonable difference in rates, charges, services, facilities, or in any other respect, either as between localities or as between classes of service." It asks for an order, under Section 202(b), directing NEPCO to provide Shrewsbury with electric service at the lower W–3 rate.

In essence, Shrewsbury wants a cheaper rate. Section 202(b) is involved in this case only to the extent that it forms the legal basis for obtaining service under the W–3 rate schedule. As its counsel argued: "All Shrewsbury is saying is, 'We would like to buy in the most economic way available.'" (Tr. 705)

The majority resolves this proceeding with a "value-of-the-middleman" test. They reason that since the middleman, Mass. Elec., performs no service which could not be performed in its absence, the middleman must be eliminated. In so holding, the majority conveniently overlooks the valuable functions which Mass. Elec. performs. (NEPCO ex. 24) The elimination of a useless middleman is an appealing rationale but its application in this case creates more difficulties than it resolves. Clearly, the authorization of a new service arrangement for any one customer, involving a lower rate, cannot be rendered in a vacuum, particularly where, as here, the rationale appears to exclude other customers of the same class from the arrangement.

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[1] In the past, W–3 sales were also made to New Hampshire Electric Co., Green Mountain Power Corp., and Central Vermont Power Corp.

The majority's reasoning squarely raises the issue of the fate of the other 22 municipalities served by Mass. Elec. which, it states, will be determined by the respective functions performed by NEPCO and Mass. Elec.: "It might well be that other wholesale customers of Mass. Elec. could show that they were likewise entitled to purchase electric energy directly from NEPCO but that would depend upon a record that is not before us now." (*Supra*, p. 378.) What kind of record would the other 22 communities have to make? What are the applicable standards? Answers to these questions must be clear, not for the purpose of making a *res adjudicata* determination of the rights of the other municipalities which are not parties to this case, but in order to evaluate the appropriateness of the majority's rationale.

The point is that Mass. Elec. provides an essential and critical function in furnishing electrical service to several of these communities, a fact the majority must know. Since the alleged absence of any function by Mass. Elec. constitutes the principal basis for the majority conclusion respecting Shrewsbury, this means that those communities which are served by necessary Mass. Elec. transmission lines will be denied service at NEPCO's W–3 rate since the middleman, Mass. Elec., in that instance, provides a valuable service. Thus, location will in essence be the determining factor with respect to the rates of each municipality.

The majority is thus veering from the "rolled-in" or "postage stamp" theory of rate making which is the hallmark of this Commission's past decisions. In addition, the majority, by emphasizing the details of the physical connection with NEPCO, is encouraging the other 22 Massachusetts municipalities to construct such facilities as may be required in order to effect a similar connection. In many of those situations, however, the connection may involve the unnecessary and wasteful duplication of existing Mass. Elec. facilities, a situation much to be deplored.

In our opinion, the disposition of this case depends upon the terms of NEPCO's W–3 tariff, recited above. Shrewsbury is a "wholesale customer" which "purchases primary electricity for resale" and is obviously willing to enter into a contract with NEPCO, a matter we can insure under Section 202(b). On the face of this tariff, Shrewsbury, no less than Mass. Elec., is entitled to the NEPCO W–3 rate.

While it would appear that the maintenance of multiple wholesale rates by the NEES companies constitutes discrimination prohibited by Section 205(b) of the Act, evidence directed to this issue was excluded on Shrewsbury's motion. The NEES companies recognize the impossibility of the existing situation and suggest that the only solution to this problem lies in the development of a uniform wholesale rate. They assert:

> that the proper course * * * is to proceed with the design of a *uniform system rate* applicable to *all* resale customers who purchase their requirements from system sources, and to put it into effect upon the earliest termination date of the present contracts. P. 8, Exceptions of NEES Cos., NEPCO and Mass. Elec.; [Emphasis added.]

While the suggested solution is meritorious and should be developed, the discrimination exists today, Shrewsbury's complaint is before us today, and we can and should, remedy the situation today.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON FORMAL COMPLAINT SEEKING AN ORDER REQUIRING DIRECT ELECTRIC POWER SERVICE

(Issued February 13, 1964)

HALL, *Presiding Examiner:* This proceeding, the first of its kind to arise under the Federal Power Act (Act), involves a formal complaint, filed under provisions

of Part II of the Act, by the Municipal Light Department of the Town of Shrewsbury, Massachusetts (Shrewsbury) against New England Power Company (NEPCO).

Shrewsbury complains that NEPCO misused its privileged position as a public utility, in conjunction with Shrewsbury's request for direct electric wholesale service, to compel Shrewsbury to (1) continue taking its requirements from NEPCO's affiliate, Massachusetts Electric Company (Mass. Electric), and (2) pay the latter's higher rate. The remedy sought is the issuance of an order directing NEPCO to render direct lower cost service to Shrewsbury under NEPCO's filed uniform rate of general applicability covering sales to Mass. Electric and others of Shrewsbury's customer class.

There appears to be no better way to comprehend and deal with this case than to approach it with knowledge of the fact that the Act indicates no intention to put a retailer into a straight-jacket insofar as its wholesale purchases of electric energy are concerned. Retailers are permitted freedom of choice where, as here, alternatives are available for choice, and such choice may be governed by price, service available, or other considerations bringing benefits to them and those they serve. Retailers have their own first-hand knowledge, experience and ideas as to what constitutes adequate and proper arrangements and services to meet their needs, present and anticipated, and in circumstances such as exist here should be permitted to exercise uncontrolled judgment in selecting their wholesaler, this being a right regularly exercised by them, where choices are available, in undertaking initial public service. Absent a showing to the contrary, the management of retailers must be presumed to be competent, to say nothing of having the responsibility, to make elections best suited to needs.[1] They are, in short, the preferred authority on electricity-at-work in their service areas.

NEPCO, in providing direct service to Shrewsbury, will be protected against any present loss of business—indeed its revenues will be increased (see *infra*, p. 412)—and, on the basis of the uptrend of Shrewsbury's requirements, it may expect continually increasing sales to Shrewsbury. In fact, because the savings under NEPCO's rate will be immediately passed on to ultimate consumers, the lower rate should cause a stronger upsurge in Shrewsbury's requirements, the end result being that the wider and greater services Shrewsbury seeks to provide its customers would increase NEPCO's sales to Shrewsbury over what they would otherwise be. Prosperity would breed prosperity.

NEPCO could have voluntarily and lawfully complied with Shrewsbury's request for direct service and uniform treatment had it wanted to upon (1) completion of the minimum five-year term, namely, February 14, 1961, of Shrewsbury's contract with Mass. Electric, or (2) at any time upon mutual agreement. NEPCO, however, discriminated against Shrewsbury and ignored

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[1] Shrewsbury's management would be remiss in its duties if it did not seek the lowest cost wholesale service available in its area. As stated in *El Paso Natural Gas Co.* v. *Federal Power Commission*, 281 F. 2d 567, 573, cert. den., 366 U.S. 912:

> • • • It is the obligation of all regulated public utilities to operate with all reasonable economies. This applies to • • • economies of management. The net result of this, of course, is that such savings as are effected are passed on to the consuming public. This we consider to be the natural and necessary consequence of rate regulation.

Presumably NEPCO acquires its electric energy needs from the lowest cost sources available to it and it is to be commended for doing so. To be consistent, it cannot properly object to Shrewsbury following the same course to advance the public interest.

its public utility responsibility.[2] None of the claims advanced by NEPCO to avoid selling electric energy to Shrewsbury are sufficient to justify denial of direct service to the latter.

Shrewsbury's complaint is bottomed upon the correct premise that NEPCO's refusal of wholesale service, under and in accordance with NEPCO's filed FPC tariff, is not final and conclusive of Shrewsbury's rights and may be nullified or set aside by the Commission when such action is shown, as it is, to be at variance with (1) primary purposes of the Act, and (2) NEPCO's voluntarily assumed public utility obligations as a wholesaler. Stated differently, the complaint brings the functions of the Commission into play for the purpose of having the Commission administer the provisions of the Act applicable to NEPCO's filed tariff and activities in a manner necessary to the proper and complete exercise of its jurisdiction.

The Town of Shrewsbury is traversed by NEPCO's 69 kv transmission lines and Shrewsbury is already interconnected indirectly with NEPCO's generation and transmission facilities through NEPCO's connecting link with Mass. Electric's equipment in NEPCO's 69/13.8 kv substation located within the Town limits of Shrewsbury. At that substation, which is one of NEPCO's ten delivery points in Mass. Electric's Worcester District, NEPCO transforms the power from 69 to 13.8 kv and then delivers it to Mass. Electric.

The electric energy Mass. Electric sells to Shrewsbury is normally delivered at the 69/13.8 kv substation, but only part of NEPCO's delivery at that point is needed to meet Shrewsbury's requirements. The balance is transmitted and sold by Mass. Electric to others located outside the Town limits. Shrewsbury asks the Commission to order NEPCO to comply with Shrewsbury's request to connect its transmission facilities directly with and to sell electric energy directly to Shrewsbury without discrimination, and at 69 kv, in lieu of the higher cost service being furnished through Mass. Electric's intervening facilities at 13.8 kv. The granting of the relief sought herein will divorce Shrewsbury from its interconnection with Mass. Electric's facilities.

NEPCO and Mass. Electric are subsidiaries of the New England Electric System (NEES), a holding company.[3] NEPCO is a wholesale electric generating and transmitting company which, *inter alia*, supplies Mass. Electric with most of its power requirements. Mass. Electric sells power at wholesale for resale and at retail in Massachusetts.

NEPCO and Mass. Electric could by choice have been, or they can now be, made one. But since by design they are two, for the purposes of this case they

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[2] While Shrewsbury has purchased its requirements from Mass. Electric and its predecessors for more than 50 years, it has, since 1957, been seeking to buy its requirement directly from NEPCO and under the same uniform wholesale rate and terms as NEPCO applies to sales made by it to other resale customers. NEPCO's jurisdictional business is not limited to its affiliates in NEES but also includes Fitchburg Gas and Electric Light Company and the Town of Littleton, New Hampshire. It also serves a number of large industrial customers.

[3] NEES controls four electric and eight gas operating subsidiaries and a system service company. The four electric utility subsidiaries are (1) Granite State Electric Company, which operates in parts of New Hampshire; (2) The Narragansett Electric Company, which operates in parts of Rhode Island; (3) Mass. Electric, which operates in parts of Massachusetts; and (4) NEPCO, a wholesaler of electric energy, which operates a bulk supply generation and transmission system in Vermont, New Hampshire and Massachusetts having an installed capacity of 1,118,000 kw (of which 250,000 kw has just gone on the line), shortly to be increased by an additional 250,000 kw. In 1962 NEPCO's total sales were 5.6 billion kwh, of which 82 percent was supplied to Mass. Electric. NEPCO's sales for resale to 41 resale customers were 5.3 billion kwh, or 93.7 percent, and its direct sales to 22 industrial customers were 353 million kwh, or 6.3 percent.

must be regulated for what they are—separated and affiliated companies (*Cf. Cincinnati Gas & Electric Co.* v. *Federal Power Commission*, 246 F. 2d 688, 692–693). They were purposely incorporated as, and exist as, separate corporations, have separate corporate contracts, buy and sell under separate rate schedules, keep separate books, and report separately to regulatory commissions. The fact that they are controlled by a common parent does not license NEPCO to discriminate against nonaffiliates and prefer its affiliates. Rather it signals the existence of a situation requiring the Commission to give the most careful scrutiny and responsible reaction to protect the public interest (*Cf. Mississippi River Fuel Corp.* v. *Federal Power Commission*, 252 F. 2d 619, 621–623).

While the Commission may consider, as the Examiner has, the functional alignment of the NEES companies, it "must also, and always, relate its action to the primary aim of the Act to guard consumers against excessive rates" (*City of Detroit* v. *Federal Power Commission*, 230 F. 2d 810, 817, cert. den. 352 U.S. 829; see also *Pennsylvania Water and Power Co.* v. *Federal Power Commission*, 343 U.S. 414, 418). As an agency of Congress, the Commission is "charged with the enforcement of no policy except the policy of the law" (*Humphrey's Executor* v. *United States*, 295 U.S. 602, 624). As the Commission put it in *Treatment of Federal Income Taxes, Etc.*, 12 FPC 869, 872:

> This Commission is an agency of Congress created to perform certain legislative functions which Congress has delegated to us. We have a legal and moral obligation to abide by and execute the laws of Congress. This obligation does not permit us to substitute our judgment for that of the Congress or nullify the clear Congressional intent by administrative action.

The public interest in the present case lies largely in the maintenance of the statutory standard of just, reasonable, and not unduly discriminatory or preferential wholesale rates for electric energy in interstate commerce, and in the enforcement of that standard by the effective administration of the statutory provisions for adherence to filed rates of general applicability such as NEPCO's W-3 rate under which Shrewsbury desires to purchase its requirements. For adherence to filed rates of this type is essential to assure (1) that the benefits of rate regulation provided by the Act are passed along to ultimate consumers, and (2) that the wholesale rates resulting from federal regulation are uniformly available to other retailing electric utilities desiring to purchase thereunder.

This proceeding could be treated as a "discrimination case"[4] founded upon Sections 205 and 206 of the Act, with the broad authority conferred by Section 309 being utilized, as it often is, to carry out the provisions of the Act. The relief requested by Shrewsbury, however, is sought primarily under Section 202(b). But it recognizes that this section, in the circumstances of this case, must be construed to give effect to the rate standard[5] banning preferential discrimination if the Commission's authority to enforce that standard and promote the purposes of the Act is to be effective at all.

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[4] *Cf. Willmut Gas & Oil Co., et al.* v. *United Gas Pipe Line Co.*, 12 FPC 132, 144–146, affirming Examiner's decision, 12 FPC 399, 401; *Otter Tail Power Co.*, 2 FPC 134.

[5] The rate standard is prescribed in Part II of the Act in Sections 205(a), 205(b) and 206(a). In Section 205(a):

> All rates and charges * * * shall be just and reasonable, and any * * * that is not just and reasonable is hereby declared to be unlawful.

In Section 205(b):

> No public utility shall * * * (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2)

Footnotes continued on following page.

Generally speaking, and insofar as the sale or exchange of electric energy is concerned, the provisions of Section 202(b) (*infra*, p. 401) empower the Commission, upon a finding that such action is necessary and appropriate in the public interest, to compel public utilities to advance the public interest by providing the services they are capable of providing with existing facilities but which they, for reasons of their own, fail or refuse to provide voluntarily. In short, Section 202(b) enables the Commission, after inquiry into the activities and methods of public utilities in carrying on their businesses in their private interests, to give relief to those whose interests coincide with the public interest. Comparable power relating to natural gas companies is contained in, and in a variety of circumstances is regularly exercised by the Commission under, Section 7(a) of the Natural Gas Act. That Act, enacted in 1938, is largely patterned after Parts II and III of the Federal Power Act which became law in 1935.

As is apparent from what has been said, the controversy herein was precipitated by NEPCO's refusal to sell power to Shrewsbury on the same terms and conditions it sells to other customers for resale under its filed FPC rate schedule of general applicability. Such refusal forced Shrewsbury to continue receiving service through Mass. Electric's facilities and to pay Mass. Electric's higher rate, that is until Shrewsbury's rights can be enforced and protected by the Commission.

Under NEPCO's rate (now designated its W-3 rate[6]) Shrewsbury would realize savings estimated by it, on the basis of 1962 takings, at about $45,000

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maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

In Section 206(a):

Whenever the Commission * * * shall find that any rate, charge * * * is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge * * * and fix the same by order.

That the purpose of power given the Commission by § 206(a) is the protection of the public interest, as distinguished from the private interests of the utilities, is evidenced by the recital in § 201 of the Act that the scheme of regulation imposed "is necessary in the public interest."

[*Federal Power Commission* v. *Sierra Pacific Power Co.*, 350 U.S. 348, 355.] And as pointed out in *Mississippi River Fuel Corp.* v. *Federal Power Commission*, 252 F. 2d 619, 626, cert. den. 355 U.S. 904, with reference to Section 5(a) of the Natural Gas Act—the equivalent of Section 206(a) of the Federal Power Act: The Commission has "a positive duty under the basic provisions of Section 5(a) to eliminate preferential discrimination."

Accordingly, the only lawful rates under the statute are those meeting the standard of just, reasonable or not unduly discriminatory or preferential. Plainly, Section 202(b), upon which Shrewsbury is placing primary reliance, must be construed, and for the purposes of this decision is construed, in the light of the protection the Act provides from unjust and unreasonable treatment. This serves the "major purpose of the whole Act * * * to protect consumers against excessive prices" (*Pennsylvania Water and Power Co.* v. *Federal Power Commission*, 343 U.S. 414, 418).

In order to serve the public interest best Congress adopted a policy of consumer protection under the Act. This policy is the same under the Natural Gas Act. In discussing this policy in *Atlantic Refining Co.* v. *P.S.C. of the State of New York*, 360 U.S. 378, 388, the Supreme Court said:

The purpose of the Natural Gas Act was to underwrite just and reasonable rates to consumers * * *. The Act was so framed as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges.

[6] NEPCO's uniform rate has been successively denoted as follows:

Rate W-1, effective August 1, 1953;
Rate W-2, effective November 1, 1962; superseding Rate W-1;
Rate W-3, effective March 1, 1962; superseding Rate W-2.

per year as compared with Mass. Electric's rate.[7] As Shrewsbury's load increases so will its savings.

Shrewsbury's purchased power costs were 73 percent of total operating expenses in 1962, and 61 percent of total revenues.[8] Accordingly, Shrewsbury's target for cost reductions must be primarily in its power costs. However, its decision to obtain its future requirements directly from NEPCO rests on a much broader base.

Among the purposes Shrewsbury seeks to accomplish with direct service from NEPCO is improvement of its position to attract additional industrial customers, there being areas available for development and an effort is being made to catch the interested eye of more industry willing to locate in the Town.[9] Shrewsbury is not overlooking the distinct possibility that the availability of rates more favorable than those it is presently charging could be the decisive factor for success in this regard. The distance it would have to transmit power to serve the remotest industrial area would be only three to four miles.

The connection which Shrewsbury seeks would provide it with an independent bulk power supply at 69 kv which NEPCO can readily furnish. This, Shrewsbury contends, would enable it "to plan and engineer its future growth flexibility, and would free it to promote increased customer utilization of electricity and to attract desirable industrial customers." Shrewsbury's manager does not consider that Shrewsbury is obtaining "maximum utilization" of electricity by its customers because it is "not now able to charge rates low enough to promote expanded customer usage."

Shrewsbury intends to initiate a load promotion program to increase its load factor which would further reduce Shrewsbury's average cost of power. This is possible because of the design of NEPCO's wholesale rate, which has a high demand charge relative to the energy charge.[10] The high demand charge impels, and the low energy charge facilitates, the design of promotional rates for off-peak service such as air-conditioning and water heating.

For the same reason, under NEPCO's wholesale rate, Shrewsbury hopes to be able to further reduce its power cost by using packaged diesel, peaksaving generating units.

Commission counsel correctly point out that "Mass. Electric's present service to Shrewsbury is inadequate because of the artificial market arrangement which arbitrarily assigns Shrewsbury to Mass. Electric. The existing arrangement prevents the Town from offering promotional rates for house heating and all electric living which access to NEPCO's rates permits Mass. Electric to offer to its retail customers."

Shrewsbury has done everything possible to locate its facilities convenient to NEPCO's established delivery point within the Town limits. NEPCO's uniform policy is to require a customer "to build to the nearest established delivery point" on its "high tension" system, and at that point to pay Rate W–3 for delivery after a "single transformation" performed by NEPCO.

Mass. Electric's deliveries to Shrewsbury are currently made to Shrewsbury's new Worthington Avenue substation, recently completed by Shrewsbury at a

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[7] Because Mass. Electric buys most of its power from NEPCO, NEPCO's rates are necessarily lower than Mass. Electric's rates.

[8] 1962:

Purchased power costs	$620,508
Total operating expenses (including purchased power costs)	847,756
Total operating revenue	1,020,888

[9] Shrewsbury has several industrial customers, the largest having a present load of 750 kw. One such customer expects to triple in size in the near future.

[10] NEPCO Rate W–3: Demand, $2.95/kw; Energy, 0.64¢/kwh. Mass. Electric G–11: Demand, $1.25/kw; Energy, 1.10¢/kwh.

cost of approximately $400,000, from which substation Shrewsbury distributes energy at 4.16 kv to its retail customers located within the Town limits. The Worthington Avenue substation, designed for an ultimate load of 30,000 kw and located beneath NEPCO's 69 kv lines with the concurrence of NEPCO, adjoins the NEPCO's 69/13.8 kv substation in the Town and constitutes a major step in Shrewsbury's "program for giving * * * Shrewsbury the best possible service at economical rates." [11] Formerly, Mass. Electric made deliveries to Shrewsbury within the same substation in which it received deliveries from NEPCO.

Shrewsbury is striving to make the industry's slogan "Live Better Electrically" more of a reality than it is in its service area.[12] It is dedicated to improved customer services and a carefully planned expansion program to carry the economy of the area forward. Its continuing perseverance in this proceeding in the pursuit of reduced power costs reflects its awareness of the fact, already proven in other areas, that low cost power works magic in terms of social and economic progress.

The motivation of Shrewsbury being plainly visible, the Commission in this proceeding must do what the Act contemplates—cause NEPCO to live up to its share of its public service responsibility by providing Shrewsbury and its customers the help they need to help themselves. It is to their credit that they are not content to be anywhere but in the forefront insofar as the sale and use of electric energy is concerned.

In the Examiner's view, to deny Shrewsbury's request for direct service from NEPCO would be to reward NEPCO's efforts which tend to control Shrewsbury's growth and deny to its customers benefits to which they are entitled and which they would otherwise receive. Such denial would constitute a death in the family of retailers—the death of the efforts of a retailer designed to materially assist in carrying it and those it serves to their loftiest heights. On the other hand, to grant the request will reflect the Commission's true concern about those in need of its help and will provide another outstanding example to retailers to have the courage to push on, despite discouragement, and prove that "it can be done."

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[11] Part of the energy delivered to Shrewsbury is carried out of the Worthington Avenue substation over two 13.8 kv distribution lines to Shrewsbury's Hilltop substation a modern structure constructed in 1956. At Hilltop the energy is transformed to 4.16 kv and fed into distribution circuits.

[12] Counsel for Shrewsbury point out that—

The load on Shrewsbury's electric system has been growing rapidly as follows * * *:

	Number of customers	Demand (kw)	Energy purchases (kwh)
1950	3,591	3,334	10,500,000
1962	5,449	10,800	42,000,000

Shrewsbury's rate of growth is 10% compounded annually as compared with the national average of 7% * * *. It is growing 1.6 times as fast as Mass. Electric's growth in the neighboring Worcester market * * *. This growth is expected to continue in the future as follows * * *:

	Demand (kw)	Energy purchases (kwh)
1963	12,000	47,304,000
1965	14,500	59,699,000
1968	19,100	[1] 78,600,000

[1] These are Nepco's estimates except that Nepco furnished no kwh estimate for 1968 so we computed this by using the load factor of Nepco's 1965 estimate. They cover only normal growth.

The fact that NEPCO's affiliate, Mass. Electric, has served Shrewsbury in the past, and desires to continue serving it in the future, is of no determinative force or effect in the ascertainment of where the public interest—as contrasted with the private interest—lies in this case. The right of free choice (such as Shrewsbury seeks to exercise in the selection of NEPCO as its direct supplier), as well as the freedom of competition, have been and will continue to be the strength of the Nation. This truth was stated most effectively by President Lyndon B. Johnson in his special message to Congress on February 5, 1964, when he urged support for an intensified campaign to move interests of American consumers out of "the back seat." As the President stated: "America's economy centers on the consumer." "Freedom of choice for consumers from our storehouse of goods, at the lowest possible prices, is the very cornerstone of American consumer policy. I believe strongly in this principle."

Competition of utilities with each other and with others engaged in the fuel business by lawful methods is clearly unrestricted. Normal rate regulation by the Commission merely enforces the policies of the Act to provide those engaged in the power business with the tools they must work with. It is up to them to make the most of what they have through aggressive and enthusiastic effort.

PROCEEDINGS BEFORE THE COMMISSION

Shrewsbury's complaint was filed on February 5, 1962. It requests a full investigation of the facts concerning NEPCO's refusal to supply power directly to Shrewsbury at the legally established rate for Shrewsbury's customer class. It also requests appropriate remedial action against NEPCO and under Sections 202(b), 205(a), 206(a) and 207 [12] of the Act.

The complaint asks the Commission to order NEPCO to serve Shrewsbury directly at NEPCO's standard wholesale (W-3) rate, without discrimination.

On April 2, 1962, NEPCO filed a combined answer and motion to dismiss, to which Shrewsbury responded on May 7, 1962.

After informal conference held by representatives of Shrewsbury, NEPCO and the Commission Staff, the Commission set the case for hearing by an order issued May 2, 1963. That order also prescribed the prehearing procedure followed by the parties with reference to the service of testimony, exhibits and motions.

As part of its order setting the case for hearing, the Commission denied NEPCO's motion to dismiss which, *inter alia*, raised the issues whether Shrewsbury, being a municipal corporation, and engaged solely in local distribution, was eligible for relief under Section 202(b) and was a "person" "engaged in the transmission and sale of electric energy" within the meaning of that section.

On May 16, 1963, the Commission issued its order granting Mass. Electric's petition to intervene.

Following the four-day hearing held July 16–19, 1963, main and reply briefs were filed on September 16 and October 7, 1963, respectively, by counsel for NEPCO and Mass. Electric, Shrewsbury and the Commission Staff.

In this proceeding Mass. Electric associated itself with NEPCO in making a combined presentation of evidence; filing joint briefs; and in opposing the relief sought by Shrewsbury.

The Massachusetts Department of Public Utilities filed a notice of intervention but was not represented at the hearing and took no part in the proceeding.

[12] Section 207 is confined to proceedings initiated "upon complaint of a State commission." Accordingly, it will suffice to point out here that Shrewbury's reliance thereon is in connection with its contention that "neither the existing nor proposed service [through Mass. Electric's facilities] to Shrewbury has the reliability required by the standards of Section 207 of the Act."

JURISDICTION

No jurisdictional questions are presented in the present posture of this case. Both NEPCO and Mass. Electric are admittedly "public utilities" subject to the Commission's jurisdiction. Both, in fact, make jurisdictional sales within the Town limits of Shrewsbury—NEPCO's sale being made to Mass. Electric and the latter's sale being made to Shrewsbury. And in view of the Commission's prior denial of NEPCO's motion to dismiss Shrewsbury's complaint, there is no issue presently outstanding regarding Shrewsbury's right to apply for an interconnection under Section 202(b).

Shrewsbury Seeks Equal Treatment From NEPCO Rather Than Preferred Treatment From Mass. Electric

Counsel for NEPCO and Mass. Electric contend "that what Shrewsbury is asking for is preferential rate treatment based solely on its proximity to certain of the high tension facilities by which NEPCO carries out its responsibilities as bulk supplier for the entire area served by the NEES companies. To avoid discrimination against other resale customers [of Mass. Electric] similar in character to Shrewsbury, the NEES companies urge that Shrewsbury should continue to be served by Mass. Electric over the existing interconnection; and that any rate complaint Shrewsbury may wish to bring before the Commission should properly be heard under section 206, and not under section 202(b)." It is therefore the suggestion of counsel that the complaint be dismissed without prejudice to commencement of a rate proceeding under Section 206(a). But such a disposition misses the point of Shrewsbury's complaint.

Shrewsbury makes no claim that discrimination or preferential treatment exists among Mass. Electric's customers or that Mass. Electric's rates are unjust and unreasonable. Rather it contends that since NEPCO's W-3 rate is an existing filed rate of general applicability, Shrewsbury must be treated on a parity with other resale customers purchasing thereunder. That is, its position is based upon the fundamental regulatory principle that all customers falling into the same class are entitled to receive the same kind of service under the same or similar conditions, and are entitled to the same rate.

When a public utility such as NEPCO operates under a rate of general applicability, it has no justifiable reason for demanding or accepting surcharges in addition to the filed rate, nor for refusing service. Of course, if the filed rate should become inadequate for any reason there is nothing to prevent public utilities from requesting an increase. If the Commission, after hearing, determines the filed rate to be so low as to conflict with the public interest, it may increase the rate.

NEPCO's filed W-3 rate reflects the "rolled-in" concept of rate making discussed in *Battle Creek Gas Co.* v. *Federal Power Commission*, 281 F. 2d 42, 46. As the Court pointed out, the rolled-in rate recognizes that a company's transmission system—

> * * * is not just a collection of discrete pieces and parts, but an integrated system serving all of its customers. Applying this approach the cost of the various assets of the system are collected or "rolled in" to arrive at cost of the entire system which is then pro-rated among all of the customers * * *.
>
> This method has many apparent advantages and the Commission has repeatedly stated a general preference for it whenever it may equitably be used. It avoids the onerous administrative burden of having to assign a different portion of the cost to each of a large number of customers. It results, if all other factors be equal, in all customers paying the same

price for [electric energy] taken from the [transmission system] at the same point, and recognizes that all customers enjoy the benefits of having the whole * * * system.

* * * [U]se of the rolled-in approach ensures that two otherwise similar customers will not pay radically different prices for commingled [electric energy] coming from the same [transmission system], merely because one happens to have been receiving the service longer than the other. Use of the rolled-in method thus serves the interest of equal treatment for customers receiving equal service.[14]

And as the Examiner stated in *Willmut*, 12 FPC 399, 410, aff'd 12 FPC 132:

* * * United's rate expert (Zinder) testified, in determining the town border customers to be included in a uniform rate area the customers need not "have exactly the same load factor, exactly the same volume, exactly the same distance from supply to get the same rate. In the averaging process * * * there may be differences. The purpose of averaging is to remove such differences within a reasonable range." Thus where, as here, uniform rate zones are established and maintained within a reasonable range so that the public interest, *i.e.*, that of investors and consumers, is protected, there can be no objection to the zone method of operation and regulation. Certainly it would not appear to be of any moment to a * * * company, so long as it earns a fair return, if all of its customers within an established zone pay a uniform rate rather than different rates producing the same aggregate revenue.

The subject under consideration can best be rounded out by pointing to the fact that in *United Gas Pipe Line Co.* v. *Memphis Light, Gas and Water Division, et al.*, 358 U.S. 103, at page 115, note 8 (which note can be read in connection with note 1, page 117, of Mr. Justice Douglas' dissenting opinion) the Supreme Court looked approvingly upon the Commission's tariff-and-service agreement system promulgated for pipelines, which is the same type of system prescribed for public utilities. That system provides for rate schedules of general applicability, making it possible for customers to pay the "going" rates, as established from time to time in accordance with the procedures prescribed by the Natural Gas Act. The Court observed that until promulgation of that system, "it was most difficult for customers, competitors, and the Commission itself to ascertain whether rates to various customers were unduly discriminatory or otherwise unreasonable."

Mass. Electric's Contract With Shrewsbury Set Forth in Mass. Electric's FPC Tariff Does Not Constitute a Bar to Service by NEPCO

Counsel for NEPCO and Mass. Electric argue that the Commission has no authority to abrogate the contract between Shrewsbury and Mass. Electric prior to February 14, 1966, that being the end of the second five-year period to which it is contended the contract was, by its terms, automatically extended.

The Examiner does not agree that NEPCO's actions in leaving Shrewsbury with no choice but to continue paying the Mass. Electric higher rate was effective to renew the Mass. Electric contract for the second five-year period. In any event, nothing done by the parties in any way impairs the regulatory power of the Commission, for the contract remains "fully subject to the paramount power

[14] In the quoted excerpt from the *Battle Creek* case the Examiner has omitted footnotes and, by the use of the words in brackets in the excerpt, has applied the Court's remarks to an electric system, such as operated by NEPCO, rather than a natural gas system, that being the subject of the Court's remarks.

of the Commission to modify * * * when necessary in the public interest" (*United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332, 344).[18]

Shrewsbury's contract with Mass. Electric, as well as the Examiner's views, can best be understood in the light of the principles set forth in the following excerpts from decided cases: *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp., et al.*, 350 U.S. 332, 344–345:

> * * * [C]ompanies are understandably not given the same explicit standing to complain of their own contracts as are those who represent the public interest or those who might be discriminated against * * *.

Michigan Consolidated Gas Co. v. *Panhandle Eastern Pipe Line Co.*, 173 F. 2d 784, 789:

> * * * We do hold that adequacy and impartiality of service, in the light of existing circumstances, is within Commission control. This must be so if control over rates means anything, since adequate service is a necessary concomitant in the fixing of reasonable rates. If this is so in respect to private utilities it must be even more important in the case of utilities which are affected with a public interest. If the Commission has no authority to order adequate service to customers, in view of all the conditions and circumstances involved, the basic purpose of the Natural Gas Act fails of realization. We can attribute to the Congress no purpose to withhold from the Commission control over services. The power to prevent preferences and discrimination both as between individuals and classes carried with it by necessary and inescapable implication, authority to regulate service.

Re Village of Fox Point, 28 PUR 3d 168, 170 (Wisconsin Public Service Commission):

> * * * There appears to be a widespread disposition to refuse to face up to the fact that from the very beginning of the concept of public utility service the obligations of the utility to serve and of the customers to take service have not been commensurate with each other. Any customer lying within a utility's profession of service has a continuing right to receive service, and the utility a corresponding continuing duty to furnish such service under reasonable terms and conditions. However, the ties that bind the customer to the utility are much less secure. Lacking contract obligations, any customer, be he small residential, large industrial, or a public or private utility resale customer, is free to discontinue service at will.
>
> Ordinarily, the freedom of customers to discontinue utility service at will is not a matter of serious consequence to the utility. The great mass of customers individually require only limited utility facilities and usually represent service locations which at one time or another will require utility service. However, in the case of large industrial and resale customers, it is customary for the utility to require term contracts to insure at least a minimum period of service. Both the commission and the statutes recognize the reasonableness of minimum contract terms for customers whose use of service is such that other customers would be adversely affected by a premature termination of service.

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[18] Where, as here, the term of the contract is deemed part of the definition of the service or consideration and therefore part of "the rate", it yields to regulation. It has long been held that private contract rights must yield to public authority and such rights may be abrogated when in conflict with the proper exercise of a commission's regulation in the public interest. *Sutter Butte Canal Co.* v. *Railroad Commission of California*, 279 U.S. 125, 137–138; *Midland Realty Co.* v. *Kansas City P. & L. Co.*, 300 U.S. 109, 113–114; *Union Dry Goods Co.* v. *Georgia Public Service Corp.*, 248 U.S. 372, 375–377.

Service to Shrewsbury has been rendered under a series of contracts or service agreements, the present one, originally entered into by Shrewsbury with Worcester County Electric Company on July 5, 1955, was filed with the Commission as Mass. Electric's FPC Rate Schedule No. 26,[16] but such filing (as well as others by Mass. Electric) was not made until after the filing of Shrewsbury's complaint. The filing of Schedule No. 26 was also made subsequent to the Commission's written inquiry directing Mass. Electric's attention to various instances in which its Form 1 reports for 1961 showed jurisdictional sales to private utilities and municipalities for which no rate schedules had theretofore been filed with the Commission.[17] The Commission's requirement that Mass. Electric file all of its contracts and rates for jurisdictional sales caused it to comply with applicable provisions of the Commission's published rules and regulations, and, of course, was essential to the Commission's discharge of the responsibilities Congress required it to discharge in regulation of interstate

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[16] An understanding of the filing and notice requirements of the Act will facilitate consideration and disposition of this case. It may first be noted in this connection that the principles set forth in *Mobile* (350 U.S. 332) were followed in *Sierra* (350 U.S. 348). In these decisions the Supreme Court made it clear that the Natural Gas Act and the Federal Power Act recognize the need "for individualized arrangements between natural gas [and public utility] companies and distributors," the Acts permitting "the relations between the parties to be established initially by contract, the protection of the public interest being afforded by supervision of the individual contracts, which to that end must be filed with the Commission and made public" (332 U.S. at p. 339).

The Act requires public utilities to file all rates and contracts with the Commission (Section 205(c)) and authorizes the Commission to modify any rate or contract which it determines to be "unjust, unreasonable, unduly discriminatory, or preferential" (Section 206(a)). Changes to previously filed rates or contracts must be filed with the Commission at least 30 days before they are to go into effect (Section 205(d)), and the Commission may suspend the operation of the new rate pending a determination of its reasonableness (Section 205(e)).

The Act's filed rate procedure is particularly adapted to enforcing the nondiscriminatory and nonpreferential part of the rate standard. For the public filing and adherence to a rate of general applicability, such as NEPCO's W-3 rate, protects the interests of other wholesale purchasers, or potential purchasers, and the ultimate consumers served by them. Thus where, as here, a local distributor in an area desires service at the rate reflected in a public utility's filed uniform rate schedule it may, if refused service by the public utility from which service is sought, apply to the Commission for an order compelling service under Section 202(b), just as Shrewsbury has done here. The Commission in enforcing the statutory rate standard, and others interested in having it do so, could not rely upon the filed rate if changes in the legal rate could be demanded or effectuated piecemeal, case by case, ignoring the filed rate.

[17] On October 11, 1962, Mass. Electric responded to the Commission's inquiry. It pointed out, *inter alia*, that its sales to Shrewsbury and others had been regarded as second-level sales—

> * * * made in Massachusetts to other utilities or municipal light departments, for resale to ultimate consumers in Massachusetts. Rate schedules for these sales have not heretofore been filed with your Commision * * *.
>
> * * * * * * *
>
> *Second-level sales.* In the case of an integrated electric system such as ours, the division of regulatory jurisdiction between the Federal Power Commission and the utilities commissions of the several states has been a matter of importance and concern for many years. In the case of sales for resale, we have heretofore disguished between first-level sales, which we have regarded as subject to the jurisdiction of the Federal Power Commission, and second-level sales, which we have assumed to be subject to the jurisdiction of the state commission.

That there was no justification for the distinction made between first- and second-level sales is clearly established by an unbroken line of decisions too numerous and well known to require citation. The Courts have uniformly held that it is immaterial whether the sale takes place before a state boundary is reached, or at the state boundary, or afterward at any point short of the last sale at retail to the ultimate consumer.

The Shrewsbury-Mass. Electric contract was, from its inception, covered by the Act (*Cities Service Gas Producing Co.* v. *Federal Power Commission*, 283 F. 2d 726, 730).

wholesale electric rates in the public interest. Then, too, it had long been established by judicial decision that all interstate wholesale sales for resale made by public utilities such as NEPCO and Mass. Electric, regardless of whether made to private utilities or public bodies, are jurisdictional sales (*United States of America* v. *Public Utilities Commission of California*, 345 U.S. 295 (1953); *Wisconsin-Michigan Power Co.* v. *Federal Power Commission*, 197 F. 2d 472 (1952), cert. den. 345 U.S. 934; *State of Wisconsin* v. *Federal Power Commission*, 201 F. 2d 183, cert. den. 345 U.S. 934; *California Electric Power Co.* v. *Federal Power Commission*, 199 F. 2d 206 (1952), cert. den. 345 U.S. 934). Insofar as the Section 201(f) exemption of public agencies is concerned, these cases hold that this section of the Act does not deprive municipalities or other public agencies distributing electricity of the benefits of the Act, but exempts them only from its burdens. As the Court stated in the *California Electric* case, for example (199 F. 2d at pp. 208–209):

> Nor is Section 201(f) of help to the petitioner. This section states that "No provision in this Part shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State * * *." It is clear that the intended exclusion or exemption is from the regulatory burdens of the statute. For the purposes of the Act these public bodies are simply not deemed to be public utilities. But it would be inconsistent with the policy of the legislation, as well as with certain of its provisions already mentioned, to hold that, as wholesale purchasers of power, they are excluded from the benefits of the regulation of the utilities from which they buy. The entire thrust of Part II is toward the seller at wholesale, not the buyer.

Following its usual practice relating to tardy filings, the Commission expressly protected the contractual rights of Shrewsbury and other retailers by accepting the contracts for filing effective October 27, 1962, upon the express condition that—

> This acceptance for filing does not constitute approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service provided for in the above-designated rate schedules; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company.

By the insertion of this condition in its acceptance letter dated February 18, 1963, the Commission made certain that disposition of Shrewsbury's complaint would in no way be hampered.

The Mass. Electric-Shrewsbury contract (Schedule No. 26) entitled Shrewsbury to purchase its requirements under Mass. Electric's General Service Rate G and obligated Shrewsbury to pay the construction cost of installations, originally estimated at $57,000, to be incurred by the seller to provide delivery to Shrewsbury. The contract was for an initial period of five years and was subject to automatic renewal for successive five year periods, unless six months prior to expiration, written notice is given by either party "that it does not care to have the contract continue after expiration date."

Shrewsbury having discharged its contractual obligations by the end of the minimum five-year term, February 14, 1961, was then fully paid up and free to seek out and switch to another supplier (NEPCO being an established wholesaler at its doorstep wasn't hard to find). In fact, when the contract was originally drawn the parties, having all the pertinent facts fresh in their minds,

were satisfied that there were then no outstanding obligations which either had to satisfy, or if there were any they were to be then satisfied. The contract expressly states in this regard:

> All existing agreements, written and oral, for the furnishing of electric service by the COMPANY to the CUSTOMER are hereby superseded and terminated as of the date of commencement of the term hereof and each party agrees to and does hereby release the other from all claims arising out of or in connection with said agreements except for any amounts unpaid for or in connection with electric service furnished thereunder prior to said date and except for any other claims arising subsequently to the date of execution hereof, of which the party claiming shall have given written notice to the other party prior to said date of commencement.

The agreement contains no indication that Shrewsbury's exercise of its right to terminate service after five years would (1) impair the financial ability of the seller to continue its service to other customers, (2) cast upon other customers an excessive burden; or (3) be unduly discriminatory to other customers. To the contrary, the only inference permitted by the terms of the contract is that Shrewsbury's termination of service on February 14, 1961, would not produce a serious situation for the seller and its remaining customers, Shrewsbury having already paid the cost of the installations required to provide the service it agreed to pay for. The contract was drafted by the parties with their eyes wide open and it is to be presumed that they protected themselves to the extent they deemed necessary. The terms of the contract are standard for all customers. As the Supreme Court's decisions in the *Mobile* and *Sierra* cases make clear, even assuming, *arguendo*, that Mass. Electric's obligation under the contract is to be regarded as an improvident bargain, it is not entitled at this late date to be relieved therefrom. As stated in *Sierra* (350 U.S. at p. 355):

> * * * But, while it may be that the Commission may not normally *impose* upon a public utility a rate which would produce less than a fair return, it does not follow that the public utility may not itself agree by contract to a rate affording less than a fair return or that, if it does so, it is entitled to be relieved of its improvident bargain. * * *

The agreed upon consideration having been met by Shrewsbury, there was and is no obligation, contractually or otherwise, upon Shrewsbury to pay severance damages in any form at or after the end of the minimum five-year contract term. The only outstanding obligation not met at the end of the five-year minimum term was NEPCO's public utility obligation to serve Shrewsbury when the latter made known its desire to purchase directly from NEPCO. Accordingly, NEPCO and Mass. Electric cannot now be heard to claim that direct service by NEPCO to Shrewsbury will inflict harm upon Mass. Electric and its remaining customers.[19] Moreover, nothing in the record suggests that Mass. Electric's overall business will not continue to grow. This means that because of the necessity to provide adequate lead time, Mass. Electric must always have excess capacity in its substations and other parts of its system to handle growth. Its sales have been steadily increasing and a continuation of the steady increase is clearly in prospect. As its counsel put it in their brief, "Although Shrewsbury's expert

[19] The Examiner excluded from the record NEPCO's proffered testimony regarding the terms and conditions for Mass. Electric sales to other municipalities. No one of them has intervened in this case, nor offered any objection to the proposed NEPCO service to Shrewsbury as preferential. The only discrimination in issue is whether NEPCO is discriminating against Shrewsbury by selling to affiliated and non-affiliated customers under terms and conditions which it refuses to extend to Shrewsbury. Counsel for both Shrewsbury and the Commission Staff agree that this case can be disposed of without a study of Mass. Electric's cost of service for its resale customers.

formulated his opinions and issued his recommendations without consideration of anybody's load growth but Shrewsbury's * * *, there is no escaping the fact that if Shrewsbury's load is growing, so is everybody else's including the other municipals in the Worcester District."

It thus appears that even if Mass. Electric's revenues are temporarily reduced by Shrewsbury's shift to NEPCO—which would mean no loss of business to the NEES system as a whole—Mass. Electric's additional sales to others should more than take up the slack in a relatively short period of time. Neither Mass. Electric, nor the NEES system, intend to stand still, nor have they in the past. This is corroborated, among other things, by the fact that the installed capacity of the NEPCO system is soon to be increased by an additional 250,000 kw (see ftn. 3, *supra*). In any event, every public utility, like every business and individual, "assumes the risk of loss in the hope of profit" (*Puget Sound P. & L. Co.* v. *Federal Power Commission*, 137 F. 2d 701, 702).[28a]

The Commission, of course, cannot look at the situation as a one-way street. The record clearly indicates that if by any chance Mass. Electric suffers any temporary loss by Shrewbury's shift to NEPCO it would only be a loss of future profits in an amount that, in the Examiner's view, is by no means commensurate with the prospective benefits to Shrewsbury and its customers. As the record amply demonstrates, Shrewsbury has adhered to sound and proven principles and is staying within safe bounds. Its policies have made it debt-free and strong and will continue to guarantee this strength. In this connection, it goes without saying that no wholesaler can be stronger than the market it serves. So the stronger the retailer the more healthy will be the wholesaler.

While no provision in the contract could have been effective to bar Shrewsbury from obtaining service from any other source available at the end of the minimum five-year contract term, it is significant that nothing in the contract even purports to bar Shrewsbury from obtaining service from a wholesaler of its choice, whether or not affiliated with the seller. Nor do the provisions of the contract purport to bar Shrewsbury from generating its own requirements with facilities it had a right to construct should its interests so dictate. In this regard it seems obvious that, because of the economics involved, the parties were cognizant of the fact that any other wholesaler selected by Shrewsbury would necessarily have to be an established wholesaler serving the area, or as indicated, Shrewsbury could have built and operated its own generating plant. Recognizing that NEPCO was the cheapest alternative source available, Shrewsbury naturally turned to NEPCO for its future requirements. But NEPCO presented an unexpected problem, for instead of standing by Shrewsbury's side at the critical time, NEPCO stood in its way (see *infra*, pp. 399–401). It did this with knowledge of (1) Shrewsbury's intention to terminate its contract with Mass. Electric, and (2) its duty to serve those in its service area who desire the wholesale service it renders.

Normally, of course, it is the custom of public utilities to take the high road of public service and make it easy for those desiring its service to deal with them by putting the facilities they have, or can install, to use in the service of their customers—it often being as easy to consult and do business with them as a single telephone call or written request. They welcome the opportunity to serve more customers and make the contribution they are capable of making to overall progress. But where affiliated companies are involved the situation may

[28a] No regulatory Commission should ever attempt to take the "loss" out of the profit and loss system. The principle has long been established (*Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U.S. 575, 590; *Regan* v. *Farmers' Loan & Trust Co.*, 154 U.S. 362, 409; *Covington and Lexington Turnpike Road Co.* v. *Sanford*, 164 U.S. 578, 596–597; *Los Angeles Gas Co.* v. *Railroad Comm.*, 289 U.S. 287, 313). *Hope Natural Gas Co.* v. *Federal Power Commission*, 196 F. 2d 803, 808–809.

sometimes be, and in this instance was, different. It was different here because of the private interests of the NEES system, as distinguished from the public interest sought to be served by Shrewsbury.

Under no circumstances can NEPCO's relationship to Mass. Electric be regarded as a means of insulating NEPCO from its statutory responsibility to serve all within its service area on a nondiscriminatory and nonpreferential basis. Nor may it, as it has attempted, "pick and choose" its customers. As the Supreme Court recognized in *United Fuel Co.* v. *Railroad Commission*, 278 U.S. 300, 309: "The primary duty of a public utility is to serve on reasonable terms all those who desire the service it renders. This does not permit it to pick and choose."

In addition to the other authority which may be invoked in this proceeding, Section 307(a) authorizes the Commission to investigate "whether any person has violated or is about to violate any provision of the Act." This provision applies disjunctively to past violations. Furthermore, the Act, in vesting the administration of its provisions in the Commission expressly confers upon the Commission broad power "to perform any and all acts * * * it may find necessary or appropriate to carry out the provisions of this Act." (Section 309) This section by itself is sufficient to enable the Commission to accord Shrewsbury the relief it seeks, but since the Commission may also invoke its authority under other provisions of the Act, it need not rely solely upon the provisions of Section 309.

Cases abound in which the Commission has utilized, and in which the courts have reminded the Commission that it could utilize, its general powers under Section 309 and the identical provisions of Section 16 of the Natural Gas Act, to protect its jurisdiction and enforce the purposes of the Act. The citation of one decision, the most recent, will suffice for present purposes. In *Public Service Commission of The State of New York* v. *Federal Power Commission*, 327 F. 2d 893 (CADC, No. 17673, January 2, 1964), the Court said with reference to the authority of the Commission under Section 16 of the Natural Gas Act:

> * * * Section 16 * * * empowers the Commission to perform any and all acts and to prescribe, issue, make, amend or rescind such orders or regulations as it may find necessary or appropriate to carry out the provisions of the Act.
>
> * * * * * * * *
>
> While the * * * Act is a statute and is not to be construed as a "constitution," nevertheless the problems placed under Commission administration, with consequent Commission responsibilities, call upon the courts to give the Act a scope reasonably necessary to permit the agency to perform its tasks consistently with the provisions and purposes of the legislation. The broad grant of implementing authority conferred by Section 16 is not confined to procedural regulations * * *. * * *
>
> All authority of the Commission need not be found in explicit language. Section 16 demonstrates a realization by Congress that the Commission would be confronted with unforeseen problems of administration in regulating this huge industry and should have a basis for coping with such confrontation. While the action of the Commission must conform with the terms, policies and purposes of the Act, it may use means which are not in all respects spelled out in detail. * * *

In view of the authority vested in the Commission by the applicable provisions of the Act, including its authority to "carry out the provisions" of the Act as

contemplated by Section 309, and also the fundamental principles of regulation hereinabove set forth which may not be scuttled, the order accompanying this decision does not exceed the power, but makes effective the duty, of the Commission in the circumstances of this case. The order abrogates Shrewsbury's contract with Mass. Electric, assuming it still to be effective, and requires NEPCO to enter into a contract for, and to commence direct service to Shrewsbury, with all deliberate speed, such service to be provided on the same terms and conditions as NEPCO applies to its other resale customers of Shrewsbury's classification. The well-timed and easy means employed by NEPCO in its negotiations with Shrewsbury to avoid its responsibilities of public service may not be tolerated, no just cause appearing for the discrimination it has practiced.

NEPCO's Refusal To Serve Shrewsbury

NEPCO's sale to Mass. Electric and other customers for resale is made at NEPCO's uniform wholesale rate set forth in NEPCO's FPC Electric Rate Schedule No. 118, filed pursuant to Section 205(c) of the Act, which is now designated its W–3 rate (see ftn. 6, *supra*).

Rate W–3 states:

> Service under this rate is available to any wholesale customer which purchases primary electricity for resale and which has entered into a contract with the company.

Shrewsbury is a "wholesale customer" which purchases "primary electricity for resale", and the characteristics of Shrewsbury's purchases are comparable to those of the customers served by NEPCO under the W–3 rate. It therefore qualifies for service under that rate. Indeed, NEPCO offered to serve Shrewsbury under this wholesale rate both in 1958 and 1961, but such offers were coupled with unacceptable and unlawful demands for surcharges. Shrewsbury could not lawfully have paid the surcharges had it wanted to. Had it agreed to pay them the Commission, in the exercise of its review function and when it caught up with their imposition, would have declared the payment thereof unlawful, with NEPCO being ordered to cease and desist from charging any rate other than its filed (W–3) rate (*California Electric Power Co.*, 10 FPC 152, 167, aff'd *California Electric Power Co.* v. *Federal Power Commission*, 199 F. 2d 206, cert. den. 345 U.S. 924).

NEPCO, having on file the W–3 rate of general applicability, could not legally impose the burden of surcharges upon Shrewsbury for it could charge the latter no rate other than its last legally filed, uncancelled, and unchanged rate. That is, NEPCO could "claim no rate as a legal right other than the filed rate, whether fixed or merely accepted by the Commission." *Montana-Dakota U. Co.* v. *Northwestern P. S. Co.*, 341 U.S. 246, 251. To use the words of the Fourth Circuit in the *Hope* case, 134 F. 2d 287, 311: "When rates were filed * * * they became the only lawful rates which the utility could charge or accept * * * and * * * there could be no occasion for a determination of their reasonableness except as reason for changing them in an order prescribing rates for the future."

In 1958 NEPCO offered to sell directly to Shrewsbury at the uniform wholesale rate but demanded an additional surcharge of $43,000 a year, based upon 22 percent of the $195,000 of additional facilities claimed to be necessary to make the service connection, such surcharge, as Staff counsel point out, was "not consistent with NEPCO's practices under its [then] W–1 rate schedule." Payment of the surcharge would have caused the cost of power from NEPCO to be in excess of the cost of the same power when purchased from Mass. Electric's

predecessor.[19] Shrewsbury submitted a counter offer proposing to pay the cost of the additional facilities as an outright connection charge, or itself build all the facilities on its land. NEPCO never replied to Shrewsbury's letter.

In 1961 NEPCO agreed to sell electric energy to Shrewsbury at its filed wholesale rate, but subject to Shrewsbury's payment of an unspecified surcharge based on NEPCO's claim that an additional investment would be required.

Since 1961 NEPCO has refused to serve Shrewsbury under any circumstances. Shrewsbury has submitted to NEPCO a contract, in NEPCO's standard form, fully executed by Shrewsbury, but NEPCO has returned it unsigned.

It is important to again call attention to the fact that Shrewsbury's contract with Mass. Electric, executed in 1955, was for an original five-year term beginning February 15, 1956 and ending February 14, 1961, subject to automatic renewal for an additional five years, unless six months prior to expiration, written notice was given by either party "that it does not care to have the contract continue after expiration date." Shrewsbury's unsuccessful efforts to purchase its power requirements directly from NEPCO began in 1957 and continued until after the end of the minimum five-year term of Shrewsbury's contract with Mass. Electric.[20]

Shrewsbury's counsel express the view, in which the Examiner concurs, that "it is difficult to conclude from [Shrewsbury's negotiations with NEPCO] that NEPCO was negotiating in good faith."

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[19] As counsel for Shrewsbury point out in their brief, "No other customer receiving delivery at 13.8 kv from the low side of NEPCO's transformers was compelled to pay any surcharge. No other customer was compelled to pay a surcharge related to facilities between the high side of NEPCO's transformers and its so-called 'high tension' transmission lines. Meanwhile NEPCO was delivering energy to other customers at 2.4 kv at the wholesale rate, not only without exacting a surcharge, but actually allowing them to deduct from Rate W–1 the standard transformation discount."

[20] In contending that the Mass. Electric contract is no bar to the Commission's ordering NEPCO to serve Shrewsbury, counsel for Shrewsbury state, *inter alia:*

In 1958, negotiations were had with officers of the New England Power Service Company, which is responsible for rate and contract matters for both Mass. Electric and NEPCO (1 R. 52–3; 3 R. 453). In the course of these negotiations Shrewsbury made clear in writing that it did not care to continue contractual relations with Mass. Electric, and the Service Company officials offered to arrange for NEPCO to sell to Shrewsbury irrespective of the contract, albeit subject to an unacceptable surcharge (1 R. 30, 150; Exs. 44, 55).

In 1961, the parties again negotiated, and the Company officials again agreed that NEPCO would sell to Shrewsbury, irrespective of the contract, although likewise subject to an unacceptable surcharge (1 R. 151, Exs. 46, 47).

It has always been the understanding of the parties that any contract with Mass. Electric was no bar to Shrewsbury's receiving service from NEPCO. This is in accordance with the customary practice under which contracts with customers are assigned and reassigned between NEPCO and Mass. Electric as the need appears (1 R. 68, 2 R. 465–6; 3 R. 486–7). Indeed, Shrewsbury's 1929 contract with NEPCO was assigned to Mass. Electric's predecessor when it became an affiliate (1 R. 68).

Similarly, the notice provisions in contracts between NEPCO and Mass. Electric are not enforced. For example, Mass. Electric accepted a rate increase from NEPCO in 1953 without invoking the two-year prior notice provision of the contract (2 R. 437–8).

As Mr. Crabtree's testimony shows, if there were an automatic renewal of the Mass. Electric contract, it happened in the course of the negotiations in which the actions of the Service Company's representatives obviously indicated that any renewal of the contract would not bar Shrewsbury from obtaining service from NEPCO (1 R. 56).

The course which NEPCO followed from 1957 to 1961 in refusing service to Shrewsbury except on its own terms, and thereafter on any terms, protected the business of its affiliate-wholesale purchaser, Mass. Electric, by denying Shrewsbury the advantage it has by virtue of its location and its right to purchase under NEPCO's filed rate of general applicability.[11] NEPCO, by such refusal, discriminated against Shrewsbury by giving preferential treatment to Mass. Electric and other customers purchasing under the W–3 rate. An important part of Commission supervision of NEPCO's activities is to prevent such unlawful discrimination and preferential treatment.

By the initiation of interstate wholesale service and the filing of a rate of general applicability, NEPCO undertook the duty of serving the public within its service area. It cannot lay aside that obligation so voluntarily assumed. Accordingly, that duty must be discharged (*Willmut Gas & Oil Co., et al.* v. *United Gas Pipe Line Co.*, 12 FPC 132, 143).

Section 202(b)

In the passage of the Act Congress recognized that there is a field, namely, that covered by Section 202(b), in which the Government rightly intervenes to advance the public interest. This section enables the Commission to exert its authority to assure that available opportunities for more appropriate service will not be missed by those constantly looking for means of improvement and lower cost. By authorizing the Commission to diagnose operationally-correctible situations and apply remedies in the interests of fair play and the greatest possible efficiency and economy, Section 202(b) furnishes relief to those persons whose interests coincide with the public interest. It provides:

> Whenever the Commission, upon application of * * * any person engaged in the transmission or sale of electric energy, * * * finds such action necessary or appropriate in the public interest it may by order direct a public utility (if the Commission finds that no undue burden will be placed upon such public utility thereby) to establish physical connection of its transmission facilities with the facilities of one or more other persons engaged in the transmission or sale of electric energy, to sell energy to or exchange energy with such persons: *Provided*, That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel such public utility to sell or exchange energy when to

[11] During the period 1957 through 1961, Shrewsbury purchased all its power from Mass. Electric at 13.8 kv As shown by the following tabulation, if it had purchased this power from NEPCO at the same voltage it would have saved $210,006:

Supplier	Total energy, (kwh) (1957–61)	Total bill (1957–61)	Average rate per kwh (1957–61) (cents)
Mass. Electric	161,414,400	$2,448,853	1.516
NEPCO	161,414,400	2,238,297	1.382
Difference		210,556	0.134

As has already been pointed out, during 1962 Shrewsbury similarly would have saved approximately $45,000 if it had purchased its energy from NEPCO rather than Mass. Electric.

do so would impair its ability to render adequate service to its customers. The Commission may prescribe the terms and conditions of the arrangement to be made between the persons affected by any such order, including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them.

Under Section 202(b) the fundamental issue in this proceeding is whether, in the circumstances of this case, it is "necessary or appropriate in the public interest" that the Commission direct NEPCO "to establish physical connection of its transmission facilities" with Shrewsbury's facilities and "to sell energy" direct to Shrewsbury. As counsel for Shrewsbury point out, "All other criteria of Section 202(b) are met * * *. That is, under the Commission's order, NEPCO would be required to sell to Shrewsbury the same energy it would otherwise sell to Mass. Electric for redelivery to Shrewsbury, and at the same location on its transmission line, and accordingly, this could neither place an 'undue burden' on NEPCO nor 'compel the enlargement of generating facilities' nor 'impair' NEPCO's 'ability to render adequate service' to its other customers."

It is necessary and appropriate in the public interest to order NEPCO to provide direct service to Shrewsbury for the two principal reasons now to be discussed.

(1) Direct service by NEPCO will, at the same time it is increasing NEPCO's revenues, reduce the cost of electricity to Shrewsbury and its customers and help them help themselves in achieving savings which reasonably may be expected to give the economy of the area—which may be further diversified when the climate is right—a stimulating shot in the arm by fostering the conditions in which greater prosperity may thrive and in which consumers are likely to enjoy the benefits of more comfort, convenience and better living. These are ends favored by, and which promote the interest of, the public.

Shrewsbury, in facing and solving the problems of its area, aims to exploit fully the advantages that lower cost power will offer and it is probable that no other single factor or accomplishment could be anticipated to further area progress faster. Shrewsbury wants to move ahead for it knows that any business that doesn't go ahead goes back. The day should never arrive when a public utility says: "What I Have Is Good Enough For Those I Serve." There is, therefore, a real need for NEPCO's energy to arrive in Shrewsbury's system on the most direct route and under the uniform W–3 rate.

Pertinent here is the decision in *Kentucky Natural Gas Corp.* v. *Federal Power Commission*, 159 F. 2d 215, 218–219, in which the Court, in reviewing the action of the Commission in a case arising under Section 7(a) of the Natural Gas Act (that being the equivalent of Section 202(b) of the Federal Power Act) said: [22]

> * * * We believe that the fact that the construction of the proposed new facilities at an estimated cost of $182,900 would eliminate the necessity of the expenditure of at least $350,000 by Central Illinois for otherwise necessary improvements and additions to its present facilities, and the fact that the proposed new facilities will enable it to obtain its gas requirements for the Mattoon area direct from Panhandle instead of indirectly from Pan-

[22] See also *Home Gas Co.* v. *Federal Power Commission*, 231 F. 2d 253, 256, and the Examiner's subsequent but related decision, 21 FPC 85, 113–119, aff'd 21 FPC 70, 82, 84–85.

handle through Kentucky Natural are by themselves of sufficient controlling importance to justify the ruling of the Commission in granting the certificate of public convenience and necessity to Central Illinois instead of Kentucky Natural, both being otherwise qualified applicants. The elimination of an unnecessary middleman between the wholesaler and the retailer is a material benefit to the ultimate consumer at retail. The basic purposes of the Natural Gas Act is protection of the public interest. * * * While the Commission has no jurisdiction to fix or regulate rates in local or intrastate sales, yet it is obvious that the cost to the ultimate consumer at retail is materially affected by the sales price of the gas from the wholesaler to the retailer, and that a factor materially affecting the cost is entitled to considerable weight by the Commission in choosing between two competing applicants. * * *

(2) The second primary reason why it is necessary and appropriate in the public interest to direct NEPCO to provide direct service to Shrewsbury is that it will eliminate NEPCO's unlawful discrimination against Shrewsbury which is within the ban of Section 205(b) of the Act. Equally applicable here is the Court's assertion in *Michigan Consolidated Gas Co.* v. *Panhandle Eastern Pipe Line Co.*, 173 F. 2d 784, 787, that "Whatever may be the limits placed by the [Natural Gas] Act upon the authority of the Commission in other respects, it is clear that * * * the authority of the Commission, in respect to undue preferences or advantages, is without limitation." The Commission cannot properly perform its duty in this proceeding unless it takes this factor into account and removes the unlawful discrimination. Unless corrected, the treatment Shrewsbury has received at the hands of NEPCO would enable the latter to circumvent the statutory scheme of regulation so that, to borrow the words of the Court in the *Michigan Consolidated* case (173 F. 2d at 789), "the basic purpose of the * * * Act fails of realization." It must be recognized here, as it was in the situation involved in *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, 232 F. 2d 467, 472, that if the Commission fails to direct NEPCO to provide the service requested by Shrewsbury it would be unable to enforce the mandate of Section 205(b), and NEPCO, contrary to the there declared principles, could "(1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service."

While the contention that Shrewsbury purchases its requirements from Mass. Electric under a contract which is not terminable until 1966 has been shown to be untenable, there are additional considerations which ought to be mentioned at this point.

Counsel for NEPCO and Mass. Electric assert that the contract "provides for successive five-year terms, subject to cancellation by either party on six months' notice at the end of each period. The first five-year term began on February 15, 1956, and no advance notice of cancellation being given at the end of the first five-year period, on February 15, 1961 its earliest termination date was extended to February 15, 1966."

This statement of the situation seems to infer that if Shrewsbury hereafter gave timely notice of cancellation it would, on February 15, 1966, be able to begin purchasing its requirements from NEPCO or anyone else of its choice. But no expertise is needed to recognize the obvious, namely, that should Shrews-

bury's request here be denied there is nothing to prevent NEPCO (or other wholesalers attempting to protect private interests of affiliates) from carrying out a repeat performance in 1966. If that happened Shrewsbury would be no better off—without Commission intervention—in 1966 than it was in 1961. Therefore, the Commission may not now ignore, or treat as of little or no significance, the fact that when the critical date of February 15, 1961, rolled around NEPCO failed to step up to and meet its public utility responsibility as a wholesaler.

On February 15, 1961, NEPCO had Shrewsbury at its mercy. For Shrewsbury, on NEPCO's terms, either had to continuing paying Mass. Electric for NEPCO's indirect service or cease its retailing business if it gave the notice of cancellation said to be required. Had Shrewsbury ceased its retailing business it could have been that Mass. Electric would have succeeded to such business. There is, of course, no indication in the record that the inhabitants of the Town desired that to happen. Accordingly, NEPCO's failure of duty left Shrewsbury with no choice but to continue receiving service from Mass. Electric until the Commission applies the correcting remedy.

While counsel for NEPCO and Mass. Electric stress their view that the Shrewsbury-Mass. Electric contract constitutes "a long-term" obligation, it is clear that it was never intended to be such unless the minimum five-year term permitted thereunder, which the Commission is here in a position to enforce, be regarded as "long-term."

One further point of interest here is that while Shrewsbury wants a connection at 69 kv for a number of solid, practical reasons, counsel for NEPCO and Mass. Electric argue that Shrewsbury is "distinguishable" from other municipal lighting department customers of the NEES companies "In just one particular. It is closer to NEPCO's transmission lines." Assuming, *arguendo*, counsel to be correct, it must be remembered that any individual, business or public agency en route to maximum success can reach their destinations quicker and with greater certainty if they make the most of their opportunities. As the Examiner had occasion to state in his decision issued June 4, 1963, and now pending before the Commission in *Turlock Irrigation District and Modesto Irrigation District, Project No. 2299*, 31 FPC 510, "The Districts, which now look to even greater usefulness in the future, have expanded their usefulness over the years by taking advantage of water and power opportunities. In so doing they have followed the fruitful path of raising the horizons of individual and collective progress, playing a full part in the ever-increasing requirements of the area's growing population, expanding economic activity, and rising standard of living" (at p. 544).

Contract To Be Entered Into Between NEPCO And Shrewsbury

While the relations between a public utility (such as NEPCO) and a distributor (such as Shrewsbury) are normally established initially by contract between the parties, with protection of the public interest being provided by Commission supervision of individual contracts, which to that end must be filed with the Commission and made public, it is to be observed that under Section 202(b) the Commission, in directing a public utility such as NEPCO to establish physical connection of its transmission facilities wth a distributor and to sell energy to the latter—

> * * * may prescribe the terms and conditions of the arrangement to be made between the persons affected by any such order, including the appor-

tionment of cost between them and the compensation or reimbursement reasonably due any of them.

Accordingly, under Section 202(b), it is the Commission which possesses the initial rate-setting power, as well as the power to "prescribe the terms and conditions of the arrangement". But since NEPCO is already rendering service to customers of Shrewsbury's classification under a standard form contract and a single tariff filed with the Commission, and in order to avoid discriminatory rates being charged to Shrewsbury, the only reasonable course for the Commission to pursue here is to require NEPCO to render direct service to Shrewsbury at its published W–3 rate now in effect and on the same terms it serves other customers similarly situated. NEPCO therefore may not be permitted to avoid, enlarge or vary either the standard form contract or the W–3 rate.

The connection sought by Shrewsbury is hereinafter discussed (*infra*, pp. 409–412). The Examiner finds that Shrewsbury has fully justified its need and design for a power supply at 69 kv. NEPCO is therefore required to establish a direct interconnection between its 69 kv transmission line A1–B2 and the facilities to be constructed by Shrewsbury, all in accordance with Shrewsbury's proposed Case IA.

Delivery is to be made by NEPCO to Shrewsbury near or at the 69 kv terminal of Shrewsbury's transformers within Shrewsbury's new Worthington Avenue Substation, NEPCO to construct, own and operate all facilities on its side of the delivery point at its expense, and Shrewsbury to construct, own and operate all facilities located beyond the delivery point at its expense. This is consistent with NEPCO's practice of making delivery into its customer's substations even where, in many cases, it is necessary for NEPCO to use the facilities of intervening retail distributors.

It is appropriate that NEPCO construct its portion of the interconnection facilities with a capacity of 30,000 kw. Shrewsbury designed its new Worthington Avenue Substation for an ultimate load of 30,000 kw and located it beneath NEPCO's lines with the concurrence of the latter.

It should be pointed out in passing that Shrewsbury is so anxious to obtain direct service at 69 kv that it is willing, as well as able, to pay the full cost of all facilities. The Examiner, however, determines such payment to be inconsistent with the terms and conditions for sales by NEPCO to other retail distributors.

Shrewsbury should pay for its energy under NEPCO's Rate W–3 with a transformation discount of 12 cents per kw by virtue of the fact that NEPCO will not be required to construct any transformation facilities, but will be making delivery at the voltage of its high-tension line.

Shrewsbury requests that NEPCO be directed to enter into a contract with it for loads up to 30,000 kw from lines A1–B2 to meet Shrewsbury's ten-year requirements. However, its counsel point out that "Shrewsbury is willing to accept a 25,000 kw limitation on its 69 kv capacity if the Commission finds it necessary. The proposed 69 kv connection is economically feasible at 12,000 kw, so obviously, it is feasible up to 25,000 kw, as well as up to 30,000 kw. At 25,000 kw Shrewsbury's eight to ten-year requirements are satisfied."

But as counsel for NEPCO state, "Shrewsbury's request is, in effect, that NEPCO be ordered to earmark or 'dedicate' 30,000 kw of capacity on its A–1 and B–2 lines for the next ten years * * *. Such a 'dedication' is certainly not a feature of the service which NEPCO supplies to any other customer, affiliated

or not". They further point out that for its other customers "NEPCO agrees 'to use all due diligence in maintaining an aggregate capacity of connecting facilities * * * sufficiently in excess of the current demand * * * to allow for normal load growth and the CUSTOMER shall give to the COMPANY (NEPCO) as much notice as possible of any anticipated changes likely to cause the load growth * * * to depart from normal * * *'".

While it appears that NEPCO's present planning now assigns 25,000 kw capacity to the Shrewsbury service at the existing delivery point off the 69 kv transmission line A1–B2, it is clear that the Commission should not require NEPCO to presently guarantee Shrewsbury up to 25,000 or 30,000 kw of capacity. Rather Shrewsbury should go through the normal process required of others in notifying NEPCO of its requirements on a more or less current basis and obtain increases in the usual and accepted manner.

In two-part rate making stability begins at the bottom, namely, with the retailer, not at the top or some point in between. Such rate making is geared to capacity which customers predetermine will be required and available for their immediate future use, the conditions created resulting in the most intensive use of constructed facilities of a supplier so that every segment depending thereon will be benefitted through the elimination of the waste of idleness. The objective is year-to-year financial stability in meeting the supplier's operating necessities in a financially sound and orderly manner (see Examiner's decision, 15 FPC 700, 713–726, aff'd on review by the Commission, 15 FPC 730, and by the Court, *Cincinnati Gas & Electric Co., et al.* v. *Federal Power Commission*, 246 F. 2d 688). If Shrewsbury paid only the W–3 rate while having idle capacity held in reserve for its future use it would be paying NEPCO less than the cost incurred by the latter and attributable to Shrewsbury. In these circumstances, the only way NEPCO could be made whole would be for its other customers to pay more than the cost of service attributable to them. Within reasonable limits, the cost of service should be assessed on the basis of customer-responsibility therefor.

While the Examiner disagrees with Shrewsbury's request that the Commission direct NEPCO to enter into a contract with Shrewsbury for loads up to 30,000 kw from lines A1–B2, this does not mean that when Shrewsbury has a demonstrated need for 30,000 kw or any lesser amount that it will not be made available to it by NEPCO. Any further plans NEPCO makes will necessarily have to be related to Shrewsbury's requirements regardless of their magnitude, just as they would be related to the existing arrangement if it was continued. It is the generally acknowledged obligation of a wholesaler, of course, to make provision for increased needs of its resale customers prior to the time those needs are anticipated to arise. This is clearly recognized by NEPCO for in providing service to its W–3 customers, it agrees "to use all due diligence in maintaining an aggregate capacity of connecting facilities * * * sufficiently in excess of current demand * * * to allow for normal growth." The Examiner assumes that the fact that NEPCO has excess capacity on its A1–B2 kv line (which Shrewsbury seeks to have reserved for its future use), and the further fact that NEPCO will soon have coming on its system still another 250,000 kw generating unit (*supra*, ftn. 3), are both related to the contract obligation referred to. But such excess capacity as NEPCO has and will have is related to its total service obligations, not just Shrewsbury's load. Should NEPCO's

obligation be breached or dilatory tactics be employed as Shrewsbury thinks might happen (see *supra*, pp. 399, 400; *infra*, ftn. 30) prompt relief should be sought from the Commission and the Massachusetts Department of Public Utilities.[29]

Facilities Now Used And To Be Used To Serve Shrewsbury

The Town of Shrewsbury is situated midway between two important junctions on NEPCO's transmission network, the Pratts Junction switching station to the north and Millbury dispatching station and switching station to the south. This line can be fed from both ends. The tap at NEPCO's Shrewsbury substation as now constructed is such that a fault in the transmission line, either north or south of Shrewsbury, will interrupt the flow of 69 kv current. For a cost of about $100,000 a looped tap can be installed so that the flow of 69 kv current would not be interrupted in such case. The looped tap, proposed herein for future direct service by NEPCO to Shrewsbury, accords with modern engineering practices of backing up transmission with transmission. That is, if the sector of the transmission line feeding Shrewsbury at any given moment goes out, the other sector of the line is automatically switched in to take over the load. In effect, there are two separately fed transmission lines terminating at the looped tap on the 69 kv line.

Before proceeding further it may be pointed out that in power system operations there is nothing unusual about tapping a high tension system to serve an individual customer, including a municipality. Numerous instances of this occur on systems of the NEES companies. There are, of course, literally thousands of individual tap-offs on other systems located throughout the Nation. Accordingly, the individual tap-off of NEPCO's A1–B2 lines sought by Shrewsbury is well within generally accepted practice and the record amply demonstrates that, insofar as NEPCO's direct delivery to Shrewsbury is concerned, it is economically feasible and physically practicable.

Under the arrangement now in effect, taps from NEPCO's two 69 kv lines running between Pratts Junction and Millbury lead to a bank of three 69/13.8 kv transformers owned by NEPCO. The delivery point to Mass. Electric is at the low voltage terminals of these transformers, which are operated in parallel and lead to a 13.8 kv bus from which delivery is made into Shrewsbury's feeder lines. This bus is also connected to Mass. Electric's 13.8 kv cables which carry energy into Worcester, a major industrial city, for sale to Mass. Electric's retail customers. The 13.8 kv cables terminate at Mass. Electric's Grafton Street Substation in Worcester where they interconnect with Mass. Electric's Worcester system.

The normal flow of current is into Shrewsbury's system and separately into Mass. Electric's Worcester system. However, the circuits may be switched so that the 69 kv transformation line A1–B2 is disconnected and the flow of current is out of Worcester and into Shrewsbury's system, all at 13.8 kv. NEPCO claims that these cables provide back-up for the Shrewsbury service. Shrews-

[29] As staff counsel further point out: "Indeed, the Town might obtain relief by an application to the Massachusetts Department of Public Utilities under section 92A of chapter 164 of the Laws of Massachusetts. *Boston Real Estate Board* v. *Department of Public Utilities*, 334 Mass. 477, 136 N.E. 2d 243 (1956); and *Kargman* v. *Department of Public Utilities*, 334 Mass. 497, 136 N.E. 2d 255 (1956)."

bury considers them wholly inadequate for this purpose.[24] The Staff does not appear to be fully satisfied that the 13.8 kv lines provide secure back up since, at one point in their brief, it refers to the claimed "back up" in quotes.

Both the 69 kv transmission line of NEPCO and the underground 13.8 kv distribution lines of Mass. Electric are in an unimpressive condition. The record shows that unscheduled outages due to faults on these lines during the last ten years (1953–1962) total as follows:

	Number of outages	Duration of outages (total)
Mass. Electric's underground 13.8 kv	12	220 hrs. 32 min.
NEPCO's 69 kv transmission line A1–B2	89	12 hrs. 52 min.

However, as the Examiner has noted, because the 69 kv line is fed with power from both ends, a looped tap sectionalizes it into two lines and thus firms up

[24] Shrewsbury argues that the existing cables, which range in age from 30 to 60 years, from Grafton Street to Shrewsbury substation do not have sufficient capacity or reliability to make the firming capacity in Mass. Electric's Worcester district available to Shrewsbury in the event of an outage of NEPCO's 69 kv lines. It is pointed out that these cables are not firm in themselves.

NEPCO and Mass. Electric make no claim that the cables are firm in themselves. Their Senior engineer explained that a "firm" interconnection exists where a load is fed from a combination of independent sources, and there is a high probability against simultaneous outage of all sources. Mass. Electric's 13.8 kv cables are but one of the independent sources of supply to the Shrewsbury substation, and therefore it is urged that there is a high probability against a simultaneous outage of these cables and NEPCO's 69 kv lines. The carrying capacity of the Mass. Electric cables were estimated by Mass. Electric's witness as 12,300 kv for each cable under the winter conditions that prevail at the time of Shrewsbury's peak, and 11,300 kv under summer conditions when, as Shrewsbury indicates, its requirements are less. The combined capacity of the two cables are, therefore, said to be 26,400 kv at the time of peak demands, and 22,600 kv during the summer.

Thus NEPCO and Mass. Electric urge that they be permitted to serve Shrewsbury's growing load from a combination of the 69 kv and 13.8 kv sources. They count on the probability that both unfirm sources will not fail at the same time. Their engineering witness predicted the probabilities would carry Shrewsbury for six more years. Counsel for Shrewsbury, in their reply brief, state this prediction "was wrong" because the probabilities "held up for less than two months. On September 9, 1963, both sources were cut off and Shrewsbury was without service for one hour." "Although power was restored after one hour, the so-called 13.8 kv 'back-up' was out for 55 hours." Supporting correspondence as to the outage is appended to the reply brief of counsel, but because the outage referred to occurred after the record was closed it does not constitute part of the evidence. The Examiner decides this case in Shrewsbury's favor on the basis of the record and without regard to the outage that occurred after the record was closed. However, should the Commission desire the correspondence to be made a part of the record it could be accomplished by simply reopening the record for this limited purpose.

The dependence upon a combination of the 69 kv and 13.8 kv sources will be avoided by NEPCO's expenditure of approximately $100,000 for the looped circuit breaker tap on the 69 kv lines, which would isolate Shrewsbury from Mass. Electric's underground cables. It would seem that Shrewsbury's independent 69 kv supply would be of some advantage to Mass. Electric, for it would free the existing NEPCO/Mass. Electric facilities for full use by Mass. Electric if it continues to regard the 13.8 cables as providing a satisfactory link to the Worcester retail area. Moreover, Case IA has been designed so that the existing Mass. Electric station receives the benefit of the looped tap.

Counsel for Shrewsbury assert that "Shrewsbury does not want to gamble on weak probabilities; it is ready to spend whatever is necessary in order to secure firm operating conditions, and Shrewsbury believes that, in the long run, this is the more economical policy." There can be no question but that Shrewsbury operates economically and efficiently, with a debt-free plant. It appears that it does not hesitate to make capital expenditures when added efficiency and reliability of service are involved.

the supply, so that the 13.8 kv underground connection can be severed. This is precisely what NEPCO proposed when it offered to serve Shrewsbury in 1958 at 13.8 kv if Shrewsbury would pay not only the uniform rate but also an unlawful surcharge. The old 13.8 kv underground cables have now aged six more years.

As far back as 1958 Shrewsbury's position has been that the physical connection between NEPCO's facilities and those of Shrewsbury include the affirmative step of terminating connections with facilities of Mass. Electric. The method now proposed by Shrewsbury for the establishment of the desired connection and the elimination of the connections with Mass. Electric are embodied in the testimony of William E. Trommershausen of R. W. Beck & Associates, who appeared as expert witness for Shrewsbury.

Witness Trommershausen set 30,000 kw at 69 kv as representing the load condition which could reasonably develop within the next ten years. He designed a connection capable of receiving that volume from NEPCO's A1–B2 lines and recommends transformer facilities capable of providing 20,000 to 25,000 kva firm capacity.[25] The two plans presented by the witness for making the connection are for convenience labeled Cases IA and IIA [26] and are identical as to major electrical features. The total capital cost of making these connections is: Case IA, $235,000; Case IIA, $267,000.

The significant difference between the two plans is that under Case IA the looped tap would be placed in Shrewsbury's substation, while under Case IIA the loop would be placed in NEPCO's substation.

The tap to be made on NEPCO's 69 kv line is at the point where it crosses over Shrewsbury's new $400,000 Worthington Avenue Substation. The plan utilizes 3-winding transformers (69 kv/13.8kv/4.16 kv) to be located in Shrewsbury's Substation to enable Shrewsbury to draw both of its distribution voltages from the same transformer bank.

Case IA, which is approved by the Examiner, leaves the existing NEPCO/Mass. Electric facilities undisturbed so that Mass. Electric can continue to take power into Worcester to the full capacity of those existing facilities if and when needed.

Although Shrewsbury recommended Case IIA as the preferred solution in its opening brief, this assumed that NEPCO would prefer to locate the looped tap

[25] As Staff counsel point out, "NEPCO, although it took the position that service direct to Shrewsbury would be uneconomic * * *, did outline briefly in its direct testimony the installation of facilities that would be required to supply Shrewsbury from the existing 69 kv source as an isolated New England Power Company load. * * *. This installation would involve two 25,000 kva three-phase, two-winding, 69/13.8 kv transformers and three oil circuit breakers. The present tap of 69 kv lines A–1 and B–2 would be retained * * *. Under this plan, service to Shrewsbury would be isolated from Mass. Electric facilities. The company estimates that the total investment required for this installation would be $340,000". As they further point out, "NEPCO's $340,000 plan would be disadvantageous to both NEPCO and Shrewsbury. This is the most costly of the plans proposed on the record. Moreover, it would simply continue service to Shrewsbury at 13.8 kv * * *. The installation would require Shrewsbury to invest $80,000 in facilities to connect its new substation with the installation of NEPCO * * *. It is obvious that this installation would not provide the capabilities of service at 69 kv, and would provide no greater reliability than the present service arrangements."

[26] The witness actually described four proposals labeled Cases I, II, IA and IIA, but in his rebuttal testimony he substituted plans IA and IIA for those contained in plans I and II in order to meet criteria for a firm source of power set forth in the direct testimony of NEPCO's Senior Engineer who had testified: If NEPCO "were required to supply Shrewsbury * * * from the 69 kv source as an isolated (NEPCO) load entirely independent of the existing Massachusetts Electric 13.8 kv facilities, not not only would two separate transformers be required for the Shrewsbury load, but in addition, one of the 69 kv lines would need to be looped with 69 kv oil circuit breaker switching in the same manner as at Glendale."

in its substation. Shrewsbury now says it "will be satisfied with and will accept either Case IA or IIA." Shrewsbury's payment for its portion of the facilities will be made out of current assets.

The Examiner's approval of Case IA is based upon the fact that it is cheaper; will do the job; and coincides with Shrewsbury's present desire. But although Shrewsbury will place this plan into effect initially, it need not seek further Commission authorization for any future adjustment of its substation equipment to meet situations encountered in connection with its retail business.

The $235,000 cost of Case IA includes everything necessary to get the power down to both of Shrewsbury's distribution voltages of 13.8 kv and 4.16 kv. It provides energy to the Worthington Avenue Substation and gives Shrewsbury a new, modern supply to take care of ten years of estimated growth. It also allows for flexibility in the event it becomes desirable for Shrewsbury to transmit power at 69 kv within the Town limits. In this regard, the Manager of Shrewsbury, in explaining continuing efforts to improve efficiency, reduce costs, and share fairly in the economies of low cost power sources, testified:

> We anticipate a continuing load growth for Shrewsbury for the foreseeable future. * * * While it is difficult to determine the exact percentage of future growth, it is clear that such growth will occur. The larger our future load, the greater will be Shrewsbury's savings from its direct Nepco connection. The proposed 69 kv connection is designed to accommodate an ultimate load of 30,000 kw. Thus, Shrewsbury can more than double its purchases of electricity, without any substantial increase in its facilities expense. Therefore, it is my opinion that in the years ahead, the annual savings to Shrewsbury will well exceed the $53,000 of indicated 1964 savings.

Stated differently, NEPCO's lower cost service at 69 kv, coupled with Shrewsbury's surplus capacity, will transform Shrewsbury's business into a bargain basement for its customers, for the greater their use of energy the less will be the unit cost thereof. This result will undoubtedly be looked upon by Shrewsbury's customers with avid interest because it is to their benefit and arises out of changes of the type going on throughout the country as localized areas with economic bottlenecks press their efforts to achieve economic growth, higher standards of living, and make needed contributions to the Nation's economy. Larger percentage gains in the use of electricity are, of course, most easily gained in areas where prior use has been depressed by high cost (see *infra*, p. 416, note 31).

The Commission's Staff accepts the connection embodied in Case IA which it finds engineeringly adequate and economically feasible, although it recommends it only as a second alternative because, basically, it assumes that the capital cost of this 69 kv connection will exceed those involved in continuing the existing 13.8 kv. connection. The Staff's position is erroneous[37] and its position in support of continuing the 13.8 kv connection is hereinafter further considered and rejected (*infra*, pp. 412–414).

Not only can the proposed Case IA facilities be constructed for $235,000, but their construction will obviate the need for Shrewsbury to invest at least $54,000

[37] The Staff prefers to continue the existing 13.8 kv connection which it recognizes will, at best, take care of Shrewsbury's growth only until 1968. It bases this recommendation on the erroneous assumption that 13.8 kv service involves an additional capital cost of only $138,000 and considers that an immediate savings of $97,000 is sufficient to decide the question. In their reply brief, counsel for Shrewsbury make a showing to the effect that the additional capital cost of providing adequate service at 13.8 kv with the existing facilities may reasonably be expected to be at least $250,000, which is greater than the $235,000 cost of the new 69 kv connection.

in a new 13.8/4.16 kv transformer, which it must do soon if it continues to receive 13.8 kv service.

Moreover, in considering the feasibility of the net $181,000 ($235,000–$54,000) investment required under Shrewsbury's Case IA, it is significant to point out that it could cost NEPCO and Mass. Electric about $158,000 in the coming years to continue service through the existing NEPCO/Mass. Electric 13.8 kv facilities. All parties agree that the continued 13.8 kv service requires installation, in about two years, of an additional 13.8 station at an estimated cost of $58,000. This would be required in order to handle the increased Shrewsbury loads through two separate 13.8 kv sources or feeders, and it is contended that this would make Mass. Electric's underground cables available to back-up Shrewsbury's increasing load. NEPCO and Mass. Electric believe that the facility would then be adequate until 1968. Under this plan NEPCO's 69 kv line would not have to have a looped tap. This would leave Mass. Electric's underground 13.8 connection to provide back-up for Shrewsbury's service. If the cables comprising the underground connection were later found to be unsatisfactory, it appears that NEPCO would then have no choice but to loop the existing 69 kv connection to make it firm, in order to provide a dependable source of power to Shrewsbury. This would cost an estimated $100,000 and is the loop proposed in Case IA approved by the Examiner.

So in evaluating the relative merits of the plan discussed in the preceding paragraph with Shrewsbury's proposals, one should take into consideration the possible expenditure of $158,000 as against spending $181,000 for a new, modern installation, with capacity to take care of Shrewsbury's reasonably foreseeable needs for some ten years.

Counsel for NEPCO and Mass. Electric make the unwarranted claim that neither of Shrewsbury's interconnection plans "are supported by substantial evidence on the record adequate to justify the Commission in adopting and ordering the establishment of" either. Having so contended, they then proceed to assert that "The record contains no other proposals at all for the establishment of any engineeringly sound and economically feasible interconnection between Shrewsbury and NEPCO which meets the objectives for which Shrewsbury has petitioned."

Assuming, *arguendo*, that Shrewsbury's proposals were not part of the record, and assuming further that no other proposals were set forth therein, NEPCO and Mass. Electric still would be unable to clamp the lid on the merits of this case at a time when Shrewsbury is going down the home stretch. The reason for this is that this is a discrimination case (*supra*, p. 386), concerning which the Commission's power is without limitation (*supra*, p. 403). Accordingly, all the Commission need do is simply direct NEPCO to take whatever actions are necessary to remove the discrimination being practiced against Shrewsbury. It would seem abundantly clear that such a directive would not tax NEPCO's ingenuity because the type of interconnection Shrewsbury seeks is comparable to that proposed by NEPCO in 1958 when it coupled its proposal with an unlawful surcharge. As counsel for Shrewsbury explain: Because "the 69 kv line is fed with power from both ends, a looped tap sectionalizes it into two lines and thus firms up the supply, so that the 13.8 kv connection can be severed. This is precisely what NEPCO proposed when it offered to serve Shrewsbury in 1958 at 13.8 kv". What NEPCO conceded it was able to do in 1958 with a surcharge it should now be able to do pursuant to a general directive of the Commission.

In the view of NEPCO's Senior Engineer, a proposal like Shrewsbury's recommended interconnection is "physically, or electrically * * * possible" but he considers it "uneconomic". His position, however, rests upon an engineering evaluation which fails to give effect to the full size of the public interest involved.

This case demonstrates that there is more than one type of good engineering, the one approved herein representing the broader view that the Commission must take if rights are to be protected and the greatest use of electric energy is to be encouraged.

Shrewsbury's investment, like the $100,000 NEPCO will incur, will be recovered through rates charged to uncomplaining customers. On the basis of Shrewsbury's 1962 sales alone, NEPCO's revenues will be increased by some $44,000 annually, so that within two years or less it should recover not less than the total of its additional investment and make possible a more intense use of its facilities through Shrewsbury's increasing sales. Shrewsbury, on the other hand, will not only save some $45,000 annually on the basis of its 1962 takings, but will be in a much improved position to better the economy and conditions in its service area, it having been removed from Mass. Electric's restrictive zone of influence.

Moreover, to contend that Shrewsbury's proposal is "uneconomic" overemphasizes the value of one or a limited number of outlets, or tap-offs, as contrasted with the benefits inevitably flowing from the greatest possible number contributing to increased business and sales. Many imposing midtown bank structures today are something of status symbols which probably cannot be afforded without the large and ever increasing number of branches which make the status symbols possible. The experience of our most flourishing institutions, chain stores, etc., tells the consistent story that the larger the number of outlets the greater is likely to be the overall success of the enterprise and the more satisfied the consuming public which gives its patronage when what is sold is placed within their financial reach. Such businesses seek the largest possible number of outlets even though the cost of many structures far exceeds the cost of a few. The reason for this is that the increased business and revenues generated by the many more than justify their cost. The Examiner believes that NEPCO's direct service to Shrewsbury will serve as another outstanding case in point.

There are some actions that have to be taken by a regulatory agency for the good of a community, area or the country as a whole regardless of how it may affect private interests. In the instant proceeding it is necessary for the NEES companies to pay the "price" (of direct service by NEPCO) for the sake of the future as well as the present. This does not, however, represent Commission management of the NEES companies; rather "it is regulation by the Commission contemplated by the Act" (*Northern States Power Co.* v. *Federal Power Commission*, 118 F. 2d 141).

Position of Commission Counsel

The position of Commission counsel, first announced in their brief, represents a proposed solution not contemplated by the direct case presented by Shrewsbury nor the defense presented by NEPCO and Mass. Electric. Nor does it accord with the Examiner's disposition herein.

Notwithstanding the lack of Commission authority over Shrewsbury (*supra*, p. 395), and the further fact that those constituting the management of Shrews-

bury are the directors of their own destiny, having already made a rather enviable record (*supra*, p. 389 note 12), the Staff constitutes itself as Shrewsbury's planning agency and, although realizing that the existing situation "is inimical to the public interest", make an oblique turn and conclude that the 69 kv service flowing through NEPCO's high tension lines is not the "preferable" service for Shrewsbury.[28] They further conclude that the existing 13.8 interconnection, which brings about a transformation from 69 to 13.8 kv, is adequate for service through 1968. Counsel therefore recommend that NEPCO be ordered to provide service to Shrewsbury over the existing facilities owned by Mass. Electric; that the Shrewsbury-Mass. Electric contract should be superseded; and that Mass. Electric should be compensated for the use of its facilities by an annual payment of $11,620, such payment being based on an allocation of Mass. Electric's investment in substation equipment between the Shrewsbury load and the load represented by Mass. Electric's ultimate customers.[29]

The Staff's recommendation breeds rigidity and inflexibility which have a tendency to lead to stagnation. It is therefore rejected.

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[28] Counsel reach their conclusion in the face of their expressly stated views (1) that the proper disposition of this case requires the use of traditional regulatory concepts; (2) that there is "very little engineering or economic justification for the interposition of Mass. Electric between Shrewsbury and NEPCO"; (3) that the public interest will be served by a reduction in Shrewsbury's purchased power costs; (4) that "where management's conscious design [of NEPCO and Mass. Electric] creates hardships on some consumers and favors others that management has created a situation which is inimical to the public interest"; (5) that any increased costs to be absorbed by other Mass. Electric resale customers, in the event Shrewsbury purchases its requirement from NEPCO, will be *de minimis*; and (6) that "Mass. Electric's present service to Shrewsbury is inadequate because of the artificial market arrangement which arbitrarily assigns Shrewsbury to Mass. Electric. The existing arrangement prevents the Town from offering promotional rates for househeating and all electric living which access to NEPCO's rates permits Mass. Electric to offer to its retail customers."

The Staff believes that the public interest will be served by a reduction in Shrewsbury's purchased power costs, provided no offsetting harm will accrue to the NEES companies and their customers.

[29] Commission counsel attempt to justify the annual facility payment of $11,620 on the theory that it would represent a "payment to Mass. Electric for the use of its intervening facilities" and that such a "facility charge is consistent with Mass. Electric's present practices in dealing with NEPCO's resale customers." In this connection they point out that "NEPCO provides deliveries to both Mass. Electric and the Narragansett Electric Co. at the low voltage terminal of NEPCO's Mink Street substation, Seakonk, Massachusetts (NEPCO Rate Schedule FPC No. 118, Exhibit 27 and NEPCO Rate Schedule FPC No. 106, Item H) Narragansett pays Mass. Electric an annual facility charge of $12,012 (Mass. Electric Rate Schedule FPC No. 30) for the use of the Mass. Electric facilities in transmitting NEPCO's deliveries to Narragansett from the Mink Street substation to the Rhode Island/Massachusetts boundary."

A reading of pages 12 and 13 of the Staff's main brief indicates that their recommendation may be controlled to some extent by failure to recognize an important difference—particularly insofar as this case is concerned—between the authority of the Commission under Section 202(b) of the Federal Power Act and that which it may exercise under Section 7(a) of the Natural Gas Act. Whereas Section 7(a) prohibits the Commission from compelling the enlargement of a natural gas company's "transportation facilities", Section 202(b) places no restriction upon the Commission as to a public utility's transmission facilities. It only withholds "authority to compel the enlargement of generating facilities" (see *supra*, p. 401).

Concerning the Commission authority under Section 7(a) the Examiner invites attention to *Michigan Consolidated Gas Co.* v. *Federal Power Commission*, 283 F. 2d 204, 221, footnote 46; *Michigan Consolidated Gas Co.* v. *Panhandle Eastern Pipe Line Co.*, 173 F. 2d 784, 788; *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, 204 F. 2d 675, 683.

What Shrewsbury is trying to do is to prepare for the future with the best available tools—which are readily at hand. The free responsible individuals comprising its management desire to make the most of their opportunities. They believe that direct service by NEPCO at 69 kv is the mainspring of their future progress and that it will lead them to their goal sooner and with greater certainty.

In Shrewsbury's view the Staff's proposal can in no sense be a cure but only a frustrating palliative which fails to have the outlook of those having the responsibility and wanting to do the job. While it is one thing for the Staff to conclude that Shrewsbury can get along a while longer with 13.8 kv service, coupled with an annual facilities payment not contemplated by NEPCO's W-3 rate, it is quite another for Shrewsbury's management to convince additional industry to locate in the Town. Conviction in this connection is best likely to succeed by taking firm and positive direction behind adequate lead time and assured resources which induce and control decision-making.

Shrewsbury has progressed to the point where it is better able than ever to meet customer needs. There is, however, still much it can do to expand its services which are far too valuable to its area for it to let up on anything. It wants the elbow room 69 kv service provides, it having good reason to believe that direct 69 kv instead of indirect 13.8 kv indirect service will give it a running start by helping to create the climate in which it can move resolutely and quickly with a "bird in hand". It does not care to become entangled, as it might under the Staff's recommendation, in further and prolonged proceedings and delays in which opportunities are likely to vanish forever.[20]

As the Examiner has already pointed out (*supra*, p. 384), the preferred authority on electricity-at-work in Shrewsbury's service area is its management. That management knows that adequate electric service, like gold, is where you find it. Not doing as well as it believes it can, it sought, as anyone would, an established wholesaler transmitting and selling 69 kv electric energy. NEPCO, a wholesaler with 69 kv service staring Shrewsbury in its face, has such service arriving in Shrewsbury. The only difficulty—which the accompanying order removes—is that it is now arriving at the wrong place to meet what Shrewsbury wants and is willing to pay for. To borrow the language in *Village District of Belmont* v. *Laconia Gas and Electric Co.*, 1925C PUR 349, 351 (N.H.P.S.C. 1924), "The utility cannot question the motive which prompts a consumer to desire service of it in preference to obtaining it from some other source. The point is that the one desiring service is willing to meet the reasonable terms of the utility and that, therefore, it is the duty of the utility to furnish it."

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[20] Staff counsel, in discussing prior relations of Shrewsbury with NEPCO and Mass. Electric, point out that "in the past, in negotiating for improvements in service, Shrewsbury has met unfavorable responses from Mass. Electric and NEPCO. In this connection Shrewsbury states that it tried unsuccessfully for seven years, from 1952 to 1959, to obtain conversion of Mass. Electric's service from 2.4 to 4.16 kv. It obtained this necessary conversion only by purchasing the 13.8/2.4 kv transformers in the substation from Mass. Electric for $47,000 and by making the conversion itself at a cost of less than $500 * * *. In the same way Shrewsbury tried for four years, from 1952 to 1956, to obtain service at 13.8 kv and succeeded only by signing a new contract that included a surcharge of $712.50 a month * * *. More recently, in 1958 and again in 1961, NEPCO agreed to provide service direct to Shrewsbury at the "W-rate", then in effect, but these negotiations broke down because of the delaying tactics on the part of NEPCO."

Additional Contentions of NEPCO And Mass. Electric

Counsel for NEPCO and Mass. Electric make several contentions not considered and disposed of hereinabove, but which will now be considered.

(1) The first contention reflects the bankruptcy in an appropriate basis for the denial of Shrewsbury's request. The contention made is that Shrewsbury is not concerned with "the probable impact of the present case as a precedent for Mass. Electric's other resale customers." This contention, while lacking the support of any evidence indicating that other municipalities are similarly situated to Shrewsbury and intend to seek comparable relief, clearly recognizes Shrewsbury's right to direct service from NEPCO but seeks to have it denied because the Commission, in the performance of its positive duties, might cause others to gain or perfect their legal rights and thereby provide wider and greater benefits in the use of electric energy.

The consideration suggested by counsel is nowhere in the Act made a standard for granting relief under Section 202(b). Indeed, if followed it would defeat, in the most effective manner, the whole purpose of the Act to provide equal and just treatment to all. Shrewsbury's rights, therefore, are not made to depend upon the probable impact of this decision upon others.

The Commission's jurisdictional orbit is delineated by what is necessary and appropriate in the public interest. When those needing assistance give the Commission better reasons for what ought to be done, than public utilities give for what is being done, the requested improvement in service should be ordered. Accordingly, contrary to the views of counsel, the granting of relief herein, rather than being viewed as a cause for alarm, should be regarded as an opportunity for achievement. Prosperity at the consumer level gives impetus to prosperity at all other levels (see *supra*, pp. 389, 390–397).

The lack of merit to the contention made will be readily recognized by anyone familiar, as the management of Shrewsbury is, with what has transpired in the South's TVA area and the seven-state Pacific Northwest power pool area. There retailers, as well as many wholesalers, having a choice, when their contract terms with old suppliers ran out, switched to new and cheaper sources of supply. They did this in the exercise of their free choice and without severance damage payment. They also did it without permanent damage to their old wholesalers who simply rearranged and improved their operations in a manner suitable to care for the steadily increasing requirements of their remaining customers and the many new customers gained, particularly large industrials, who were induced to locate in the booming areas. The end result has been that the old wholesalers, together with the customers they lost in the process to modern, better equipped new wholesalers, are now all more prosperous than at any time in their history. Thus when NEPCO and Mass. Electric make many of the contentions they have made in this proceeding, such contentions, while they may appear "potent from the standpoint of [those companies], they do not avail too much from the standpoint of general regulation and the public interest" (*Mississippi River Fuel Corp. v. Federal Power Commission*, 232 F. 2d 619, 624).

It is not amiss to point out here that some of the public utilities in the New England area have lagged behind the truly outstanding accomplishments of

the power industry as a whole."[21] Perhaps the situation in New England has resulted in large measure from a philosophy, expressed by counsel for NEPCO and Mass. Electric at the hearing, of getting "in Yankee Land, the last penny of our investment out before you give [what you have] up." In any event, the industry as a whole has historically doubled—its capacity, its production, and its sales—every ten years, this being a record of which it is justly proud. There is, however, no apparent reason why, because of the exploding population, rising economy, more efficient capacity, possibilities for further interconnections, and the ever present need for strong defense readiness, it cannot and will not be accelerated even more. Another factor having a prodding effect is that other fuels are reaching out to challenge. For these and other reasons, the top position that was not easily won by the industry may not, in any section of the country, be calmly enjoyed.

(2) As has been pointed out (*supra*, fitn. 2), NEPCO now makes wholesale sales for resale to two non-affiliated customers, the Fitchburg Gas and Electric Light Company and the Town of Littleton, New Hampshire. Counsel for NEPCO and Mass. Electric seek to have such sales treated as of no significance by urging that "Littleton simply has no other source of supply (aside from its own small hydro plant) and for Fitchburg the same is true as a practical matter * * *. However, the fact that these peculiar situations have become embedded in NEPCO's scheme of operations is no basis for the addition of another exception".

NEPCO can no more be permitted to refuse service to Shrewsbury than the latter could be permitted to refuse reasonable service to any person demanding it in its service area. Both occupy privileged positions as utilities and the public has need of the service they render. The contention of counsel therefore lacks merit because it amounts to no more than a claim that NEPCO, contrary to a principle adhered to by the Supreme Court (*supra*, p. 398), should be permitted to "pick and choose" its customers.

If NEPCO can sell, as it does, to Littleton at Rate W–3, with a transformation discount, and operate some ten miles of 34.5 kv line for the sole use of this customer one-fourth the size of Shrewsbury, it should be directed to sell to

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[21] Chairman Joseph C. Swidler of the Federal Power Commission, in an address to the Electric Council of New England entitled "Goals For The Electric Power Industry" (Boston, October 10, 1962), noted that "New England is still an underdeveloped power market", and the "pace of growth in this region has not matched the national average" although per capita income is higher (mimeo p. 8). He noted also that "The low level of use in New England is accompanied by a relatively high level of rates" with Massachusetts residential rates being second highest in Continental United States (mimeo p. 9). If New England fuel prices were brought down to the national average, New England rates would nevertheless be "well above the national average" (mimeo p. 10). He further stated:

> * * * New England in the past has built and still relies on too many small and inefficient generating units and on too few of the large, low cost units (mimeo. p. 12).
>
> * * * * * * *
>
> The evidence suggests that New England's electrical progress is restrained by the chain of high costs, which in turn leads to high rates, which delays growth of energy use and thus tends to keep costs high. The challenge to New England power leadership is to break away from this chain to what I might call the wheel of progress—low costs which make possible low rates and high use and thus contribute to further cost reductions (mimeo pp. 14–15).

Among the remedies he recommended were:

> * * * every stimulus should be given to load development now by all known promotional means. For example, it costs very little to offer substantial rate inducements for usages which are still largely nonexistent. Any increment above out-of-pocket costs for these new loads will make some contribution to net income, and as more efficient capacity is added to the system, these loads will become increasingly profitable (mimeo p. 17).

Shrewsbury (which with NEPCO's concurrence has constructed its new $400,000 substation directly under NEPCO's transmission lines) at Rate W–3 without any additional charges.

The Examiner observes in passing that there is no indication that NEPCO's service to Littleton and Fitchburg has generated any alarm of the kind NEPCO and Mass. Electric speculate might occur if the relief requested by Shrewsbury is granted (see *supra*, p. 415). Nor does it appear NEPCO's service to its many large industrial customers have been the cause for any such alarm.

(3) Counsel for NEPCO and Mass. Electric point out that this "case involves two of the major companies of an integrated holding company system." This, they say, "raises the further question whether the functional simplification achieved by the NEES companies under the Public Utility Holding Company Act will be taken into consideration in the Commission's administration of the Federal Power Act." The Examiner, having considered this matter, finds that nothing heretofore done by the Securities and Exchange Commission can be regarded as conclusive and binding upon the Federal Power Commission insofar as the issues in the instant proceeding are concerned. Each Commission carries out its duties under different statutes for different purposes. The actions of neither suspend the performance of duties with which the other is charged.

In this proceeding the Federal Power Commission has no alternative but to carry out the primary aim of the Federal Power Act to eliminate discrimination and guard consumers against excessive rates (*supra*, p. 386). In short, the Commission's disposition of Shrewsbury's request must be viewed in the perspective of the Federal Power Act, not statutes administered by, nor the actions of, the Securities and Exchange Commission.

(4) The next contention, likewise of no controlling significance, is that "The Shrewsbury substations of NEPCO and Mass. Electric [located in the Town of Shrewsbury] were originally established to take care of both the loads of Worcester and the Shrewsbury load, and the successive additions to substation capacity have been engineered with the objective of serving the total requirements of the area in the most economical manner."

To protect consumers, the Act subjects any company rendering a jurisdictional service to Commission regulation and control. The choice of whether to initiate jurisdictional services lies, of course, with the public utility, but once it dedicates its property to such service it submits irrevocably to the jurisdiction of the Commission and commits itself to abiding by the statutory standards. Thus while public utilities are free to construct whatever transmission lines, and establish whatever interconnections, they deem desirable for the purpose of securing and conducting business in their private interests, such freedom in no way impairs the jurisdiction of the Commission to inquire into and correct situations which have been created, or which result in, violations of the Act.

In this proceeding Shrewsbury is seeking enforcement of its legal rights. It is not quarreling with the manner in which the existing substations were originally constructed, nor with the manner in which subsequent additions to capacity have been engineered. It paid the contract price demanded for their use in its service. Neither NEPCO nor Mass. Electric can make any further legal demand upon Shrewsbury on this account, nor can NEPCO be allowed to fail in its public utility responsibility to serve Shrewsbury upon request. Even if some temporary economic detriment might result to NEPCO and Mass. Electric from granting Shrewsbury's request, such detriment could not be said to constitute detriment to the public interest, or even show where the public interest lies.

Inequities growing out of past planning and development of the NEES system companies must be eliminated rather than accentuated by the denial of relief

such as sought by Shrewsbury herein. No adequate reason appears why NEPCO's future planning and operations cannot and should not enable it to provide direct service to Shrewsbury under its uniform rate. In any instance in which a public utility's method of operation fails to produce answers in the public interest it will invite resistance on the part of those affected and remedial action by regulatory commissions.

The wholly untenable position of NEPCO and Mass. Electric in this proceeding amounts to plea for self-regulation of their wholesale business. But in this area of the electric business the essential role of the Commission is to assure adequate service to the public at reasonable rates, not regulate the general public into using high cost service to protect private interests.

FINDINGS

(1) On February 5, 1962, the Municipal Light Department of the Town of Shrewsbury, Massachusetts (Shrewsbury), filed a formal complaint against NEPCO requesting a full investigation of the facts concerning NEPCO's refusal to supply power directly to Shrewsbury at the legally established rate for Shrewsbury's customer class.

(2) Shrewsbury's complaint asks the Commission to order NEPCO to serve Shrewsbury directly at NEPCO's standard wholesale rate, without discrimination, and seeks such further relief as may be appropriate in the circumstances of this case.

(3) The hearing on Shrewsbury's complaint was held pursuant to the Commission's order issued May 2, 1963.

(4) Mass. Electric, NEPCO's affiliate and present supplier of Shrewsbury's electric energy requirements, intervened in this proceeding and joined NEPCO in opposing the relief sought by Shrewsbury.

(5) NEPCO and Mass. Electric are admittedly public utilities within the meaning of the Federal Power Act and are subject thereunder to regulation by the Commission.

(6) Shrewsbury is a retail distributor of electric energy within the Town of Shrewsbury, Massachusetts, which has a population of about 17,000.

(7) NEPCO, under its existing W–3 rate, sells and delivers electric energy to others of Shrewsbury's customer class.

(8) Rates and charges demanded, charged and collected by NEPCO from others of Shrewsbury's customer class were voluntarily established by NEPCO.

(9) The lowest rate voluntarily made available by NEPCO to any customer of Shrewsbury's customer class, namely, its existing W–3 rate, is the rate available to Shrewsbury.

(10) Although Shrewsbury is in the same class or classification as others served by NEPCO, NEPCO (a) has failed without lawful justification to make electric energy available to Shrewsbury at the same rates or charges voluntarily established and made available to others of Shrewsbury's class; (b) is unlawfully subjecting Shrewsbury to undue prejudice and disadvantage; and (c) is unlawfully granting undue preference and advantage to others of Shrewsbury's class; and such practices by NEPCO are unjust, unreasonable, unduly discriminatory and preferential, and unlawful, in violation of the provisions of the Federal Power Act.

(11) Section 202(b) of the Federal Power Act is designed, *inter alia*, to enable the Commission to exert its authority to assure that available opportunities for more appropriate service will not be missed by those constantly looking for means of improvement and lower cost.

(12) By the provisions of Section 202(b) the Commission is authorized to diagnose operationally-correctible situations and apply remedies giving relief to those persons whose interests coincide with the public interest.

(13) Under Section 202(b) it is necessary or appropriate in the public interest that the Commission direct NEPCO to establish physical connection of its transmission facilities with Shrewsbury's facilities and to sell energy direct to Shrewsbury under NEPCO's filed W–3 rate for two principal reasons: First, for the reasons set forth in paragraph (10) above. Second, direct service by NEPCO will, at the same time it is increasing NEPCO's revenues, reduce the cost of electric energy to Shrewsbury and its customers and help them help themselves in achieving savings which reasonably may be expected to give the economy of Shrewsbury's service area a stimulating effect by fostering the conditions in which greater prosperity may thrive and in which consumers are likely to enjoy the benefits of more comfort, convenience and better living, all these being ends favored by, and which promote the interest of, the public.

(14) The requirement that NEPCO serve Shrewsbury directly, instead of indirectly through Mass. Electric, will not place any undue burden upon NEPCO nor require NEPCO to enlarge its generating facilities for such purpose, nor impair its ability to render adequate service to its customers.

(15) Shrewsbury has fully justified its need and design for a direct power supply from NEPCO at 69 kv and the connection should be constructed in accordance with the design embodied in Shrewsbury's Case 1A in this proceeding.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission:

(A) NEPCO be, and it is hereby directed, to establish and maintain physical interconnection between its 69 kv transmission lines A1–B2 and the facilities to be constructed by Shrewsbury, all in accordance with Shrewsbury's proposed Case 1A.

(B) NEPCO will pay the cost of the looped tap and make delivery at 69 kv at or near the high side of Shrewsbury's proposed 3-winding 69/13.8/4.16 kv transformers.

(C) NEPCO will charge Shrewsbury its standard wholesale rate, Rate W–3, less the transformation discount of 12 cents per kw, for all power delivered.

(D) NEPCO will construct its portion of the interconnecting facilities with a capacity of 30,000 kw.

(E) NEPCO and Shrewsbury shall, within thirty days of the date this order becomes the final order of the Commission, enter into NEPCO's standard form of contract for the service to be provided pursuant to this order and NEPCO shall file the executed agreement with the Commission within the thirty-day period.

(F) NEPCO and Shrewsbury shall proceed with all deliberate speed to construct the required facilities and carry out the provisions of this order.

(G) Within sixty days after this order becomes the final order of the Commission the parties shall inform the Commission in writing and under oath the progress that has been made in carrying out the provisions of this order and when commencement of service by NEPCO and Shrewsbury is contemplated.

(H) The contract under which Shrewsbury has been receiving service from Mass. Electric be, and it is hereby cancelled, immediately upon commencement

of service by NEPCO to Shrewsbury and Shrewsbury, from and after that time, is freed from any further obligations or service thereunder.[32]

(I) NEPCO shall report to the Commission the date of commencement of service provided for herein within thirty days following the commencement of such service.

FRANCIS L. HALL,
Presiding Examiner

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. Charles R. Ross, Harold C. Woodward and David S. Black.

TRUNKLINE GAS COMPANY, DOCKET NO. CP64-114

FINDINGS AND ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 27, 1964)

On May 25, 1964, Trunkline Gas Company (Applicant) filed an application to amend the Commission's order issued March 20, 1964, in Docket No. CP64-114 by authorizing an increase in the contract demands of eight existing customers in the aggregate amount of 5,810 Mcf, all as more fully set forth in the application to amend.

The order of March 20, 1964, 31 FPC 621, authorized Applicant to construct and operate facilities to increase its system design capacity and to sell and deliver additional contract demands totaling 50,961 Mcf to four existing customers.

Applicant states that eight other existing customers* have now requested increased contract demands in order to meet their natural gas requirements commencing with the 1964-65 heating season. Applicant states that no additional facilities will be required to provide the herein proposed increase since the order of March 20, 1964, gave Applicant 9,039 Mcf per day of unallocated capacity.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on July 1, 1964 (29 F.R. 8283). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued March 20, 1964, in Docket No. CP64-114 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued March 20, 1964, in Docket No. CP64-114 be and the same is hereby amended by authorizing an increase in the contract

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[32] See *Mississippi River Fuel Corp.* v. *Federal Power Commission*, 252 F. 2d 619, cert. den., 355 U.S. 904, and *Michigan Consolidated Gas Co.* v. *Panhandle Eastern Pipe Line Co.*, 226 F. 2d 60, cert. den., 350 U.S. 978. In *Mississippi* the court sustained a Commission order requiring United Gas Pipe Line Company to disregard a contractual obligation to provide Mississippi with all of its natural gas requirements. In *Michigan Consolidated* the court recognized the Commission's authority to free Panhandle of a contractual duty to supply Michigan Consolidated with a specified amount of gas.

*Somerville, Tennessee; Bardwell, Kentucky; Fairfield, Illinois; Flora, Illinois; Louisville, Illinois; Citizens Gas Company, Arcola, Illinois; Illinois Power Company, Ogden, Illinois; and North Indiana Public Service Company.

demands of eight existing customers of Applicant in the aggregate amount of 5,810 Mcf, all as hereinbefore described and as set forth in the application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

KASKASKIA GAS COMPANY, DOCKET NO. CP64-230

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued July 28, 1964)

On April 9, 1964, Kaskaskia Gas Company (Applicant) filed in Docket No. CP64-230 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Natural Gas Pipeline Company of America (Natural) to establish physical connection of its natural gas pipeline system with facilities to be constructed by Applicant in the communities of Cowden and Alma, Illinois, and to sell and deliver natural gas to Applicant for resale and distribution in those communities, all as more fully set forth in the application on file with the Commission and open to public inspection.

The proposed distribution system in Alma to be constructed by Applicant will be connected with the pipeline now owned and operated by Applicant in the City of Kinmundy, Illinois, which receives gas from Natural at a connection point in Marion County, Illinois. A new tap connection will be required for the service of the community of Cowden.

The estimated cost to Natural of this connection facility is $18,010, and the estimated cost of all facilities proposed by the Applicant is $226,000, which cost to Applicant will be financed by the sale of common stock, mortgage notes, and use of company earnings.

The respective volumes of gas for Cowden and Alma upon the peak-day and annual basis at pressures of 14.73 psia are as follows:

	First year	Second year	Third year
For Cowden:			
Peak day Mcf	247	316	418
Annual Mcf	23,909	29,837	37,794
For Alma:			
Peak day Mcf	123	184	249
Annual Mcf	11,139	16,211	21,582

Applicant has obtained appopriate authorizations from the communities of Cowden, Alma and Xenia and from the Illinois Commerce Commission to construct, operate and maintain a natural gas transmission and distribution system and to engage in the business of gas distribution and service in the villages of Cowden and Alma, Illinois.

On May 7, 1964, Natural filed its answer to the subject application stating that it has no objection to the granting thereof.

Due notice of the filing of the application and opportunity for hearing thereon have been given by publication in the Federal Register on July 7, 1964 (29 F.R. 8502). No protest, petition to intervene or notice of intervention in opposition to the granting of the application has been filed.

The Commission finds:

(1) Natural Gas Pipeline Company of America is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G–235 (3 FPC 830).

(2) Applicant, Kaskaskia Gas Company, is a public utility duly organized and existing under the laws of the State of Illinois and is duly authorized by the Illinois Commerce Commission and by the villages of Cowden and Alma, Illinois, to construct, operate and maintain distribution pipeline systems in said communities and to engage in the business of distributing and selling natural gas in the respective service areas.

(3) It is necessary and desirable in the public interest that Natural be directed to establish a physical connection of its natural gas transmission system with the proposed facilities of the Applicant which are to serve the village of Cowden and that area and to sell and deliver to Applicant up to 667 Mcf of natural gas per day, as set forth in the application in this proceeding, and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Natural within one year from the date of issuance of this order.

(5) The requirement that Natural serve Applicant, as proposed, will not place any undue burden upon Natural nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Natural Gas Pipeline Company of America be and is hereby directed to establish physical connection of its transmission system with the proposed facilities of Applicant, for service to Cowden, Illinois, and to sell and deliver up to 667 Mcf of natural gas to Applicant, for sale and distribution in the areas of Cowden and Alma, all as hereinbefore described and as more fully set forth in this proceeding.

(B) Applicant shall be prepared to receive natural gas from Natural within one year from date of issuance of this order.

(C) Natural shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

AREA PRICE LEVELS FOR SALES OF NATURAL GAS BY PRODUCERS-AMENDMENT, DOCKET NO. R–265

ORDER NO. 284

NINTH AMENDMENT TO STATEMENT OF GENERAL POLICY NO. 61–1

(Issued July 28, 1964)[1]

The Commission has given further consideration to its Statement of General Policy (18 CFR 2.56) and particularly the Second and Seventh Amendments relating thereto (Second Amendment was issued December 20, 1960, 24 FPC 1107; 25 F.R. 13799; as amended by Order No. 264 issued March 27, 1963, 29 FPC 589; 28 F.R. 3203; and the Seventh Amendment was made by Order No. 273 issued November 27, 1963, 30 FPC 1370; 28 F.R. 12865) which pertain to offers of settlement in certain areas. We have determined that it is not appropriate to approve settlement offers under the Second and Seventh Amendments

[1] Published in the Federal Register on August 1, 1964 (29 F.R. 11154).

unless at least five years remain of the term of the contract comprising the rate schedule involved in a proposed settlement. The life of the remaining contract term will be measured from the date the settlement offer is filed. We are, therefore, revising the Statement of Policy in accordance with the views expressed above.

The Commission finds:

(1) No notice or hearing is necessary under section 4(a) of the Administrative Procedure Act.

(2) In view of the purpose, intent and effect of the amendment herein ordered, good cause exists for making it effective forthwith.

The Commission, acting pursuant to authority granted by the Natural Gas Act, as amended, particularly Sections 4, 5, 16 thereof (52 Stat. 822, 823, 830, 15 U.S.C. 717c, 717d, 717o, *orders:*

(A) Effective upon the issuance of this order, paragraphs (b) and (c) of § 2.56, Part 2, Statements of General Policy and Interpretations, Chapter I of Title 18 of the Code of Federal Regulations are amended by adding a subparagraph (3) to each as follows:

Section 2.56 Area price levels for natural gas sales by independent producers.

* * * * * * * *

(b) * * *

(3) Sub-paragraphs (1) and (2) of this paragraph shall not be applicable to a settlement offer unless at least five years remain of the term of the contract comprising the rate schedule sought to be brought within the provisions thereof.

* * * * * * *

(c) * * *

(3) Sub-paragraphs (1) and (2) of this paragraph shall not be applicable to a settlement offer unless at least five years remain of the term of the contract comprising the rate schedule sought to be brought within the provision thereof.

[Secs. 4, 5, 16, 52 Stat. 822, 823, 830; 15 U.S.C. 717c, 717d, 717o]

(B) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

OPINION NO. 439

EL PASO NATURAL GAS COMPANY, ET AL., DOCKET NO. CP63-296 (PHASE II)

MEMORANDUM OPINION AND ORDER MODIFYING AND ADOPTING PRESIDING EXAMINER'S INITIAL DECISION ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 29, 1964)*

Syllabus

1. Evidence of record supports conclusion that additional gas supply is and will be needed in Southern California during interim period to November 1, 1965, and that El Paso cannot reasonably undertake obligation to deliver required quantities without addition of subject facilities. P. 426.
2. Issue of air pollution in Los Angeles Basin should not be determined in absence of full exposition of factual situation; since matter will be covered extensively in current long-term service-to-California proceeding, no weight is accorded such issue in instant determination. P. 426.

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*Initial decision appears on p. 429.

3. Motion to reopen record for introduction of additional evidence properly denied as concerning matters which either can be officially noticed or are immaterial to resolution of any contested issue in proceeding. Pp. 426, 427.
4. Determination of need for facilities should not be based on all-out capability of El Paso's system, which is subject to force majeure restrictions, operating temperatures and other conditions over which it has no control; no sufficient basis is shown for overruling management's decision as to need of facilities, particularly since they are minimal and could not be achieved at lesser cost later. P. 427.
5. Other considerations beyond simple comparison of incremental revenues and costs are relevant in determining economic feasibility– –of significance is condition applied here providing for exclusion from cost of service of any deficiency resulting from construction and operation of facilities in period through 1967. P. 427.
6. Certification in instant situation, where probability of harm to jurisdictional customers has been rendered remote, is in accord with certification of pipeline facilities in *Medina* and *Western Transmission*. P. 427.
7. No prejudice to or prejudgment of applications in pending service-to-California proceeding is intended or should be inferred from instant certification; no contentions of increased "impact" of idle capacity will be accepted in that case as result of action here. P. 427.
8. In proceeding under Section 7 of the Natural Gas Act, Commission *issues* certificate of public convenience and necessity authorizing construction and operation of facilities for interim service to Southern California companies. P. 428.

George D. Horning, Jr., C. Frank Reifsnyder, Malcolm T. Dungan, Gordon Davis, and *E. G. Najaiko* for El Paso Natural Gas Company

John S. Battle, Jr., Raybourne Thompson, and *James W. McCartney* for Transwestern Pipeline Company

Richard W. Sabin for Public Utility Commissioner of Oregon

John S. Cooper, Frederick T. Searls, and *Malcolm H. Furbush* for Pacific Gas and Electric Company

Richard Richards, W. C. Braden, Jr., John A. Ferguson, Jr., L. R. Pankonien, R. C. Alletag, Robert E. Shaw, Harry S. Littman, Jack Werner, and *Richard Littell* for Gulf Pacific Pipeline Company

R. C. Woodbury, William E. Marx, and *William R. Connole* for Southern California Edison Company

David D. Mix for Air Pollution Control District of Los Angeles County

R. Clyde Hargrove, Jesse H. Foster, Jr., and *William H. Holloway* for Humble Oil & Refining Company

Sherman Chickering, C. Hayden Ames, and *Stanley Jewell* for San Diego Gas & Electric Company

Sheldon Rosenthal for the People of the State of California and The Public Utilities Commission of the State of California

Robert M. Olson, O. C. Sattinger, John Egan, K. R. Edsall, and *John Oromosa* for Pacific Lighting Gas Supply Company, Southern California Gas Company and Southern Counties Gas Company of California

Harry A. Potts, Jr., Richard M. Merriman, Peyton G. Bowman, III, and *N. H. Powell* for Arizona Public Service Company

James N. Horwood, Robert L. Woods, and *Charles E. Brown* for the Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

This proceeding involves an application by El Paso Natural Gas Company under Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) the construction and operation of certain additional compressor stations and appurtenant facilities totaling 13,690 horsepower, at an estimated cost of $3,481,000, for the purpose of increasing the capacity of its San Juan (southern division) mainline by 40,000 Mcf per day;[1] (2) sale of the 40,000 Mcf per day made available by the installation of the facilities to Southern California Gas Company and Southern Counties Gas Company of California (jointly referred to as Southern Companies), with a firm obligation on El Paso to deliver but no obligation on Southern Companies to take, at a price equal to the commodity charge in effect from time to time under Rate Schedule "G" as contained in El Paso's FPC Gas Tariff Original Volume No. 1, currently 22.48 cents per Mcf, such sales to be made for a period ending November 1, 1965, or upon commencement of such new service as results from any Commission order issued in the *Transwestern Pipeline Company, et al.*, Docket No. CP63-204, *et al.*, proceeding, whichever is earlier, and (3) use of such facilities after November 1, 1965, for the delivery and sale of additional quantities of gas to purchasers east of California so as to minimize expected curtailments of firm industrial customers of El Paso in Arizona and New Mexico.

The current proceeding in this docket is denominated Phase II. The original application as filed by El Paso and later supplemented requested authorization for delivery and sale of up to 100,000 Mcf per day to Southern Companies for a period ending December 31, 1966, of which 60,000 Mcf per day could be accomplished through the diversion of facilities previously authorized in Docket No. CP63-207 and the remaining 40,000 Mcf per day by construction of the subject facilities. After revision of the maximum interim service termination date to November 1, 1965, and consolidation with a similar limited term service application by Transwestern Pipeline Company, the Commission, by order issued December 16, 1963: (1) severed the present case into Phase I (relating to the interim deliveries of 60,000 Mcf per day without additional facilities) and Phase II (delivery of 40,000 Mcf per day necessitating new construction); (2) granted authority, subject to certain specified conditions, for the Phase I deliveries, as well as Transwestern's application for an approximately equivalent increase; and (3) set the present Phase II down for hearing before an examiner. Certification in this proceeding has been supported actively by the Southern Companies, the California Public Utilities Commission, the Los Angeles County Air Pollution Control District and the applicant; it has been opposed, on various grounds, by Southern California Edison Company, Gulf Pacific Pipeline Company, Humble Oil & Refining Company, Transwestern, California Gas Producers Association and the Commission Staff.

On May 4, 1964, the presiding examiner issued an initial decision which would grant the certificate sought by El Paso on condition that the sales authorization to the Southern Companies end November 1, 1965, that the facilities thereafter be used for deliveries to customers east of California, that no prejudice be occasioned by certification of these facilities to the applications of any of the parties to the pending major service-to-California case, Docket No. CP63-204, *et al.*, and that if, in the future, all or any part of the years 1964 through 1967 are used as a test period in a El Paso rate proceeding, any deficiency resulting from the 40,000 Mcf per day sale is not to be used as support for a rate increase.

[1] All volumes herein are at 14.9 psia at a temperature of 60° F.

El Paso has filed no exceptions to the initial decision. In its brief in reply to the exceptions by other parties it states that it will accept a certificate containing the conditions specified by the examiner. Of the six parties named as actively opposing certification four, Gulf Pacific, Transwestern, California Gas Producers and staff, have filed exceptions. Two, Southern California Edison and Humble, do not except to the decision. Standard Oil Company of California, an intervener, excepts only to the examiner's treatment of air pollution considerations as affecting the need and market for the gas which would be supplied for use in California.

Upon consideration of the evidence of record, the parties' briefs, the examiner's decision, and the exceptions and replies thereto, we are of the opinion that the examiner's decision should be adopted as the decision of the Commission, subject, however, to the modifications noted below.

The evidence of record supports the examiner's conclusion that the additional gas supply is and will be needed in southern California during the interim period to November 1, 1965, and that El Paso cannot reasonably undertake a firm obligation to deliver the quantities of gas here involved without the addition of the subject facilities. The examiner found that the incremental gas to be supplied under the limited term sales authorization, while destined to be utilized primarily to serve the Southern Companies' interruptible market, will not result in a higher level of service to this market but, instead, will replace volumes presently allocated to firm resale customers as a result of the growth of that priority market. The evidence shows that the Southern Companies have been able since 1960 to obtain increasing amounts of interruptible gas, and thus serve a greater share of the interruptible market, due mainly to the certification of Transwestern and the authorization of a high level of such deliveries during the early years of the pipeline's existence. Thus, while the market exhibits indicate that the percentage of the interruptible market served by the Southern Companies in 1965 if this project is denied will not be significantly lower than that served in 1960, it will be substantially lower than that which it estimates it will be able to serve in 1964. As stated by the examiner, the volume herein sought to be authorized for delivery in the period to November 1, 1965, "represents less than one year's growth of Pacific Lighting's [Southern Companies'] firm requirements."

The presiding examiner indicated that air pollution considerations in the Los Angeles Basin, including the recent extension by the Air Pollution Control District of the prohibition against the use of high sulfur content fuels to a year-round basis (Rule 62.1) "suggest that the availability of additional gas for southern California is in the public interest." This finding, however, is unsupported by any substantial evidence of record in this proceeding. In fact, a review of the evidence shows that no testimony or evidence, other than the mere text of the rules, regarding this subject was submitted or adduced herein. Since this issue is one which should not be determined in the absence of a full exposition of the factual situation, and since this matter will be covered extensively in the major, long-term service-to-California proceeding, it is preferable in our opinion that nothing be done herein which in any way affects or tends to affect the resolution of the issue in that case. Accordingly, no weight has been given by us to air pollution considerations in determining that the additional gas is needed to meet the market requirements of southern California customers during the interim period and the discussion of this element in the examiner's decision expressly is disavowed.

The arguments against certification advanced by the California Gas Producers Association have been answered adequately by the examiner. For the reasons therein stated, the exceptions filed by this intervener are similarly without

merit. The motion to reopen the record filed on April 21, 1964, for the introduction of additional evidence properly was denied in the ruling issued concurrently with the initial decision as concerning matters which either can be officially noticed or are immaterial to the resolution of any contested issue in this proceeding.

Insofar as the need for these facilities to provide service to El Paso's east of California customers is concerned, the opponents argue primarily that with the availability of the Phase I facilities, the level of curtailments expected by El Paso will be reduced and that such curtailments will not occur on more than a few days a year. They acknowledge, however, that in order to hold these curtailments to the lowest level El Paso will be required to strain its facilities to their utmost in periods of peak demand. We agree with the examiner that the determination of the need for these facilities should not be based on all-out capability of El Paso's system, which is itself subject to force majeure restrictions, operating temperatures and other conditions over which applicant has no control and, further, that no sufficient basis has been shown for overruling the presumably well-considered decision by the company's management as to the need for these facilities, particularly since the additional capacity is relatively minimal and could not be achieved at lesser cost on a later date.

Although staff concedes that the incremental revenues to El Paso will exceed the incremental cost of service during the interim service-to-California period, the contention is made that the facilities will not be economically feasible for the two years after their release to east of California service. As noted by the examiner, other considerations beyond a simple comparison of incremental revenues and costs are relevant in determining economic feasibility herein. Of further significance is the condition applied by the examiner providing for the exclusion from the cost of service of any deficiency resulting from the sale through 1967. Certification in this situation, where the probability of harm to jurisdictional customers has been rendered remote, is in accord with our certification of pipeline facilities in *Medina Gathering Corporation, et al.*, Docket No. CP62–194, *et al.*,[2] and *Western Transmission Corporation, et al.*, Docket No. CP63–329, *et al.*[3]

We believe, however, that the condition requires clarification in one respect. As expressed in the initial decision, the deficiency in revenues which is guarded against is framed in terms of that occurring "from the sale of this 40,000 Mcf of natural gas per day * * *" To this extent the language of the condition is identical, except for the volume specification, with that provided in ordering paragraph (C) of the order authorizing the Phase I deliveries. Under the circumstances involved in this Phase II proceeding, however, the 40,000 Mcf per day sale is scheduled to terminate on November 1, 1965, and the facilities will thereafter be used on an intermittent basis to meet peak day demands in the remainder of the southern division market area. Accordingly, to insure that no misunderstanding will occur as to the intent and effect of the restriction, the condition will be revised to provide for the exclusion from the cost of service of any deficiency resulting from construction and operation of the facilities in the period through 1967, rather than in terms of whatever additional sales are made thereby.

Finally, we agree with the examiner and with all parties to this proceeding that no prejudice to or prejudgment of the applications in the pending Docket No. CP63–204, *et al.*, proceeding is intended or should be inferred from the grant of the certificate herein and that no contentions of increased "impact" or idle capacity will be accepted in that case as a result of our action here.

[2] Opinion No. 397, issued July 16, 1963, 30 FPC 227, 234.
[3] Opinion No. 429, issued May 26, 1964, 31 FPC 1295, pp. 1299–1301.

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware Corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The sales and deliveries of natural gas proposed by El Paso, as hereinabove referred to and as more fully described in its application, are subject to the jurisdiction of the Commission and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Subject to the requirements of our order herein and the conditions attached to the certificate herein issued, El Paso is able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sales and deliveries proposed by El Paso, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity upon the conditions hereinafter set forth, and a certificate should be issued as hereinafter ordered.

(5) The conditions attached to the certificate hereinafter issued are required by the public convenience and necessity.

(6) Except as herein granted, the exceptions to the examiner's decision should be denied.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued to El Paso, upon the conditions hereinafter set forth, for the transportation and sale of natural gas in interstate commerce as proposed, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described above and in the application and amendments thereto.

(B) The certificate issued in paragraph (A) above is hereby conditioned to provide that the delivery and sale of the additional 40,000 Mcf per day of natural gas to Southern California Gas Company and Southern Counties Gas Company of California shall be made for a limited period ending November 1, 1965, or upon commencement of any new service which results from any order issued by the Commission in *Transwestern Pipeline Company, et al.*, Docket No. CP63–204, *et al.*, whichever is earlier.

(C) El Paso shall have a firm obligation to deliver, upon advance operating arrangements, any portion of such volumes as are required by Southern California Gas Company and Southern Counties Gas Company of California, but such companies shall have no obligation to take such gas.

(D) The rate for all gas so delivered by El Paso shall be the commodity charge in effect from time to time under Rate Schedule G contained in El Paso's FPC Gas Tariff Original Volume No. 1.

(E) After November 1, 1965, El Paso is to use the facilities hereby authorized exclusively to deliver gas to customers on its San Juan mainline located east of California.

(F) If, in the future, all or any portion of the years 1964 through 1967 are included in any test year in a future rate proceeding involving El Paso, any deficiency in revenues resulting from or occasioned by the construction and operation of the facilities herein authorized shall not be taken into account in

computing the cost of service and shall not be used as support for increased rates.

(G) The certificate issued in paragraph (A) above shall be without prejudice to the applications in the proceeding in *Transwestern Pipeline Company, et al.*, Docket No. CP63-204, *et al.*

(H) The certificate issued in paragraph (A) above and the rights granted thereunder are conditioned upon El Paso's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3) and (e) of Section 157.20 of the Regulations; the facilities hereby authorized shall be constructed and placed in actual operation within three months from the date of issuance of this order.

(I) The certificate herein issued is conditioned upon its acceptance in writing by El Paso within 30 days of the issuance of this order.

(J) El Paso shall report to the Commission in writing, under oath, the date of commencement of service to be rendered to the various customers named herein.

(K) The presiding examiner's decision issued herein on May 4, 1964, is hereby modified consistent with the foregoing decision and order and, as so modified, is, together with the ruling issued concurrently therewith, hereby adopted as the decision of the Commission as of the date of issuance of this order.

(L) Except as herein granted, the exceptions to the examiner's decision are denied.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATION TO CONSTRUCT FACILITIES AND TO DELIVER AN ADDITIONAL 40,000 MCF OF GAS PER DAY TO SOUTHERN CALIFORNIA

(Issued May 4, 1964)

LANDE, *Presiding Examiner:* In this second phase of the proceeding El Paso Natural Gas Company (El Paso) seeks authorization to sell and deliver on a firm basis up to 40,000 Mcf per day at 14.9 psia to Pacific Lighting Corporation and it subsidiaries, Southern California Gas Company and Southern Counties Gas Company of California (Pacific Lighting) for a period not to exceed November 1, 1965. In addition to the requested authorization to sell and deliver the 40,000 Mcf per day, El Paso has requested authorization to construct certain field and mainline compressor stations totaling 13,690 horsepower at an estimated cost of $3,481,000. El Paso submits that these facilities will be utilized after November 1, 1965 in conjunction with existing and presently certificated southern division facilities to affect increased deliveries east of California and to minimize curtailments which might otherwise occur in El Paso's over-all requirements other than California.

PROCEDURAL BACKGROUND

El Paso's initial application herein requested a certificate of public convenience and necessity authorizing El Paso to sell and deliver to Pacific Lighting up to 100,000 Mcfd of natural gas for a period terminating on December 31, 1966, together with authorization for El Paso to construct certain facilities which would increase its system design capability for deliveries to Pacific Lighting by 40,000 Mcfd. Subsequently, El Paso amended its initial application to change the termination date on the interim period during which the proposed deliveries were to be made, to November 1, 1965. The first 60,000 Mcfd deliveries were to be made, commencing January 1, 1964, the remaining 40,000 Mcfd deliveries

to be made, commencing November 1, 1964, by means of increased capacity on El Paso's system resulting from the addition of facilities sought to be certificated herein. All such deliveries were proposed to be made on a firm basis at the El Paso commodity rate for gas sold there at 22.48¢ per Mcf. By Commission Order dated October 21, 1963, the application as amended was consolidated for purposes of hearing and decision with the application of Transwestern Pipeline Company ("Transwestern") in Docket No. CP64–34, the latter application seeking certificate authorization for increasing Transwestern's contract daily quantity from 300,000 Mcfd to 350,000 Mcfd and maximum daily demand quantity from 345,000 Mcfd to 410,000 Mcfd.

Early in 1963, Gulf Pacific Pipeline Company (Gulf Pacific) filed an application in Docket No. CP63–223, requesting authorization to construct and operate a pipeline system extending from Katy Field near Houston, Texas, to the metropolitan area of Los Angeles. Gulf Pacific proposed in that application to transport natural gas which Southern California Edison Company (Edison) and The Department of Water and Power of the City of Los Angeles, California (Department) have agreed to purchase from producers in the State of Texas to nine steam electric generating stations owned and operated by Edison and the Department in the metropolitan area of Los Angeles. El Paso and Transwestern have also filed major applications seeking authorization to supply additional large quantities of natural gas to the southern California market (Docket Nos. CP63–204, CP64–76 and CP64–91). These applications, along with the application of Gulf Pacific, have been consolidated for hearing and are now pending in another proceeding under Docket No. CP63–204, et al.

Hearing in this proceeding commenced on November 18, 1963, and on December 4, 1963, two separate proposed stipulations and agreements entered into by the parties to the proceeding were received into evidence without objection. On December 6, 1963, the presiding examiner certified these two stipulations and agreements to the Commission. On December 16, 1963, the Commission issued certificates of Public Convenience and Necessity to El Paso and Transwestern pursuant to the terms of the two separate stipulations and agreements entered into by the parties to the proceeding. Both El Paso and Transwestern were authorized to sell and deliver additional volumes of natural gas to their southern California customers through existing facilities for a limited period ending November 1, 1965, or upon commencement of any new service which may result from any authorization of the Commission in the Gulf Pacific Docket No. CP63–204, *et al.*, certificate proceeding for major service to southern California.

The certificate granted to El Paso in the December 16, 1963, order was for only part of the authorization requested by El Paso in its initial application in Docket No. CP63–296. The Commission remanded the case with respect to the controversial authorization of the remaining 40,000 Mcf per day, and ordered a hearing on said Phase II of El Paso's application. In its order the Commission required that all testimony and exhibits in support of Phase II be served on all parties by January 3, 1964, and scheduled a hearing on Phase II to commence January 8, 1964.

In the instant Phase II of the proceeding El Paso presented four witnesses and Pacific Lighting presented one witness in support of the application. Interveners who actively participated at the Phase II hearing were Pacific Lighting, California Gas Producers Association, Gulf Pacific, Humble Oil & Refining Company (Humble), Edison and Transwestern. In addition, the following parties were permitted to intervene in the proceeding: Air Pollution Control District of Los Angeles County, Arizona Corporation Commission, Arizona Public Service Company, Continental Oil Company, Monsanto Chemical Company, Pacific Gas & Electric Company, The People of The State of California

and The California Public Utility Commission, The Public Utility Commissioner of Oregon, San Diego Gas & Electric Company, and Standard Oil Company of California. Witnesses were cross-examined by the staff and by several of the interveners at the session of the hearing held from January 8, 1964, through January 16, 1964. Thereafter, the hearing recessed until February 11, 1964, at which time Pacific Lighting's witness presented supplemental testimony and Transwestern and the California Gas Producers Association each presented one witness in rebuttal to portions of El Paso's presentation. Those witnesses were cross-examined by the staff, El Paso, and several interveners at the session of the hearing held from February 11, 1964, through February 13, 1964. The record consists of 1,667 pages of transcript, 23 exhibits, and certain items by reference. Simultaneous opening briefs were to be filed [3] by March 5, 1964, and reply briefs by March 20, 1964. Briefs supporting the application were filed by El Paso, Pacific Lighting, The People of the State of California and The Public Utilities Commission of The State of California and The Air Pollution Control District of Los Angeles County. In addition, a brief was filed by Gulf Pacific stating that it would not oppose certification if conditions were attached to any authorization granted herein to provide against the contingencies in order that Gulf Pacific's application to serve Southern California will not be prejudged in any form. Briefs or replies in opposition to the application herein were filed by the staff, the California Gas Producers Association, Edison, Transwestern and Humble. The opposing briefs urge that the project should be denied because El Paso allegedly failed to establish either that the market needs of Pacific Lighting required that El Paso make additional deliveries until November 1, 1965, or that the market needs required that El Paso's existing Southern Division Customers located east of California receive additional gas after that date.

THE CONTROVERSY

El Paso submits that the expansion authority applied for herein is required by the present and future public convenience and necessity. Its contention being that the system expansion proposed is necessary for flexibility in operation, is minimal in amount, is attainable at virtually negligible cost, and could not be effected at a later date at less cost. El Paso urges that it be given an opportunity to keep pace with the growth in its firm, non-curtailable resale requirements and thus to prevent excessive curtailments of El Paso's firm industrial customers resulting not from increased requirements of such customers, but rather from increased requirements of El Paso's absolutely non-curtailable, total requirements resale customers. Upon termination of the interim California deliveries, the deliveries here proposed, together with the 60,000 Mcf per day heretofore certificated and which will then become available to the customers east of California, would only enable El Paso to stay abreast of the growth in its firm resale load and maintain a proper level of future curtailments of its firm industrial customers. Too frequent interruptions of these customers can result in the loss of their business. Without installation of these facilities, El Paso claims that it might be required to curtail about half of its firm industrial load. Such excessive curtailments would seriously jeopardize the revenues from this business to the alleged detriment of all of El Paso's customers. Construction of the facilities when proposed would enable El Paso to sell and deliver more of its short-term excess gas supply and minimize prepayments to its producer-suppliers. There allegedly is an interim need of Pacific Lighting for

[3] Several parties filed their briefs belatedly. Air Pollution Control District on March 12, 1964; Transwestern, Pacific Lighting and California Gas Producers on March 9, 1964.

the firm deliveries proposed. The customers east of California supposedly also need the minimal system expansion.

Edison contends that substantial amounts of excess gas can be made available to Pacific Lighting without the proposed expansion. Edison argues that during December 1963 daily volumes available ranged as high as 156,000 Mcf. On 24 days in that month there was at least 40,000 Mcf per day available. El Paso's market Exhibit 28 shows a decline in total market requirements for east of California customers through 1965. During 1966 and subsequent years these requirements are expected to increase. However, this means that for the interim period, El Paso will have more available capacity for sales to Pacific Lighting. Edison points out that excess gas service has historically been made available to Pacific Lighting by El Paso on an interim basis. Transwestern contends that El Paso's failure or unwillingness to pursue the course which it has historically followed in furnishing interim supplies of gas does not establish a "necessity" and cannot be used as a justification for the proposed additional facilities.[2] Transwestern argues that the 40,000 Mcfd involved in these proceedings could be made available to Pacific Lighting on a firm basis without the installation of any additional facilities. The only question is to what extent El Paso would be required to curtail its industrial customers during this period. Transwestern further contends that El Paso's capacity is shown on the basis of certain design conditions which its witness Hunsaker stated were conditions close to an annual average basis. That design was based upon flowing and suction temperatures of 65° F in the San Juan line. In addition, actual horsepower which El Paso's compressors could develop on a sustained basis was ignored by witness Hunsaker and manufacturer's nameplate rating was employed except where a different rating had been specifically approved by the Commission. Mr. Hunsaker conceded that at a lower ambient temperature the Dilkon Station, which Exhibit 25 reflects at 10,500 horsepower, could develop an additional 1,500 to 2,000 horsepower. Furthermore, additional peaking capacity can also be made available by installing facilities authorized in Docket No. CP62-294, where El Paso requested and obtained authorization to install 28 "uprating kits" to be utilized in its turbine compressors. At this date only six of the kits have been installed. In summary, Transwestern submits that with its presently authorized facilities, El Paso can deliver to Pacific Lighting more gas than its maximum daily design capacity of 756,000 Mcf per day during the 1965-66 and subsequent heating seasons because of the lower operating temperatures, the installation of the authorized uprating kits and the additional horsepower available from its Dilkon Compressor Station.

El Paso, its present customer Pacific Lighting as well as the interveners went to great length attributing ulterior motives to each other. Is El Paso's requests herein to expand its facilities based entirely on the desire to keep up with anticipated normal growth, or may there be inferred an additional motive, namely to improve El Paso's role in the other now pending proceeding for substantial additional gas service to southern California? Are the interveners herein appearing primarily on behalf of the gas customers? What are the additional motives of Transwestern—a present competitor, Gulf Pacific—a new applicant for the large additional gas market in California, Humble—a prospective supplier of Gulf Pacific and Edison—a substantial customer bound to benefit from an abundant supply of gas in that region. The decision in this case must rest primarily on the true public convenience and necessity considerations. It is

[2] *Cf. City of Pittsburgh* v. *F.P.C.* (CADC—1956) 237 F. 2d 741: "The existence of a more desirable alternative is one of the factors which enters into a determination of whether a particular proposal would serve the public convenience and necessity. That the Commission has no authority to command the alternative does not mean that it cannot reject the proposal." (Fn. 28, p. 751).

necessary to ascertain how badly El Paso and its customers do or will need the additional gas. It is also important to determine whether authorization of said facilities will truly prejudge any of the interveners. We shall detail most of the opposing presentations and attempt to evaluate the rather precarious balance of divergent interests of the applicant, competitors, interveners and customers.

Interim Need of Southern California

An issue in the case is whether El Paso requires the proposed additional capacity in order to make firm deliveries of the 40,000 Mcf per day to Pacific Lighting during the "interim period."

Interveners Humble, Edison, and Transwestern do not question El Paso's contention that additional deliveries are required to be made to Pacific Lighting in the interim period but, rather, argue that these additional deliveries could be, and should be, made through existing facilities under El Paso's Rate Schedule GX–2 by an extension of the authorization granted to El Paso in Docket No. CP62–154. Staff Counsel state that, if this application is granted, El Paso can deliver and Pacific Lighting can resell the gas proposed to be delivered to southern California. However, in Staff's opinion the evidence shows that this gas will be used for the sole purpose of reducing curtailments of deliveries to *interruptible* industrial customers who use gas for boiler fuel, with slight exception, but contend that it does not demonstrate that the reduction in curtailments is required by the present or future public convenience and necessity.

Staff Counsel contend, too, that neither El Paso nor Pacific Lighting has made a "positive showing" to overcome the presumption against the use of natural gas for boiler fuel as required by the Commission's decision in *Mississippi River Fuel Corp.*, 12 FPC 109. The application in that proceeding, to build a lateral to serve a new steam electric generating plant, was denied but was subsequently granted after rehearing. Staff Counsel point out that while in several subsequent cases certificating applications involving sales for boiler fuel usage, the Commission balanced the negative factor of the end uses against other factors and circumstances in deciding whether or not certification was required by the public convenience and necessity.[1] Staff Counsel have taken a position that in this case the Applicant has failed to make a "positive showing" under the doctrine of *Mississippi River Fuel Corp.* On the other hand the Examiner finds that Pacific Lighting is correct in its contention that the facts of the *Mississippi River Fuel Corp.* case are clearly distinguishable from the case at hand. *Mississippi* was an application for the construction of facilities for the direct sale of natural gas by an interstate gas pipeline company to a steam electric generating plant for boiler fuel exclusively, at a time when a retail distribution customer of the interstate seller could not obtain enough natural gas to meet its requirements. The project proposed here stands on other grounds. It is not a direct sale for boiler fuel usage. It is a sale for resale to natural gas distribution companies to enable them to continue to provide adequate service to their rapidly growing utility service area. Even though the volumes sought here may help serve Pacific Lighting's interruptible market, such service will not be at new higher levels, but rather will simply replace volumes now necessarily allocated to firm customers because of the growth of that priority market. Growth of the non-steam electric plant market requirements in southern California is shown by Exhibits 30 and 40. From 1962 to 1965 the non-"boiler

[1] *Southern Natural Gas Co.*, 14 FPC 243, *aff'd sub nom. Charleston & W. C. Ry.* v. *F.P.C.*, 234 F. 2d 62 (CADC), (a new sales lateral will permit more off-peak sales and enable the pipeline to improve its load factor); *Houston Texas Gas & Oil Corp., et al.*, 16 FPC 118, aff'd *sub nom. Florida Economic Advisory Council* v. *F.P.C.*, 251 F. 2d 643 (CADC), cert. denied, 356 U.S. 959.

fuel" market of Pacific Lighting will have increased 66 billion cubic feet, or an equivalent increase of 60,000 Mcf per day per year. The growth of Pacific Lighting's firm requirements is equally dynamic. As shown on Exhibits 30 and 40, an increase of 51 billion cubic feet during the three-year period indicates an annual growth of firm requirements of about 47,000 Mcf per day. Therefore, the 40,000 Mcf for which certification sought in this application is less than one year's growth of Pacific Lighting's firm requirements. As the firm load increases year by year, the historical balance between firm and interruptible loads suffers and the associated benefits vanish unless additional increments of gas are obtained. The Examiner finds that with certification of the El Paso project, no additional gas volumes will be used for interruptible sales above historical levels in southern California, but the volumes already certificated by FPC will be partially restored to render the same certificated pattern of service.

El Paso presented evidence of its system capacity using design criteria assuming flow and suction temperatures of 65° F, while Transwestern's witness Blundell challenged it with evidence showing the probability of actual capacity greater than "design" on some days because of the effect of generally lower ambient temperatures. However, despite this, witness Blundell conceded that El Paso would have to curtail at least 10 to 15 days during the "interim" period. In other words, he conceded that El Paso does not quite have sufficient capacity to deliver the proposed 40,000 Mcf per day upon a firm basis on each day of the interim period without the additional facilities. Accordingly, this additional gas supply is needed in Southern California during the interim period.

Air Pollution

A primary factor in the fuel market in southern California is the restrictions against the burning of fuels with high sulfur content. When this proceeding started, the principal restriction was Rule 62 of the Air Pollution Control District of Los Angeles County which prohibited in the Los Angeles Basin the burning of liquid or solid fuel containing more than 0.5 percent sulfur by weight during the period of April 15 through November 15, provided that low sulfur content fuels are available. On January 14, 1964, while the instant proceeding was in progress, the Board of Supervisors of Los Angeles County enacted Rule 62.1 which extends the ban on burning high sulfur content fuels to a full year basis, again provided that low sulfur content fuels are available. Since only a limited amount of low sulfur oil is available in southern California Rules 62 and 62.1 have the effect of assuring that, except for that limited supply, all fossil fuel demand in the Los Angeles Basin will be demand for natural gas regardless of price or availability of residual fuel oil. The Air Pollution Control District, County of Los Angeles, State of California, is very much in favor of the allocation to southern California of as much natural gas as it is possible to obtain. There is, however, one major condition to the District's support of this application. That condition is that the certification will not jeopardize the approval of the now pending other applications by Gulf Pacific, Transwestern and El Paso seeking to bring substantial additional volumes of natural gas to southern California. Staff Counsel properly point out that since only about half of Pacific Lighting's market is located in the Los Angeles Basin and is subject to Rules 62 and 62.1, the question of competitive fuel price and availability on Southern's system deserves only limited consideration in evaluating the market for natural gas. Nevertheless, the air pollution aspects do suggest that the availability of additional gas for southern California is in the public interest.

It is also noted that the People of the State of California and the Public Utilities Commission of the State of California urge that the certificate re-

quested herein by El Paso be granted. They submit that the proposed price of 22.48¢ per Mcf and the lack of take or pay provisions make this project commensurate with the public interest of that State.

The California Gas Producers

The California Gas Producers Association (Producers) presented testimony that Occidental Petroleum Corporation has substantial reserves in the Lathrop Field in northern California which are dedicated to Pacific Gas & Electric Company (PG&E), and that Occidental is capable of, and is desirous of, making additional deliveries of gas to PG&E at levels higher than at present. Producers suggest that PG&E take this additional gas from the Lathrop Field and amend its present service agreement with El Paso in order to take less gas at the California border under El Paso's Rate Schedule G, and thereby enable El Paso to deliver more gas to Pacific Lighting without constructing any new facilities.

It is found that the evidence of record warrant a finding that PG&E would not be willing to displace any El Paso gas with Producers gas. The gas under contract to PG&E in the Lathrop Field is produced jointly by Occidental and numerous other producers under a contract that provides that the producers must maintain, over a five day period, an ability to deliver at least three times the annual average obligation of PG&E to take the gas. There is no requirement that PG&E purchase a particular volume of gas on any one day. Under the contractual arrangement, it is possible for PG&E to take gas for only one-third of the days during the year and still satisfy its minimum purchase obligation. The gas from the Lathrop Field can be used as peaking gas and, in fact, is being used for peaking purposes by PG&E. Ever since PG&E began taking from the Lathrop Field, it has averaged only approximately its minimum obligation. Furthermore, the price of Lathrop Field gas is greater than that for the El Paso gas. The basic charge for Lathrop Field gas is 26.5 cents per Mcf for gas with a heating value between 850 Btu and 900 Btu per cubic foot. El Paso sells gas to PG&E under Rate Schedule G which provides for a commodity rate of 22.48 cents per Mcf and a 100 percent load factor rate of 29.74 cents per Mcf. El Paso is obligated to deliver gas with a heating content of 1,000 Btu per cubic foot from the San Juan Basin and 950 Btu per cubic foot from other areas. Taking into consideration the Btu content of the respective gas, it is obvious that El Paso gas is less expensive than Lathrop Field gas. The increased price will have to be passed on to PG&E's customers. Thus, it is patent that PG&E will not voluntarily increase its takes of gas from the Lathrop Field in order to reduce its takes of gas from El Paso. Producers' brief suggests that contracts be entered into by El Paso, Pacific Lighting, and PG&E to provide that PG&E take 40,000 Mcf of gas per day less from El Paso so that the volumes can be delivered to Pacific Lighting. However, there is no evidence that PG&E would be amenable to such an agreement. Absent such willingness on the part of PG&E and El Paso, it would be useless to order an amendment of the present El Paso service to PG&E which is rendered under an approved and properly filed service agreement.

One month after the due date for filing reply briefs, Producers filed a motion to re-open the record for the purpose of receiving in evidence a contract between Pacific Lighting and PG&E as well as the request of El Paso and the authorization by the Federal Power Commission of an amendment to a temporary certificate. Producers allege that these matters, having occurred after closing of the hearing on February 13, 1964, should be given proper weight in the decision. Having given due consideration to this motion and the proposed exhibits, the Examiner concludes that the newly offered evidence does not warrant changing the findings herein or delaying the issuance of the initial decision.

However, Producers' motion will be acted upon separately as soon as the other parties had an opportunity to reply thereto. The specific ruling on the motion and the decision will be released simultaneously.

Need East of California

Transwestern and Edison allege that El Paso does not need additional capacity for service east of California because (a) it will not experience serious difficulty in meeting firm resale obligations in the foreseeable future, and (b) it will not experience an unsatisfactory level of curtailment of industrial customers.

El Paso concedes that it can meet its resale obligations east of California, for a few years, if it disregards its obligations to firm industrial customers. However, El Paso seeks here to meet the growing requirements of its resale customers and at the same time maintain the historical and expected level of service to its firm industrial customers.[4] El Paso's witnesses testified that the east-of-California industrials made possible the original extension of its system to the area west of its original terminus in West Texas, with accompanying service to domestic users, through resale distributors, which they could not otherwise have obtained. The entire history of service to these customers—the basis on which they have contracted, the rates they have paid and are paying, the type of service they are accustomed to and require—as well as the Natural Gas Act itself, all indicate that their curtailments should be held to a much lower level than those predicted for the future without the proposed facilities, if El Paso's resale customers are not to suffer.

Edison argues that since 6,240,000 Mcf curtailment for customers east of California during 1966 was apparently acceptable to El Paso under its original proposal to deliver interim gas through 1966, 6,270,000 Mcf for 1965 with the sale of 40,000 Mcf per day through November 1, 1965 as now proposed, and without the additional facilities must also be acceptable and, therefore, the facilities are not required until after 1967. El Paso contends that curtailments of these customers, who pay the highest rates on the system, would be in violation of their contracts and the bases on which they have been and expect to be served. If curtailments were at a level of 6,240,000 Mcf and half of such curtailments were made of power plant loads, the average penalty of 26¢ per Mcf differential for use of alternate fuels is equivalent to an annual cost to El Paso of $811,200, a figure closely approximating the total cost of service attributable to the facilities proposed (Ex. 29). Obviously, such curtailments are not acceptable to El Paso.

A major basis of Transwestern's opposition is the claim that El Paso already possesses a "maximum capability" or "all-out" capability exceeding both design and best-efforts capacity. This claim is based on the testimony of Transwestern's witness Blundell, the only engineering witness called by any opponent of the certificate. Under his assumption of a flowing temperature of 50° and maximum "all-out" winter capability operations, Mr. Blundell admitted that the additional compression facilities would be required for ten to fifteen days, perhaps more, during the 1964–65 heating season. El Paso convincingly pleads that "all-out capability," should not be used as the measure of system capacity. El Paso insists that every pipeline possesses, under some conditions, a capability above best efforts capacity; but that is not to say that its application for a modest system expansion should be denied for that reason, and that it should be prevented from making proper provision for emergency and unanticipated operating conditions. A system of the size of El Paso's needs this minimum capacity increase to provide the service contemplated. The additional capacity approxi-

[4] *Cf. Granite City Steel Co. v. F.P.C.*, 320 F. 2d 711.

mates only 1¼ percent of daily winter deliveries and is truly minimum. El Paso contends that a pipeline should not be required to plan on the basis of operating in excess of best efforts capacity under design conditions, which are representative of conditions reasonably attainable. There must be some reasonable capability above best efforts for meeting unanticipated and emergency conditions. El Paso does not possess any significant capability above best efforts capacity. It has been unable, in the past since 1960, even when operating at maximum "all out" winter capability, to avoid substantial and frequent curtailments of its firm industrial customers. Without installation of the facilities proposed, these curtailments will increase in frequency and severity. Even with the installation proposed, it must, nevertheless, curtail. It cannot, therefore, be concluded that the maximum "all out" winter capability above best efforts capacity is unreasonable or excessive.

It is also found that certification will assist El Paso in its prepayment problems. The record shows that El Paso has a temporary oversupply of gas which should be sold, and the more it can sell the better so far as its prepayment problem is concerned. More can be sold by this project than can be sold if the project is denied.

Prejudgement Aspects

Transwestern and Gulf Pacific assert that certification of the additional facilities proposed herein by El Paso could prejudge their applications in Docket No. CP63–204, *et al.*, because any increase in El Paso's system capacity at this time, while the Gulf Pacific application is pending, might be utilized as the basis for argument of "impact" of increased magnitude by El Paso and others opposing the Gulf Pacific Project. Humble wants to preserve the status quo as to firm commitments and facilities.

Edison submits that if El Paso's system capacity is increased at this time, it is likely that any such argument by the Gulf Pacific opponents would reflect assertions of "idle" capacity resulting from approval of the Gulf Pacific Project in increased amounts corresponding to whatever additional capacity is certificated herein and constructed.

Transwestern, a potential competitor with El Paso for sales to markets east of California, argues that if El Paso is permitted to obtain authorization in this proceeding through this device of providing "interim" service to California through additional facilities which it contends will be required at some later date for other markets, it can perpetuate an advantage over Transwestern in competition for those markets. Any attempt to sell gas to El Paso's existing customers, or new customers along its system, would undoubtedly be met with the claim that the facilities required for such sales had already been authorized and installed and would be available upon expiration of the "interim" period. Potential competition should not be curtailed by this proceeding.

Gulf Pacific submits that the only effective safeguard against prejudgement is a specific finding by the Examiner and the Commission that El Paso's requested new facilities are in fact needed, and must be used, for service to El Paso's east of California customers after the interim period. If such a finding is made on the basis of the record, Gulf Pacific does not object to issuance of the requested authority to El Paso. Gulf Pacific contends that an ample market exists in California for additional volumes of gas and, if it is properly protected against prejudice, it has no opposition to the proposed additional service by El Paso during the period up to November 1, 1965.

There is a certain amount of validity in the opposing contentions of Edison, Humble, Transwestern and Gulf Pacific. Their interest would be better protected if El Paso's application herein were denied. On the other hand, the

alleged prejudice is not of such magnitude that this aspect in itself would warrant denial of certification of a slight expansion of El Paso's facilities, which management deems essential to meet normal growth. Moreover, the possible, though not necessarily probable prejudgment to opponent's interest can be reduced to a minimum with an appropriate condition in the proposed certicate to El Paso. While such a condition may not be a panacea it will, nevertheless, serve as proof that the decision herein is not intended to impair any of the rights of the parties in the now pending Gulf Pacific Project, Docket No. CP63–204, *et al.* Accordingly, an appropriate condition will be included in the ordering part of this initial decision.

Economic Feasibility

Neither Transwestern or Edison seriously doubts that El Paso's incremental revenues will recover the incremental cost of service during the first year of this project when deliveries would be made to Southern. Similarly, it appears that the same will hold true after 1967, when the needs of the east of California customers reach higher levels. The economic feasibility of East California during the first two years after November 1, 1965 is less certain.

Edison and the Staff argue that a comparison of the incremental revenues with the incremental cost of service discloses that the project is economically not feasible. After July 31, 1964, the highest rate that El Paso will charge any of its customers east of California will be 35.7 cents per Mcf. Deducting El Paso's systemwide average cost of gas of 15 cents per Mcf shows that the revenues exceed this variable cost by 20.7 cents per Mcf. Even assuming that all of the incremental sales will be made at its highest rate, El Paso would have to sell approximately 4,270,000 Mcf of gas in the second year of the project and approximately 4,221,000 Mcf in the third year in order to recover its incremental costs in those years. To recover those costs El Paso would have to make additional sales equal to the full utilization of the additional capacity requested on more than 105 days during both the 1965–66 and the 1966–67 heating seasons. The record shows that El Paso is not likely to curtail its east of California customers on anywhere near 105 days in the near future if the instant application is denied. Hence, the Staff submits that the project is economically not feasible.

However, El Paso does not attempt to relate the loss in revenues due to curtailments to the cost of providing additional capacity and draw any conclusion from it. El Paso contends that incremental revenues do not approach incremental cost only if one considers the curtailment revenues loss to be prevented as "incremental" revenues, which applicant refuses to do. El Paso makes a convincing argument that this project is unusual, in that it is designed not only to produce revenues for El Paso but also to save revenues which might otherwise be lost. These facilities, after the interim utilization thereof, will be employed for the indefinite future in serving the needs of the east of California customers. El Paso contends that the project is a provision of facilities to maintain service to the firm industrial customers at acceptable and appropriate levels so as not to jeopardize the revenues from these customers which approximate $35,000,000.00 annually. El Paso is not here proposing an increase in volumes to a new service area but proposes the maintenance of a former level of service to an existing market, its firm industrial customers. The project is also economically feasible from the viewpoint of service to the resale customers to keep pace with the growth in this load. Applicant argues that denial of certification will prevent

El Paso from maintenance of prior levels of service to its firm industrial customers because of the continuing growth in the full requirements resale load. On that basis, El Paso could not expect to indefinitely retain its firm industrial load and certainly not at present firm industrial rates.

It is held that consideration must be given to the cost responsibility El Paso would incur if certification of the proposed facilities is denied. The evidence clearly shows that absent the proposed facilities El Paso deliveries to "firm" industrial customers cost of California will be further curtailed, resulting not only in decreased revenues from the "firm" customers but also requiring payments to certain of these customers by El Paso for the difference between the customers' actual costs of alternate fuels (oil) and what the costs would have been had equivalent volumes of gas been delivered by El Paso. Thus, viewing incremental costs and revenues solely on the basis of what would result if the proposed facilities are certificated would be falacious to the extent that costs and revenues are not weighed in the alternate situation.

It is further held that Edison and the Staff have shown no valid precedent to support their position that a complete market and supply showing is required when a major pipeline seeks to attach relatively minor additional supplies on terms favorable to its customers (*cf.* Medina Gathering Corp., Opinion No. 397, issued July 16, 1963). Even assuming marginal economic feasibility while serving east of California during the 1966 and 1967 winter season, there is no evidence that any of El Paso's other customers will actually be prejudiced from it. Stringent application of economic feasibility requirements are not warranted in this proceeding. However, as an extra precaution the certificate should contain a special provision that if, in the future, all or any portions of the years 1964 through 1967 are included in any test year in a future rate proceeding involving El Paso, then any deficiency accruing from the sale of this 40,000 Mcf of natural gas per day during such period will not be used as support for increased rates. Normally this type of a condition may be out of step with effective certification procedures. However, since we are dealing with such a small fragment of applicant's operations this provision appears warranted and will serve a useful purpose. Accordingly, an appropriate condition will be included in the ordering part of this tentative decision.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the record in these proceedings, it is specifically found and concluded, in addition to the findings and conclusions heretofore stated that:

(1) Applicant, El Paso Natural Gas Company, a Delaware Corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(3) The sales and deliveries of natural gas as proposed by Applicant, are required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(4) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder should be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3) and (e) of Section 157.20 of such Regulations.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission, that:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing El Paso to construct with reasonable dispatch the proposed facilities hereinbefore described, and as more fully described in the application in this proceeding and to operate such facilities for the transportation and sale of natural gas in interstate commerce for resale, all as more fully described in said application subject to the jurisdiction of the Commission and upon the terms and conditions of this Order. Such certification pursuant to Section 7(c) of the Natural Gas Act authorizes El Paso Natural Gas Company to construct and operate various compression and metering facilities and to deliver an additional 40,000 Mcf per day of natural gas to Southern California Gas Company and Southern Counties Gas Company of California under El Paso's Rate Schedule G–1 for a limited period ending November 1, 1965. Deliveries are to be made at El Paso's existing points of delivery to Pacific Lighting near Blythe, California, and Topock, Arizona. After November 1, 1965, El Paso is to use these facilities to deliver natural gas to customers on its Southern Division located east of California.

(B) The certificates issued in paragraph (A) above shall be without prejudice to the applications in Docket Nos. CP63–204, CP63–223, CP64–76 and CP64–91.

(C) If, in the future, all or any portions of the years 1964 through 1967 are included in any test year in a future rate proceeding involving El Paso, then any deficiency accruing from the sale of this 40,000 Mcf of natural gas per day during such period is not to be used as support for increased rates.

(D) The certificates issued in paragraph (A) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3) and (e) of Section 157.20 of the Regulations.

(E) The certificate issued in paragraph (A) shall be deemed accepted and of full force and effect, unless refused in writing and under oath by El Paso.

(F) El Paso shall report to the Commission in writing, under oath, the date of commencement of service to be rendered to the various customers named herein.

ALLEN C. LANDE,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

INDIANA NATURAL GAS CORPORATION, DOCKET NO. CP63–292

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued July 29, 1964)

Indiana Natural Gas Corporation, (Applicant), an Indiana Corporation having its principal place of business in Paoli, Indiana, filed on April 29, 1963, an application herein, and on May 16, 1963, June 27, 1963 and May 25, 1964, supplements thereto, and on February 28, 1964 an amendment thereto, pursuant to Section 7(a) of the Natural Gas Act, for an order directing Texas Eastern Transmission Corporation (Texas Eastern) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by

Applicant, and to sell and deliver to Applicant its natural gas requirements for resale to the public in the towns of French Lick and West Baden Springs, Indiana, and vicinity, as hereinafter described.

Applicant proposes to construct and operate distribution systems in said towns, which are contiguous, at an initial cost of $106,612 and amounting to $125,776 in the fifth year of construction. Applicant does not propose construction of any transmission facilities, since it shows that Texas Eastern's pipeline is located within the corporate limits of French Lick and also within Applicant's service area. Applicant shows that it will finance said construction by the sale of 6¼ percent first mortgage sinking fund notes in the amount of $70,000 which it will sell to Northwestern National Life Insurance Company, which will be secured by a first lien upon the property and franchises held by Applicant in the towns of Paoli, Orleans, French Lick and West Baden Springs, Indiana. The financing will also include the sale and issuance of 10,000 shares of Applicant's common stock in the amount of $55,000.

Applicant estimates its natural gas requirements for French Lick and West Baden Springs as follows:

Year	Peak day (Mcf)	Annual (Mcf)
1	1994	152,460
2	2098	160,301
3	2173	168,646

Applicant shows that it holds a franchise from both French Lick and West Baden Springs. Applicant also shows that it was by order of the Indiana Public Service Commission dated February 28, 1963, granted a necessity certificate authorizing Applicant to render gas distribution service within the rural areas in Orange County, Indiana, adjacent to the towns of French Lick and West Baden Springs.'

Applicant shows that its largest consumer will be the French Lick Sheraton Hotel, which now uses coal and propane as fuel.

Pursuant to due notice, a public hearing was held in Washington, D.C. on July 20, 1964, respecting the matters involved in and the issues presented by the application herein. On June 6, 1963, Texas Eastern Transmission Corporation filed an answer herein stating that it has no objection to the granting of the application. No petition to intervene or protest to the granting of the application has been received. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) Indiana Natural Gas Corporation, an Indiana corporation having its principal place of business in Paoli, Indiana, is engaged in the local distribution of natural gas in the state of Indiana.

(2) Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 10, 1947, in Docket No. G–880 (6 FPC 148).

(3) It is necessary and desirable in the public interest that the Commission, by order, direct Texas Eastern Transmission Corporation to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant a maximum vol-

ume of 2173 Mcf of natural gas per day for resale and distribution in the towns of French Lick and West Baden Springs, Indiana, and vicinity, provided Applicant file a contract between it and the French Lick Sheraton Hotel to render natural gas service to said hotel upon such terms as will not vary appreciably the economic feasibility of its project as shown by the exhibits attached to the application herein.

(4) The requirement that Texas Eastern Transmission Corporation serve Applicant as above set forth will not place any undue burden upon it nor require it to enlarge its facilities, nor impair its ability to render adequate service to its existing customers.

(5) A request having been made by staff counsel for omission of the intermediate decision procedure and all requirements of the provisions of Section 1.30(c)(1) [18 CFR 1.30(c)(1)] of the Commission's Rules of Practice and Procedure having been satisfied, sufficient cause exists for the Commission forthwith to render its final decision in the instant proceeding.

The Commission orders:

(A) Texas Eastern Transmission Corporation be and the same is hereby directed to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant a maximum volume of 2,173 Mcf of natural gas per day for resale and distribtuion in the towns of French Lick and West Baden Springs, Indiana, and vicinity, upon the condition that Applicant file with the Commission a contract between it and the French Lick Sheraton Hotel to render natural gas service to said hotel upon such terms as will not vary appreciably the economic feasibility of its project as shown by the exhibits attached to the application herein.

(B) Applicant shall be prepared to receive natural gas from Texas Eastern within one year from the date of issuance of this order.

(C) Texas Eastern shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

KASKASKIA GAS COMPANY, DOCKET NO. CP64-231

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued July 29, 1964)

On April 9, 1964, as supplemented on May 26, 1964, Kaskaskia Gas Company (Applicant) filed in Docket No. CP64-231 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Trunkline Gas Company (Trunkline) to establish physical connection of its transmission facilities with the proposed facilities of and to sell natural gas to Applicant for resale and distribution in the community of Xenia, Illinois, all as more fully set forth in the application, as supplemented.

Applicant proposes to construct and operate 4.2 miles of 2-inch lateral transmission line extending from a point of connection with Trunkline's facilities in Clay County, Illinois, to the city gate of Xenia. Applicant will also construct and operate distribution facilities to provide the proposed natural gas service to Xenia. The estimated cost of Applicant's proposed facilities is $106,000, which cost will be financed by the issuance of common stock and the sale of mortgage notes.

The estimated third-year peak day and annual natural gas requirements for Xenia are 295 Mcf and 26,300 Mcf, respectively.

It appears that Applicant has received appropriate authorization from Xenia and the Illinois Commerce Commission.

On May 15, 1964, Trunkline filed an answer to the subject application stating that it has no objection to providing natural gas service to Applicant.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on July 1, 1964 (29 F.R. 8282). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Trunkline Gas Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 29, 1949, in Docket No. G–882 (8 FPC 250).

(2) Applicant, Kaskaskia Gas Company, is a public utility duly organized and existing under the laws of the State of Illinois and is authorized to engage in business as a public utility in said State of Illinois.

(3) It is necessary and desirable in the public interest that Trunkline be directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 295 Mcf of natural gas per day to Applicant, as set forth in the application, as supplemented, and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Trunkline within 9 months from the date of issuance of this order.

(5) The requirement that Trunkline serve Applicant, as proposed, will not place any undue burden upon Trunkline nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Trunkline Gas Company be and it is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 295 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully set forth in the application, as supplemented.

(B) Applicant shall be prepared to receive natural gas from Trunkline within 9 months from the date of issuance of this order.

(C) Trunkline shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP64–96

FINDINGS AND ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 29, 1964)

On April 29, 1964, Transcontinental Gas Pipe Line Corporation (Applicant) filed an application to amend the Commission's order issued April 17, 1964, 31 FPC 957, in Docket No. CP64–96 by authorizing Applicant to construct and

operate approximately 15.5 miles of 16-inch lateral pipeline in lieu of the 15.5 miles of 10-inch pipeline lateral heretofore authorized in this proceeding, all as more fully set forth in the application to amend.

The order of April 17, 1964, authorized Applicant to construct and operate, among other facilities, 15.5 miles of 10-inch pipeline extending from a point on Applicant's main transmission line near Coatesville, Pennsylvania, to the Pennsylvania-Delaware Border. The subject line was for service to Applicant's existing customers, Philadelphia Electric Company and Delaware Power & Light Company. Subsequent studies by Applicant indicate that a looping of the 10-inch line would have to be undertaken within a short period of years and that by installing a 16-inch line at the present time at relatively little additional cost, such a looping program at a substantially greater cost will be avoided.

The estimated cost of the 16-inch lateral is shown to be $1,480,481; the 10-inch lateral was estimated to cost $1,185,822.

Due notice of the filing of the application to amend and opportunity for hearing thereon have been given by publication in the Federal Register on July 3, 1964 (29 F.R. 8443). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued April 17, 1964, in Docket No. CP64-96 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued April 17, 1964, in Docket No. CP64-96 be and the same is hereby amended by authorizing Applicant to construct and and operate approximately 15.5 miles of 16-inch lateral pipeline in lieu of the 15.5 miles of 10-inch lateral pipeline heretofore authorized in this proceeding, all as hereinbefore described and as set forth in the application to amend.

(B) In all other respects said order shall remain in full force and effect.

OPINION NO. 440

PUBLIC UTILITY DISTRICT NO. 1 OF SKAMANIA COUNTY, WASHINGTON, PROJECT NO. 2199

OPINION AND ORDER ADOPTING EXAMINER'S ORDER

(Issued July 30, 1964) *

Syllabus

1. Only purpose for which Commission may license use of waterpower resources is to serve public interest. P. 446.
2. No private individual, private company, municipality or state, no one other than people of United States has any right or claim to use or benefit of water power resources. P. 446.
3. License under Federal Power Act is a privilege conferred, not for benefit of licensee, but for benefit of the public– –before any license can issue, benefit to public must be shown. P. 446.

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*Initial decision appears on p. 456. Order denying rehearing and motion to reopen issued September 25, 1964, 32 FPC 844.

4. In licensing hydroelectric projects Commission has not gone so far as to require firm contracts [as occasionally done in gas cases], nor does it here– –however, a stronger showing is required than applicant has so far been able to make. P. 447.
5. It is Commission policy to encourage extension of natural gas and electric power into new areas whenever possible—both to bring their benefits to additional customers and to further development of these areas. P. 447.
6. Commission *finds* cost of project would be such as to increase rather than reduce cost of power in comparison with Bonneville's present rates. P. 448.
7. Creation of reservoir, diversion of river flow, and fluctuating flow, would introduce chemical changes adversely affecting program of U.S. Fish and Wildlife Service fish installations on the Little White Salmon. P. 449.
8. Evidence on danger to fish is not susceptible of demonstration with mathematical precision, but it clearly reflects substantial hazards. P. 450.
9. Upon instant record, possible benefits to public are small, problematical and unlikely to be realized– –Commission is persuaded that, on balance, applicant has failed to make case for project and application should be denied at this time. P. 450.
10. Commission *denies* application for license in proceeding arising under Section 4(e) of the Federal Power Act.

Commissioner Ross *concurring.*

Commissioner Black *dissenting.*

Paul Coughlin and *John W. Riley* for Public Utility District No. 1 of Skamania County, Washington

Charles H. Vaughn and *Frank M. Potter, Jr.* for Department of Interior

Joseph L. Coniff and *Mike Johnston* for State of Washington, Department of Game

Donald A. Sander for the Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

WOODWARD, *Commissioner:*

This case involves an application filed by Public Utility District No. 1 of Skamania County, Washington (Applicant), for a license to construct a hydroelectric project on the Little White Salmon River and its Rock Creek tributary, which are part of the Columbia River System. The application for license was opposed by the State of Washington through its Department of Fisheries and Game, by the Secretary of the Interior through the U.S. Fish and Wildlife Service, and by staff counsel. In addition, letters of protest against the proposed project have been received by the Commission from some 24 Skamania County residents.

A hearing was held in Portland, Oregon, in March 1963. In a decision issued August 8, 1963, the presiding examiner denied the application on the grounds that the proposed project represented a hazard to two fish hatcheries and a fish laboratory operated by the U.S. Fish and Wildlife Service; that measures needed to protect fish, wildlife, and recreational aspects would raise already precarious costs above estimates; that the financial feasibility of the project was not shown; and that the application came too soon for accurate prediction to be made as to whether the project power would be needed in the general development of the Pacific Northwest. The case is before us following oral argument upon Applicant's exceptions to the examiner's decision.

We are satisfied that the examiner in this case, ably assisted by our staff and the Department of the Interior, properly evaluated the pertinent evidence; and we adopt his decision as our own, with the following additional observations.

The Basic Principle Involved

The only purpose for which we may license the use of waterpower resources is to serve the public interest.[1] No private individual, no private company, no municipality or State, no one other than the people of the United States has any right or claim to the use or benefit of these resources. A license under the Federal Power Act is a privilege conferred, not for the benefit of the licensee, but for the benefit of the public. Before any license can issue, the benefit to the public must be shown.

The Benefit to the Public

The benefit which Applicant contends will result from this project is that power will be made available to the people of Skamania County and to other customers at slightly lower rates than they will be able to buy power provided by Bonneville Power Administration. To the extent to which the project is successful in providing cheaper power than is now available, the potential customers will benefit. To the extent that the project may prove unprofitable, either the customers or the investors—or both—will suffer.

We are faced, at the outset, with the fact that only about 20 percent of the power which the project is expected to produce could be used by the people of Skamania County. There were 2,206 customers in Applicant's entire area as of December 31, 1961. Since 85 percent of the county is a national forest, it does not appear likely that major growth will occur which will enable the county to make use of the entire power output of this project in the foreseeable future. The testimony before us is that all power needs within the general area can be met for many years to come, whether this project is built or not. The sole benefits to the public which this project might confer, on the record presented, is the possibility of a small reduction in price to a small number of customers and the possibility that others beyond the county may share in the reduction. Power produced by Bonneville Power Administration is low-priced power, however, and on the most favorable assumptions any saving to the public from lower rates as a result of this project will not be great.

Applicant, however, bearing the burden of proof, has not been able to satisfy us that even these small benefits can be delivered. It is not uncommon for a hydroelectric project to cost more than is expected. The Commission staff places the annual costs higher than does Applicant. Increases in expense would be required by precautions necessary to protect fish and wildlife. Possible reductions in the power output of the project may result from the need to release water for the benefit of fish operations. There is a difference of opinion as to the amount of power that would be generated by the project, and there is at least the possibility that the expectations of Applicant in this regard are overoptimistic. The examiner found that the annual costs may exceed annual benefits by about $118,000; and we are in accord with this finding.

If the hopes for the project prove overoptimistic by reason of underestimates of costs, accidents, or other unforeseen events in the course of construction, decreases in revenue resulting from the need to supply water to sustain the fishing operations, or inability to locate customers who will take the power on the terms offered, then this project will confer no benefit at all upon the public.

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[1] "The grant of a license, being a privilege from the sovereign, can be justified only on the basis of benefit to the public." *Northern States Power Co.* v. *F.P.C.*, 118 F. 2d 141, 144 (CA7, 1941), quoted in *Alabama Power Co.* v. *F.P.C.*, 128 F. 2d 280, 288–9 (CADC, 1942).

Financing

Applicant proposes to raise $11,909,000 by a bond issue. Underwriters have indicated that $9,000,000 in bonds could be sold if firm contracts or other solid basis existed to show the power could be sold.

There are 2,206 customers for power within Applicant's district, which has a population of approximately 26,000. The project would produce between 30,600 kilowatts and 35,000 kilowatts by 1970. Only 20 percent of the power could be used inside Applicant's district for some years; the estimate is that all the power to be produced cannot be used within the district before 1992.[2] Approximately 85 percent of the district is included within the Gifford Pinchot National Forest so that only about 15 percent of the area of the district will be available for growth which might appreciably increase the consumption of electric power.

It appears that by far the greater part of the power to be generated by this project would have to be sold outside the district for many years to come. Applicant presents no studies showing probable demand outside the district. In its attempt to show that the project could be financed successfully, it presented three letters; one from a neighboring public utility district and two from private companies. Examination of these letters reveals nothing more than a polite reply on the part of the private companies to letters of inquiry which had been sent them. The letter from the Clark County Public Utility District indicates more interest, but is far from providing any reliable expectation of a market. We think this is an insecure foundation upon which to base an $11,000,000 venture.

A comparison may be drawn between our determination here and our requirements when licensing natural gas pipelines to initiate service in new areas. In the case of natural gas we have upon occasion required written contracts when it was anticipated that a substantial portion of the sales of gas would be made to a particular customer. In licensing hydroelectric projects we have not gone so far as to require firm contracts, nor do we do so here. In such a case as this, however, we do require a stronger showing than Applicant has so far been able to make.

We have authorized natural gas pipelines to extend their services in new areas notwithstanding the fact that the market to support the new services was marginal at best. In those cases, however, the pipelines were bringing a new service, a new form of energy, to areas previously lacking it. It is our policy to encourage extension of natural gas and of electric power into new areas whenever possible, both to bring their benefits to additional customers and to further the development of these areas. This policy, however, has no application in the case before us. Skamania County is amply supplied with electric power at reasonable rates. There is nothing in the record to indicate that one additional home would receive electricity by reason of the building of this project.

The sole benefit suggested is that, if the fondest hopes of Applicant are realized, power might be supplied at a price of 3.12 mills per kilowatt hour rather than at 3.37 mills per kilowatt hour, the price paid Bonneville Power Administration during 1962. The figure of 3.12 mills per kilowatt hour can be supported only if the annual cost is divided over a 50-year period by the estimated annual generation. If a 44-year period is used, as recommended by staff, the cost of power at site becomes 3.42 mills per kilowatt hour—more than BPA's selling price. If flows at the diversion structure are considered during the months of June through

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[2] In 1962, the maximum demand was 10,900 kilowatts. A new mill, with an estimated firm need of 2,500 kilowatts, is building in the district. Studies (which did not consider the new mill) estimate a demand for 19,700 kilowatts in 1971.

November, when the amount of water available is less than the hydraulic capacity of the project, the cost of power could rise to 3.91 mills per kilowatt hour. These figures take no account of the additional cost of precautions for the protection of wildlife and fish, loss of available water through spillage necessary in connection with the fish operations, the likelihood that not all the potential power can be disposed of for some years at least, or the possibility of human miscalculation. It is the judgment of the Commission that the cost of the project would be such that there would be an increase rather than a reduction in the cost of power as compared with Bonneville's present rates."

Effect on Wildlife

The Department of Game of the State of Washington opposed issuance of the license on the ground that some of the project's waterways would be a hazard to deer and other game. This hazard could be largely eliminated by asphalt rock stripping along the sides of the waterways so that game could climb out, and the testimony indicates that alternative measures would also be effective in minimizing the hazard to game. These protective measures would add, however, to the anticipated cost of the project.

Recreational Facilities

That part of the river to be occupied by the project is not particularly suitable for fishing, and very few fishermen use it. The fishing facilities below the project would be affected to some extent by fluctuations in the river. The testimony is that even during low periods the project would allow the fish population enough water for continued existence, but would leave less water in which the fish could move than there is at present. Any loss in stream fishing as a result of the project would be more than offset by the addition of the boating and lake fishing not now available.

The Effect on the Fish Installations

The U.S. Fish and Wildlife Service fears that operations of its two fish hatcheries and its fish nutrition laboratory on the Little White Salmon River would be endangered by the construction and operation of the proposed project. The two hatcheries are considered to be among the best in the Columbia River Basin. They not only contribute to the economy of the area, but are an insurance policy on the preservation of the salmon.

The Little White Salmon National Fish Hatchery was established before the turn of the century. Egg taking operations began on the Little White Salmon in 1896. In 1955 the hatchery buildings were rebuilt and enlarged at a cost of $612,871.93. It is now the second largest producer of the 21 hatcheries established or reconstructed under the Columbia River Fishery Development Program. In 1962 it produced 12,667,000 fall chinook salmon out of the 54,760,000 produced in that year by all hatcheries under the program and released an additional 215,000 silver salmon of 1960 brood year.

The Willard National Fish Hatchery was built in 1954 at a cost of $649,755.94. In 1962 it produced 159,000 fall chinook salmon and released 2,858,000 silver salmon of the 1960 brood year, as compared with a total of 16,296,000 silver salmon released in 1962 by all hatcheries under the program.

The Western Fish Nutrition Laboratory was built in 1957. Its purpose is to determine the nutritional requirements of salmon and steelhead for the benefit of the hatcheries of the Columbia River Basin. The uncontradicted testimony is that this laboratory is an essential unit in the Columbia River

Fishery Development Program, and has already gone far in providing basic information and setting standards that are being adapted to hatchery operations.

All these installations are a part of the Columbia River Fishery Development Program to rehabilitate the salmon and steelhead of the Columbia River System. The program, although financed by Federal funds, is planned and executed in cooperation with the States of Idaho, Oregon, and Washington. From 1949 through 1962, over $22,500,000 has been made available by Congress for the construction or reconstruction of 21 hatcheries in the Columbia River Basin. Approximately 1,500 miles of tributary streams have been cleared of obstructions to permit better passage and spawning of fish. Some 500 screens have been installed in diversion ditches and canals, 22 major fishways have been built at falls that blocked fish migration, and some 150 minor falls have been improved to permit easier passage for the fish.

It has been urged that the project might adversely affect the fish installations on the Little White Salmon River in the following ways:

Temperature of the water: The river water is now colder than optimum temperature for salmon hatching and growth, although the fish installations have operated successfully. With the advent of the project, the water temperature would be slightly raised in summer because the reservoir would be warmed by the sun. We agree with the examiner that no adverse effect upon the fish installations is to be expected from these temperature changes.

Change in the chemical content of the water: Data on fish nutrition has been collected at the fish laboratory over a 5-year period. It is urged that alteration of the chemical content of the river (which would result from water flowing through the reservoir and from fluctuating volumes of water) will render this data useless. There is now substantial chemical change from season to season and from year to year, principally because the volume of flow varies constantly with differences in rainfall and as temperature changes affect the melting of the mountain snowcaps that feed the river. The varying flow causes the river and its tributaries to flow over different ground in different years and seasons, and also changes the rate of erosion and the proportion of water from different sources. Lumbering and road building also affect the chemical content of the water. While the data so far collected cannot be said to deal with a constant situation, the project would create a completely new condition. There appears no doubt that the creation of a reservoir, the diversion of the flow of the river, and the fluctuating flow would introduce chemical changes in addition to and different from those previously experienced at the fish laboratory, and so would adversely affect the hatchery program and the comparability of the statistics on fish population which are an important value of the fisheries.

Fluctuation and quantity of flow: Applicant admits the necessity of making sufficient water available to the fish installations, spilling water from the reservoir if necessary. Applicant also concedes that operation of the project would cause fluctuations in the flow of the river downstream, especially as the project is to function as a peaking operation. It would also be necessary at certain seasons of the year to provide an even flow, as salmon would be deterred from entering at the mouth of the river if it discharged a fluctuating volume of water. Although it may be necessary to spill so much water that the estimated power output may be reduced at certain times, the flow can be regulated without adversely affecting the fish if there are no accidents or breakdowns of communications between those dealing with the fish and those in charge of the project.

Silting and debris: Excessive silt kills salmon eggs. Both hatcheries have some silting problems, but they do not appear to have interfered greatly with their operations. It has been suggested that protection against debris might have to be increased at the hatcheries if debris in the river increased as a result

of the project. From the evidence, it does not appear that the change in river conditions with respect to silt and debris would be great enough to be given much weight in our considerations.

Fish disease: Expert testimony was presented that the reservoir might act as a breeding tank for micro-organisms which would introduce disease into the water flowing to the downstream fish installation. Other expert testimony was presented to the contrary. In view of the testimony of an expert witness employed by the U.S. Fish and Wildlife Service, we hesitate to say that the hazard does not exist; accordingly, we leave undisturbed the examiner's finding on this point.

Construction: Damage could result to the fish installations during construction of the project unless protective measures are taken. Blasting within 1 mile of salmon eggs at certain critical times could kill them. Until concrete has been installed long enough to be leached, it introduces toxic elements into the water. This could be taken care of by diverting the flow of water around the fish installations during the period of construction and for a short time thereafter, but the possibility of accidents remains. Both the testimony in this record and our own experience indicate that this possibility is substantial.

Accidents and unforeseen developments: Unforeseen accidents have repeatedly occurred on other projects and caused damage to fish. Such happenings as washouts, sinking of a barge, incorrect calculation of flow, and rock slides have caused deleterious effects. After careful consideration, we conclude that, while the evidence does not establish how great a hazard the project would be to the fish installations, some hazard would exist.

The evidence on the danger to the fish is not susceptible of demonstration with mathematical precision, but it clearly reflects substantial hazards.

Upon this record, the possible benefits to be conferred upon the public are both small and problematical and, in our judgment, are not likely to be realized. The hazard of detriment to the public is clearly present. While the economic feasibility of this project is problematical, if that were the only issue we might well grant a conditional license. Under the circumstances, we believe that the application should be denied at this time, not because of any single factor, but because a weighing of all considerations persuades us that, on balance, the applicant has not made a case for the project. If at some future date the need should arise for development of water power at this location or there should be other material changes of circumstances, another application may be submitted.

The Commission orders:

(A) The findings and order of the presiding examiner in the above-entitled matter, issued August 8, 1963, are hereby adopted as the findings and order of the Commission.

(B) The exceptions of Applicant to the initial decision of the presiding examiner are hereby denied.

Commissioner Ross *concurring.*

Commissioner BLACK *dissenting.*

Ross, Commissioner, *concurring:*

Once again the Commission, as in the controversy surrounding the immediate damming of the Salmon River, is called upon in its role as a trustee and guardian of the nation's resources to protect the continuing interest of the entire human species in our precious natural resources, a role which involves "our maturity and mastery, not of nature but of ourselves".[1] It would be shameful if this Commission were not alert to the possibilities of the extinction or severe diminution of the fishery resources of the Northwest. Surely, the

[1] Rachel Carson, CBS Reports, April 3, 1963.

nation cannot afford to gamble with the rights of future generations and await the virtual extinction of fish in the Columbia while idly relying on some speculative promises that all will be well. If we are to do our job, it must be done here and in each case. There may not be a next time. All too often the nation oversleeps and awakens to a world stripped of its glory. Ponder life for a moment without the clear sparkling streams teeming with fish and wildlife. Let us not forget the epic tragedies which befell the passenger pigeon, the buffalo and the whooping crane. Let us not repeat the Raid on Resources so vividly described in Stewart Udall's *The Quiet Crisis.*

There is a place in our lives both for power and the material benefits that power brings, and the fish which are increasingly important in the recreational field, and are also meaningful as a sacred and living symbol of life itself. It is the function of the Federal Power Commission to focus the camera and bring the two into proper perspective.

Here the scales weigh against the dam for the several reasons stated by the Staff, the Examiner and the majority. One of the primary answers of the power developers in the Northwest to the arguments that their high dams were destroying the anadromous fish runs has been that the state and federal fish hatcheries would serve as an adequate substitute for nature. This contention is supported by experience abroad and has been accepted in many cases in this country. Therefore, when the hatcheries themselves are threatened, it becomes incumbent to proceed cautiously, particularly since the environment necessary for successful reproduction is extremely difficult to duplicate. And as the majority notes, these two hatcheries are among the oldest and most successful in the Columbia River basin.

The evidence on the danger to the fish concededly is not of that mathematical precision which would make our decision here a simple mechanical process. But the evidence clearly silhouettes the clear and present danger this project represents to this resource at this time and thus, in my opinion, the reasonable, prudent course is to forego, at least for the present, this power project. Surely, the respected leaders of this Utility District, the very ones who have fought valiantly to promote the orderly growth of one of the most beautiful areas of the country, will not quarrel too bitterly over a decision which does not close the door, but only reserves to their children and our children the opportunity to weigh again the wisdom of our decision.

In a manuscript, "Our Commitment to Future Generations", which was completed two days before he was slain, John F. Kennedy began:

> Robert Frost, a late poet, once remarked, "What makes a nation in the beginning is a good piece of geography". Americans have been richly endowed with a land that is both beauteous and bountiful. Our greatness today rests in part on this gift of geography that is the United States but what is important for tomorrow is what the people of America do with their conservation legacy. [*Country Beautiful,* Feb.-March, 1964, p. 12.]

BLACK, Commissioner, *dissenting:*

We are here faced with the question of whether vague and unsupported fears of danger to an existing fishery laboratory and two fish hatcheries should preclude the licensing of a hydroelectric project of moderate economic efficiency. Unfortunately, and apparently in recognition of the fundamental lack of any solid evidence of danger to the fish facilities from the proposed development, the majority has injected a variety of makeweight issues relating to the

economic feasibility of the project. Because I believe the majority's expressed reasons for rejecting this project would adversely affect the continued development of the Columbia River Basin by non-federal entities, I must dissent.

The majority expresses four basic reasons for denying applicant a license. First, that all the power needs within the general area can be met even if the project is not built; second, that project power cannot all be marketed; third, that the possibility exists that the project is not economical; and fourth, that fish hatchery operation may be adversely affected. I will deal with these points in the order I have stated them.

Need for the Power

The Commission has taken a most curious and unfortunate position which will perhaps set a precedent with far reaching implications for the development of the Columbia Basin water power resources by publicly-owned entities in the Pacific Northwest. The majority tells us that the Northwest is in a surplus power position and that the Bonneville Power Administration can supply applicant's needs for the foreseeable future. I expect that this is true. But if this is a valid reason for denying a license in this case, it should also prevent the licensing of other projects within Bonneville's marketing area. This Commission has here taken a stand which necessarily treats the Federal Government as the favored—or perhaps even the exclusive—power supplier for the future in the Northwest. I don't think that Congress expected the enactment of the Bonneville Power Act to have the effect of creating a kind of federal monopoly in the Columbia Basin. The Commission is setting up the intended benefits of the preference provisions of the Bonneville Act as an obstacle to the development by PUD's municipals, and other public entities, of their own generating facilities.

Moreover, the approach which the majority has taken here would in the case of competing applications between a preference and non-preference body, actually use the preference provisions of the Bonneville Power Act to defeat the preference provisions of the Federal Power Act. As between a private and public applicant in the Bonneville marketing area, the public body of course has less "need" for its own generation, since it is a preferred customer of Bonneville. The Commission's reliance on this factor is an ominous sign for the future of public non-federal hydroelectric development in the Pacific Northwest. Logically, it does not bode well for the future development of the water resources of the area by privately-owned utilities, either. The rather complete integration of the operations of the private and public bodies which comprise the Pacific Northwest Power Pool with the Bonneville system tends to minimize the absolute "need" for power by *any* of the member utilities as long as the Pacific Northwest enjoys a surplus of power.

The majority has taken, I believe, a fundamentally erroneous approach in its insistence on "need" by the developer. Our responsibility under Section 7(a) of the Federal Power Act is to see that *the water resources of the region* are most effectively developed for the over-all public good. The majority seems to recognize this most basic concept of the law when it recites that "A license under the Federal Power Act is a privilege conferred, not for the benefit of the licensee, but for the benefit of the public," and then proceeds to ignore this solemn pronouncement. The resources of the Little White Salmon River are totally undeveloped for its hydroelectric power potential, and the Commission, by its action today, is preventing its development for the benefit of the public in large part by its preoccupation with the individual applicant's need or lack of need for the power the project would produce.

Marketability

Related to the question of applicant's need for power in its own system is the question of its ability to dispose of energy outside the district. It is conceded that applicant cannot market all the output of the project on its own system in the early years.

As the majority opinion notes, three letters from private utilities and a Public Utility District were placed in evidence which show varying degrees of interest in purchase of the project power. It is, of course, incumbent upon this Commission to satisfy itself that a proposed project can be financed, and I am inclined to agree with the majority that applicant's case with respect to sale of the project power in the early years is not compelling. We must recognize, however, that financing of a project must await issuance of a license; and without a license a proposed developer is not in a particularly favorable bargaining position. It would be entirely consistent with past practice of this Commission, both with respect to applications by natural gas pipelines seeking to serve new areas,[1] and in hydroelectric licensing cases,[2] to issue the license with a condition requiring applicant to demonstrate financibility to our satisfaction within a reasonable period of time.

Economic Feasibility

The record contains satisfactory evidence that, although the site is not a bountiful one, it is capable of economic development. Applicant's case establishes that over a 50-year period its average annual costs will be $704,000. This would result in the power costing the applicant $20 per kilowatt year of peaking capability or 3.26 mills per kwh of average annual energy in contrast to the 3.37 mills applicant paid for power it obtained from Bonneville in 1962. The majority summarily rejects applicant's case without discussion and concludes with the Examiner that the annual costs may exceed annual benefits by $118,000. This is achieved by assigning an unsupported, inflated average annual cost to the project of $715,000 and by denying the applicant any credit for the project's dependable capacity over and above that attributable to its prime energy. It disregards the unrefuted expert testimony of applicant's consultants (R. W. Beck & Associates). Applicant's evidence establishes that the annual benefits could exceed annual costs by as much as $248,000, producing a benefits-cost ratio of 1.35.

Even a most conservative analysis of this project using the value of power determined by the staff, it is only during the first 7-year period that the annual costs exceed the annual benefits, and then by a mere $142,500. However, for the remaining 43-year period the dependable capacity at market will increase substantially and produce a net benefit over cost of $168,300, for a benefits-cost ratio of 1.22. Thus, even on this basis we have a benefits-cost ratio based on the weighted dependable capacity at market for the 50-year license period of about 1.11. Staff's conclusion that the benefit-cost ratio is less than unity is based on its analysis of the project's initial seven years of operation only, contrary to the normal standard laid down in FPC Technical Memo No. 1 which prescribes the use of a 50-year period.

This Commission issued thirteen major project licenses between January 1, 1961 and December 31, 1963, to both private and public bodies, seven for projects

[1] Northern Natural Gas Company, et al., CP62–85, *et al.* Opinion No. 404 issued September 30, 1963, 30 FPC 859.

[2] First Iowa Hydroelectric Cooperative, 6 FPC 227. See also PUD No. 1, Douglas County, 28 FPC 128.

with benefit-cost ratios of less than 1.11.[3] It should be noted that even after oral argument of this case before the Commission we unanimously approved the issuance of a major project license in another uncontested case involving a facility having a benefit-cost ratio of only 1.14.[4] Furthermore, it should be pointed out that in submitting recommendations to the Bureau of the Budget and the Congress for the inclusion of hydroelectric and generating facilities in proposed federal construction, it is the policy of the Commission to make favorable recommendation for the inclusion of such facilities in cases in which the benefits to cost ratio of the project, on a 50-year term basis, simply exceeds unity.

UNCONSTRUCTED MAJOR PROJECTS

Project No.	Project name	Licensee	Benefits costs	Construction cost
2079	Upper American R.—Calif.	Placer Co. Water Agency	1.08	$102,205,800
2106	McCloud-Pit R.—Calif.	Pacific Gas & Elect. Co.	1.03	92,030,000
2144	Boundary—Wash.	City of Seattle	2.07	118,566,000
2149	Wells—Wash.	PUD No. 1	[1] 1.16	145,113,000
		Douglas Co., Wash.	[2] 1.33	165,072,000
2155	Chili Bar—Calif.	SMUD & Pac. Gas & Elect. Co.	1.56	42,676,000
2157	Sultan—Wash.	PUD No. 1 Snohomish Co.	1.02	48,167,000
2211	Markland Dam Ohio R.	Pub. Svc. Co. of Indiana	1.03	25,839,000
2266	Yuba-Bear R.—Calif.	Nevada Irrigation District	0.89	36,825,000
2304	Blue Ridge—Ariz.	Phelps Dodge		6,666,000
2305	Toledo Bend Texas & La.	Sabine River Authority	1.07	30,000,000
2309	Hards Creek—N.J.	Jersey Central Pwr. & Light	1.10	30,000,000
2310	Drum—Spaulding	Pacific Gas & Elect. Co.	1.25	24,544,700
2328	Lake Whitman	City of Ketchikan, Alaska	2.78	1,559,460

[1] Initial installation.
[2] Ultimate installation.

It is clear that applicant's proposal, on the record before us, is economically feasible. But the majority, in straining to support the Examiner, goes outside the record and agonizes over all sorts of eventualities and calamities which might befall the applicant. It is not uncommon, they tell us, for a hydroelectric project to cost more than is expected. There may be "possible" reductions in the power output of the project. There is "at least the possibility" that the expectations of applicant with regard to the amount of power to be generated are "over optimistic." Applicant may experience accidents, the "possibility of human miscalculation," or "other unforeseen events" in the course of construction.

Indeed, some or all of these things "might possibly" happen. They might happen in the construction of *any* project, large or small. But I have always labored under the apparent misapprehension that this Commission decided its cases on a factual record; not on conjecture and speculation that something might go wrong. No one pretends that a decision upon the licensing of a hydroelectric project can be decided with computer-like accuracy; but if timidity and unsupported fears are so profoundly to affect the exercise of our licensing jurisdiction as the majority opinion indicates in this case, then we have a lot of hand wringing to do over the so-called marginal projects we have licensed in the past several years.

Fish Interests

Finally, the Commission has decided that the "possible benefits" of the proposed project are outweighed by the hazard of damage to the operation of two fish hatcheries and a fish nutrition laboratory. Lest my position be misunderstood in light of Commissioner Ross' moving and poetic concurring statement, let me assert without equivocation that I have no quarrel with Rachel Carson,

[3] Economic Feasibility of Projects Licensed from January 1, 1961 to December 31, 1963.
[4] *Public Service Company of Colorado*, Project No. 2351, issued March 23, 1964, 31 FPC 684.

Robert Frost, etc. as to the value of the nation's fish and wildlife resources. In fact, if the majority's conclusions were supported by substantial evidence I would join with my colleagues in the denial of the project license, even though I am convinced they have erred in passing upon the financial and economic aspects of the application.

The majority is concerned with possible changes in the chemical content of the water which, it is asserted, might adversely affect the hatchery program. If the chemical content of the water upon which fish nutrition data is based were reasonably constant, or even if it fluctuated with some reasonable predictability, we might be justified in deferring to the expressed fears of the fisheries interests. But the majority recognizes (and the record supports) the fact that the chemical content of the water is constantly changing from a number of wholly unpredictable causes. A witness for the U.S. Fish and Wildlife Service testified simply that "The quality of the water may change; we do not know how." At another point he admitted that "I do not know to what extent" there will be any change in water quality. The fact is that to the extent some small chemical change may occur as a result of the construction and maintenance of the project, it very likely will be of no more significance than the great variety of changes occurring from other causes over the years.

The majority addresses itself to the question of possible fish diseases resulting from the breeding of micro-organisms in the reservoir, candidly admits that it doesn't know what will happen, and shrugs the whole thing off by saying that the Examiner's finding will remain undisturbed. The Examiner based his finding upon the testimony of an inorganic chemist for the Department of the Interior who should in the first place have been disqualified to express an expert opinion concerning the development of living organisms. He did, however, demonstrate sufficient candor to admit at several points in the record that he "wouldn't have any idea," what the effect might be. There is, on the other hand, considerable and persuasive evidence of record that the project would not, in fact, create water conditions suitable to the growth of algae, flora and fauna. But, even assuming for the sake of argument that the witnesses who testified to this effect were wrong, evidence was adduced which would establish that the growth of small organisms is, if anything, *beneficial* to fish. The members of this Commission are not expert fish biologists; but our lack of independent knowledge in this regard does not justify abdicating responsibility to the Examiner, who, so far as I know, is not highly schooled in the matter of fish diseases either. There is no substantial evidence of record to support his finding or that of the Commission that any hazard of disease will be created by construction of the proposed project.

Lastly, we are told that damage to the fish could result from construction activities, and "unforeseen accidents" such as "washouts, sinking of a barge, rock slides," etc. These dreadful things have occurred on other projects and caused damage to fish. Apparently the way to avoid such risks is simply not to license any more projects.

The majority strikes a stern and rigid pose as to the burden of proof which applicant must bear, and which, it is asserted, was not met. But the merest expression of nervousness by the fishery interests and we go all to pieces.

The refusal by the majority to explain the basis for its conclusions underscores its approach to this case upon the apparently preconceived notion that the project should not be built. It has created out of whole cloth all manner of obstacles to a favorable decision. In so doing, the facts of record, the precedents of this Commission and the intent and requirements of the law have been ignored. All to satisfy the undefined apprehensions and opposition of the fishery interests; and with the effect of inhibiting development in the Northwest

of water power resources by local public bodies who find themselves in the marketing area of the Bonneville Power Administration. Whether or not this small project is ever built is probably not of earth shaking moment; the basis upon which the Commission's decision was reached, however, is most disquieting, and I am compelled to dissent for the reasons stated.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATION FOR A LICENSE FOR A HYDROELECTRIC PROJECT

(Issued August 8, 1963)

LANDE, *Presiding Examiner:* This proceeding is upon an application filed by the Public Utility District No. 1 of Skamania County, Washington (hereinafter referred to as the Applicant) for a license, pursuant to the provisions of the Federal Power Act, for the construction of a hydroelectric project to develop the water power potential of the Little White Salmon River, a tributary of the Columbia River.

A hearing was held in Portland, Oregon, from March 4 through March 13, 1963, inclusive. During the course of the hearing all parties and participants were afforded an opportunity to present evidence and to cross-examine witnesses. In addition, all persons appearing at the hearing and desiring to speak either in favor of or in opposition to the issuance of a license for the proposed project were heard.

The record for consideration herein consists of a transcript of 1529 pages, 76 physical exhibits and a number of other documents received by reference and official notices.

Seriatim briefs have been filed by all parties on the various dates set. Applicant replied to the interveners' briefs on or about July 22, 1963, as of which date the case was considered submitted for decision.

PROCEDURAL BACKGROUND

A Little White Salmon hydroelectric project was first actively considered by local residents in the 1940's. At the same time that the Skamania County PUD No. 1 and some residents of the area expressed an interest in the projects, the Washington Public Power Supply System indicated its interest and went so far as to obtain some measure of approval from the Washington State Departments of Game and Fisheries of the then proposed project, which differed from the present project. The initially proposed project studies contemplated a series of canals and tunnels down the left side of the river as distinguished from the present plan for canals and penstocks down the right bank of the river. Subsequently Applicant allegedly started an engineering study of the Little White Salmon River with a view of constructing a hydroelectric project to meet the future needs of the area served or to be served by the Applicant. Applicant obtained loans from the Housing and Home Finance Agency and also used its own funds to obtain an engineering report. The preliminary engineering report was dated July 21, 1958, and formed the principal basis for the application for a license to construct Project No. 2199.

The Commission by its Order of December 14, 1956, issued a preliminary permit to the Applicant for Project No. 2199. On September 14, 1959, the Applicant filed an application for license showing *inter alia* that the proposed project would affect lands, fish hatcheries, and nutritional laboratories of the United States.

Notice of the foregoing application was published and thereafter, based upon their petitions, the State of Washington through its Departments of Fisheries

and Game, and the Secretary of the Interior through the U.S. Fish and Wildlife Service were granted intervention by the Commission's Orders of January 4, 1960, and September 4, 1962, respectively. Several letters of protest against building of the project have been received by the Commission. Following a request for hearing by the State of Washington and the U.S. Fish and Wildlife Service, a hearing was fixed by the Commission's Order of May 11, 1962, and was held in Portland, Oregon, in March 1963.

THE ISSUES

The basic issues in this proceeding may be stated in substance as follows:

1. Is the proposed project best adopted to a comprehensive plan for improving or planning the water power development of the Northwest?
2. Has Applicant shown its own need for the project output now, or in the foreseeable future?
3. Is there a market for surplus power from the project?
4. Will the project impose hazards to existing hatchery, laboratory installations, and to the area wildlife?
5. Is the project economically feasible?

JURISDICTION

The proposed Project nestles along the boundary line of the Gifford Pinchot National Forest. The proposed transmission line of the Project crosses National Forest land. The proposed powerhouse of the Project is located on United States land close to the Little White Salmon Fish Hatchery of the U.S. Fish and Wildlife Service; and similarly situated upon such United States lands are the penstock, the access bridge across the River, the weir at the powerhouse and the initial portion of the Project transmission line.

The evidence shows, and it appears to be conceded by all of the participants in the proceeding, that the Applicant must secure from the Federal Power Commission a license for the Project because portions of the Project occupy public lands and "reservations" within the meaning of Section 3(2) of the Federal Power Act.

Jurisdiction of the Commission is properly grounded upon (a) the fact that the Project proposes the construction, operation and maintenance of dams, water conduits, powerhouses, transmission lines and other project works upon parts of "reservations" of the United States consisting both of national forest reservations and other lands owned by the United States, and (b) upon the fact that the Project contemplates construction, operation and maintenance of dams, water conduits, reservoirs, powerhouses, transmission lines and other project works for the development, transmission and utilization of power across, along, from or in streams which affect "navigable water" within the meaning of Section 3(8) of the Federal Power Act.

PROJECT'S FEATURES

Water for the proposed Project would be diverted by a structure to be located in the Little White Salmon River (elevation about 1,160 feet) approximately 5 miles above its confluence with the Columbia River. From the diversion structure water would flow through a 11,200-foot canal to Rock Creek Reservoir where about 200 acre-feet of usable pondage would be available between the normal pond elevation of 1,151 feet and the minimum level at elevation of 1,147 feet. Water would be lead from the reservoir through a 8,560-foot canal to a tunnel about 5,160 feet long which terminates at the base of a surge tank.

An underground penstock would bring the water to a single 49,200 hp. turbine in the powerhouse located on the river about a half-mile above its mouth, and just across the Little White Salmon River from the upper group of holding and rearing ponds of the Little White Salmon Fish Hatchery. The minimum tailrace pool elevation proposed is 102.5 feet as compared with the hatchery trough elevation of 102.5 feet and rearing pond elevation of 101.67 feet.

The total cost of constructing Project No. 2199 is estimated at $11,909,000. This is based on preliminary designs intended only to show major features and their function as a unit. Before actual bids on construction can be made many more design details will have to be developed on the basis of further tests and study. Commission Staff has reviewed the estimates in the light of work papers and other detailed information available and regards them as reasonable. Geological testimony of the experts, Applicant's witness Coombs and Interior's witness Anderson, is in substantial agreement in regard to its relationship to proposed structures. Interior and Washington did not seriously question the adequacy of the structures and their safety or adequacy to serve the purposes for which they are intended. It is understood that additional studies would be carried out before final designs can be prepared for Commission approval in the event a license were issued.

ADJACENT FACILITIES

Little White Salmon Fish Hatchery

The Little White Salmon Hatchery is located in a narrow canyon of the Little White Salmon River just above its confluence with the Columbia River. This hatchery was first established in 1898. In 1955 it was rebuilt and enlarged at a cost of $612,871.93 and now consists of a service building, a hatchery building with 72 troughs, several storage buildings and 52 raceway-type concrete rearing ponds. One group of rearing ponds is located about 1,700 feet below the powerhouse site and the second group is located across the river and just immediately below the site. This second group of ponds is operated in conjunction with a short fish ladder and holding pond which are used in egg-taking operations.

The principal water supply for the hatchery consists of a diversion dam a short distance upstream from which water passes through 200 feet of 48-inch steel pipe to a settling basin and rotary screening device. It then passes through 1,100 feet of 36-inch steel pipe designed to carry 55 cfs to a trough at the upper rearing ponds at 102.5 feet elevation. This water supply is supplemented by a small diversion dam and 24-inch steel pipe just immediately upstream from this group of ponds. Water is passed to the lower group of ponds by means of 1,650 feet of 24-inch pipe. This water supply is supplemented from two springs across the river and one on the same side of the river.

Willard National Fish Hatchery

The Willard National Fish Hatchery was constructed at a cost of $649,755.94 in 1951 under authorization of the Mitchell Act of May 11, 1938 (52 U.S. Stat. 345) as amended by the Act of August 8, 1946 (60 U.S. Stat. 932) and is located on the Little White Salmon River about 3,900 to 4,000 feet below the diversion structure for Project No. 2199. It consists of several buildings including a hatchery building and 108 deep troughs and 50 concrete raceway rearing ponds. The main water supply consists of an intake structure by which water is taken from the river through 1,100 feet of 36-inch steel pipe designed to carry about 50 cfs of water. The water passes through a screening device before reaching the hatchery. This water supply can be supplemented from one well which can

produce 1,000 g.p.m. and two which can produce 500 g.p.m. each. Facilities for reuse of water are also available. A spring used primarily for domestic purposes is also available for the hatchery and laboratory use.

Western Fish Nutrition Laboratory

The Western Fish Nutrition Laboratory was built by Interior in the early 1950's for the purpose of studying basic nutritional needs of salmonoids and basic process of body chemistry and metabolism of these fish for use in artificial propagation of salmonoids in the Pacific Northwest. This installation is located just immediately downstream from the Willard Fish Hatchery on the Little White Salmon River and normally receives its water supply from two of three wells located just above the hatchery.

Wildlife and Recreational Aspects

Approximately four and one-half miles of the Little White Salmon River from the Willard diversion point to its confluence with the Columbia River will be affected by the proposed Project. The valley through which the river runs is relatively steep, however there are several routes of access to the river which are utilized by fishermen. The Little White Salmon River is one of the few remaining exclusive trout streams in the State of Washington.

Witness Larson testified for the Washington Department of Game that construction and operation of the proposed Project would have "an extremely deleterious effect" on game fish in the Little White Salmon River. He further testified that the open canals would cause substantial losses of deer by drowning.

Applicant's Own Need

Skamania County is located on the north bank of the Columbia River, beginning about 20 miles east of Vancouver, Washington. The southern boundary of the county extends 40 miles along the Columbia River. The Gifford Pinchot National Forest partially covers Skamania County, and comprises 85 percent of the county's total 937,000 acres. Skamania County Public Utility District No. 1 was organized in 1938 as a municipal corporation, which is subject to audit control and supervision of the State of Washington. It operates an electrical distribution system serving users located entirely within Skamania County. The power which the Applicant distributes is presently obtained entirely from the Bonneville Power Administration (BPA). The Applicant has been actively engaged in the operation of electrical public utility properties since 1939 when it acquired the electrical distribution properties of the private companies then serving Skamania County, Washington. The initial purchase of such properties was financed by the sale of the Applicant's electrical utility bonds in the amount of $79,000. As of December 31, 1961, the Applicant had outstanding $393,114 of electric revenue bonds and had $83,769 in cash accrued for bond redemption. As of December 31, 1961, the Applicant was serving 2,206 customers in Skamania County. The normal electric load growth experienced by the Applicant suggests its energy requirements might double in about 10 years. Applicant contends that the construction of the Project in Skamania County would help the area attract new business, new industry, and other ventures which could utilize energy made available under drawback provisions in Applicant's agreements for sale. Furthermore, Applicant claims that the Project would afford the people of Skamania County and the Applicant protection not only against anticipated rate increases of the BPA, but protection against the date in the future when the BPA may be unable to meet the demands of its preference customers.

The Department of the Interior (Interior) strongly challenges the contention that Applicant has a true need for the power to be generated by the proposed Project. It submits that under the terms of the Bonneville Project Act, Applicant is what is known in the industry as "preference customer", and it has a prior right to purchase power from Bonneville—a right which is greater than that of private utilities or industries. If any future shortage of power should be anticipated the Bonneville Power Administration is required by statute to pull back from its nonpreference customers enough power to meet the requirements of the preference customers. Henderson McIntyre, Bonneville's witness, testified that even if no new resources should be developed beyond those which are now being constructed or in operation, the requirements of all of the public utility districts in the Northwest would be met through the year 1972–73. This took no account of the certainty of further development of generating resources in this region—public and private, hydro and steam. Mr. McIntyre stated that it was his estimate that the Applicant will be able to purchase all of its energy requirements from Bonneville at least through the year 1974–75. For at least the next ten years this Applicant will never once need the power which it would generate by the construction of this Project. When other projects are constructed in the region, as they certainly will be, this will serve to further put off the date by which the dam must be constructed. Mr. McIntyre thinks that Applicant cannot justify this Project in terms of its own needs or the needs of the region.

As to an increase in rates against which Applicant wishes to protect itself, Witness McIntyre stated that BPA's rates will be reviewed in the near future, and that it appears probable that there will be a ten percent overall increase in BPA's rates. Interior points out that while the increase in rate appears reasonably certain, the reasoning that the Project should be built to protect the Applicant against rate increases is not very persuasive since in the contemplated operation of the Project the Applicant still intends to purchase its base load from BPA.

It does not appear necessary to repeat here the various assumptions and the rather optimistic future energy need estimates made by Applicant's witnesses. Nor will much be said about Interior's detailed criticism thereof. Suffice it to point out that in this connection Staff Witness Bell is of the opinion that it will be about 1992 before the entire output of Project No. 2199 would be needed to supply Skamania County P.U.D. system loads.

Applicant's witnesses Price and Westfall were of the opinion that the anticipated growth of electrical loads in the Pacific Northwest justifies construction of the Project. They felt that if there is any "slippage" of energy in the near future the surplus will be reduced substantially. By contrast, Staff Counsel takes the position that the mere possibility of a deficiency of peaking capacity at some future time does not justify granting a license, unless it is also shown how the power will be integrated into the system and that contracts for the sale of power from the Project can be made on terms which will enable it to finance its construction. These matters will be discussed later.

The Cost of Energy Produced

Applicant proposes to negotiate a contract for integration of the energy to be generated by the Project with the Bonneville Power Administration. There is some doubt whether energy from the Project can be sold on terms that will assure financial success. Applicant estimates the cost of average annual energy to be generated by the Project at 3.12 mills, compared to the average cost of energy purchased by Applicant from Bonneville, its sole source during the year

1962 of 3.37 mills per kilowatt hour. Furthermore, Bonneville's witness anticipated at 10% average rate increase.

Applicant estimates the average annual cost of producing energy at the Project over a 50 year period to be $704,000. The Staff contends that the actual average annual cost for the first 44 years of the Project will be $769,000. Thus, the Applicant and the Staff are nine percent apart in their average cost estimates. Furthermore, the Staff maintains that Applicant's cost estimate per kilowatt hour is unrealistic because it uses the Lapham Gage for actual flows and as a basis of the correlated flows Applicant erroneously assumes more water for production of power than would actually be available at its intake structure. In addition, should it become necessary to release water for hatchery use either at the diversion structure or the penstock, particularly since such releases are most likely to occur during low flow periods, the resulting reduction in power production would represent a definite loss to the Project. The Staff points out that 17% less water for six months would raise the unit cost of power at market to 3.70 mills per kwh. A 37% decrease in water for 6 months would raise the cost to 3.90 mills.

Applicant contends that with pumping there would be a recapture of water "so that the measurements of flow at the Willard gaging station would be quite realistic." The economics of this plan seem to be based on a hope of purchasing cheap power from Bonneville to operate pumps to raise 15 cfs for a head of 225 to 250 feet. However, it appears that as the size of pumps is increased the capital investment increases very materially.

In short, it appears that the pumping plan economics are in doubt and considerably more information is necessary before it can be determined how much water can economically be pumped, and consequently the impact thereof on the cost of energy.

Area's Need

Applicant contends that beginning in 1967 and during an occasional season thereafter there would be a deficit of power in the area within which the proposed Project is situated. In order to demonstrate a possible power deficit in the foreseeable future, Applicant counted as "firm" power quantities which Bonneville had proposed to firm up only if the proposed Canadian Treaty had been signed. A brief comment about interruptible and firm loads is in order. Interruptible loads are loads which can by contract be curtailed by either the supplier or the purchaser. They may curtail it at their option without penalty in order to accommodate their plant operations to the market. Interruptible power is treated as secondary and nonfirm in the forecasts of the programing staff of the Bonneville Power Administration. The reason that this power is sold as interruptible and not as firm is that the persons generating electricity cannot guarantee to meet certain loads under all conditions, *i.e.*, if critical water conditions should recur. In order to firm up interruptible loads the generating agency would have to be assured of the availability of resources to meet those loads. Interior submits that without Canadian storage this cannot be done.

If the Canadian Treaty had been ratified by Parliament, dams would have been built on the headwaters of the Columbia River permitting greater storage of water and greater assurance of firm power. Such an increase in the availability of firm power would have enabled Bonneville to sell this power, now sold as interruptible, on a firm basis. It would prefer to do so because secondary power does not command as high a price as does firm power. Although the Bonneville Power Administrator has indicated the desirability of firming up this interruptible power he has not indicated that this would be done unless the water resources could be so managed as to permit a justifiable prediction

that these loads could be met under all water conditions. Similarly, a Northwest-California intertie is anticipated to import power from California to firm up the generation of power which can now be sold only as secondary and to take away surplus energy from the Northwest which can be sold in California. Interior states that it has never been contemplated, and is not now contemplating, that firm power would be exported from the Northwest whenever it was needed to meet loads in that region. It is for this reason that the factor of inter-regional exports was excluded from firm loads since these exports are by their nature exports of unsalable power, surplus to the needs of the Northwest.

Mr. McIntyre, for the Bonneville Power Administration, testified that according to Bonneville's predictions the power load requirements would be amply met throughout the ensuing ten years without the construction of the Little White Salmon Hydroelectric Project. He pointed out that the Administration would export over any intertie only noncritical power. He added that the "West Group Forecast", on which Applicant based its projections, was designed for only one purpose—to show the development of the region without new construction and that for this reason you would normally expect to find a greater deficit in the West Group Forecast than you would in the Bonneville Advance Program, based on the programed development of hydroelectric construction in the area. He also pointed out that Applicant's presentation was based on the 1962 West Group Forecast which showed higher estimates of future loads than were demonstrated in the more recent 1963 West Group Forecast, available at the time of the hearing. Basically, Mr. McIntyre's testimony demonstrated that in the next ten years there will be no substantial excess of demand over supply of electrical energy even if the Little White Salmon Hydroelectric Project were not constructed.

Staff Counsel takes the position that Applicant intends to operate the Project as a peaking resource. Load forecasts show that without Canadian Storage there will be no need for additional peaking capacity until about 1972–73. If Canadian Storage is realized there will be no need for the peaking capacity of the Project in the foreseeable future. Interior submits that since there is at the present and for some time in the future, a surplus of peaking capacity in the Pacific Northwest area the Project will not become dependable at its full peaking capability for a number of years.

Interior asserts that in the past five years, Bonneville has been unable to sell $125.5 million worth of surplus power. If the proposed Project should be licensed, and an additional surplus created, to that extent Bonneville's unsalable power surpluses will have been increased, and its financial structure placed in further jeopardy. It submits that such a result would not be consistent with the best interests of the region, and even with the long-range interests of the Applicant itself.

Effect of Project on Fish Installations

The United States Government has constructed two hatcheries and a laboratory on this river: the Willard Hatchery, the Little White Salmon Hatchery, and the Willard Fish Nutritional Laboratory, which have all been in operation for a considerable period of time. The United States Government has invested several million dollars to construct these hatcheries, and this laboratory. In addition, substantial sums of money are expended each year for the operation and maintenance of these facilities. These hatcheries form a significant portion of the total Columbia River Fishery Development Program. The Columbia River is the largest source of salmon and steelhead trout in the Pacific North-

west; and laboratories and hatchery programs play a significant part in maintaining and improving this national resource.

What would be the effect of the construction of a dam on the Little White Salmon River? Some of these effects are apparent and can be measured; some of the more significant effects are not known and cannot be measured although the testimony presented in this case indicates that problems will be presented by the construction of the proposed Project. Testimony from representatives of the Applicant, witnesses from the interveners, and from experts on both sides of the question all indicate possible injury to hatchery and laboratory operations following construction of this Project. The extent of this risk, although apparent, cannot be measured.

The Applicant would outweigh these hazards with the alleged benefits of the Project. A discussion of the effects of the Project follows.

Water Quantity

During 1962 the amount of water used at the Little White Salmon Hatchery from the river varied from 13 cfs to 49 cfs. Water rights claimed for use of water from the river are shown as approximately 73 cfs. It is anticipated that a greater amount than 49 cfs will be used during 1963. During 1962 the Willard Hatchery used from about 18 to 30 cfs of water from the Little White Salmon River. Rights to 50 cfs of water from the river are claimed. Increased production in 1963 utilized all the water which could be drawn through the main supply system from the river. Although it is designed to carry 50 cfs, certain obstructions permit only about 26 cfs to pass. This condition necessitated reuse of some water. More water would be used at the Willard Hatchery if rearing ponds presently not in use are utilized.

Both the Applicant and the intervener, U.S. Fish and Wild Life Service, assume that at times the flow in the Little White Salmon River will not be sufficient at the intake structures of either fish hatchery to meet their needs. In the event of insufficient water supply at the Little White Hatchery, the Applicant has elaborate plans for supplying water from the tailrace pool below the powerhouse, including a by-pass valve from the penstock when the turbine is shut down.

With regard to the Willard Hatchery the Applicant asserts that it is willing to release up to 35 cfs of water at the diversion structure whenever it is called for.

The Staff points out that Applicant has overlooked a very substantial inflow into the Little White Salmon River during low flow periods between the Lapham and Willard Gages.

Based on the demonstrated inflow between the Cook, Lapham and Willard Gages, and the provisions in Applicant's plans to provide water for hatchery use in the event of low flows, it is concluded that if the Project were to be constructed the Little White Salmon and Willard Hatcheries would have sufficient water as to quantity at all times for their needs.

Water Quality

Diversion of water from the river at the Project diversion structure would probably mean that water flowing past the Willard Hatchery intake will have a greater percentage of ground water in it than prior to diversion. This fact, however, gives no clear indication whether the hatchery operations will be favorably or adversely affected.

On the other hand a serious question is raised with regard to the quality of water available to the Little White Salmon Hatchery during periods of low

water when flows at the present intake have to be supplemented with water, which has passed through the Rock Creek reservoir. The reservoir will cover an area of about 40 acres with the upper end being about a quarter to a half-mile away. Applicant draws attention to the fact that the reservoir will provide excellent fishing and has offered to make annual plants of sports fish in cooperation with the Washington State Department of Game in the reservoir area over the life of the Project. Interior's Woodall foresees prolific growth of algae and flora and fauna in silt deposits and around the shores of the reservoir. He reasons further that these conditions could contribute to the culture of disease organisms and parasites.

It is found that changes in the quality of water by reason of the Project will probably not affect materially the operation of the Willard Hatchery or the Little White Salmon Hatchery as long as the river and springs provide sufficient water for its use. However, when the Little White Salmon Hatchery would have to depend on use of water which passes through the Rock Creek Reservoir, it will be faced with a hazard to its operation. Under these circumstances the quality of the water could be harmful to hatchery operation.

Water for the operations of the Western Fish Nutrition Laboratory is supplied from two wells. The effect of lowering the flow in the river in the vicinity of the wells would result in getting more ground water in proportion to the Little White Salmon River water, in the wells. This variance in proportion would result in changes in chemical quality of the water. However, evaluation of this change is a difficult matter. Witness Royce, felt he could with assurance pass on the effect of chemical changes in water on fish hatchery operation. He testified that he could not tell whether the chemical changes in well water would be significant to the operation of the laboratory. Similiarly, Witness Woodall, who is certain that a chemical change will take place, states that what the effect of these changes on the operation of the laboratory is, and must largely remain speculative because the effects are immeasurable. The problem stems from the fact that the effect of a change in quality of water cannot be measured until after the change has taken place.

The Applicant in its Brief makes the point that there is no evidence to show an impairment in the quality of the water in the wells, and that the evidence actually shows that if the proportion of river water in the wells becomes less, the quality of the water will be better. The important point, however, is not whether ground water is of better quality; the question is whether the change in the chemical composition of the water is such that past studies can no longer be correlated with future studies. The present source of water represents a standard condition in five years of experimentation. Thus, while it cannot be said that construction of the Project will affect operations at the Laboratory adversely, a chemical change in water quality can be anticipated. To this extent, studies at the Laboratory would be subject to a hazard if the Project were constructed.

Water Temperature

Applicant contends that the temperature of water for the Little White Salmon Hatchery will be improved. Witness Royce stated that a warming of the water up to ten degrees would be beneficial, and suggests that this might be accomplished through use of water which has passed through the Rock Creek Reservoir. Applicant's witness Needham suggests that hatcheries operating with water at less than 50 degrees Fahrenheit may be considered marginal in their productive ability.

As far as the subject of water temperatures go, it appears that there is no evidence that the Project will have any adverse effect. On the contrary there is some evidence that it could possibly have a slightly beneficial effect.

Construction Hazards

The construction of a powerhouse and other facilities within the close confinement of the Little White Salmon River would cause certain inconvenience in hatchery operations. However, such conditions would only be temporary if the Project were constructed. It seems that most of the dangers could be avoided by cooperation and careful scheduling of the construction activities with the hatchery operations.

It must be recognized that increased activity, such as the construction of a hydroelectric project in the vicinity of a fish hatchery, does increase the possibility of some unforseen event occurring which would be damaging to fish. However, this possibility would not be sufficient cause for denying the construction of a project. The solution would be to establish safety measures insofar as possible to guard against known hazards. Applicant claims that construction of the Project would lessen the amount of silt in the water used by the Little White Salmon Hatchery. This in turn could be considered as some compensating factor.

Water Rights

Interior contends that it now has water right certificates for the appropriation and use of 74.5 cfs of water. Of this 74.5 cfs of water to which the intervener holds water right certificates, 50 cfs of the water are and have been beneficially used for fish farming on the Little White Salmon River. The intervener will continue to use this amount of water and up to 74.5 cfs of water in the future as the expansion programs of the intervener are completed.

Interior claims that according to the law of the State of Washington it has a vested right in the 50 cfs of water which are now being beneficially used for fish farming. Revised Code of Washington, Sec. 90.03.010, *et seq.* This vested right to the appropriation and use of the 50 cfs of water is allegedly protected by section 27 of the Federal Power Act.

As to the remaining 24.5 cfs of water to which the intervener holds water right certificates pursuant to Washington law, Interior allegedly has an inchoate right[1] to the use and appropriation of this amount of water.

It is Interior's contention that the use of water for fish farming is a right or use of the "same nature" as irrigation. Water used to raise crops is water used for irrigation. Water used to grow grass to raise cattle is water used for irrigation. Water used to grow fish eggs to raise fish is water used for irrigation or at least water used for a purpose of a related or "same nature", as water used for irrigation. Interior submits that the Commission should do nothing to destroy the inchoate water rights of the intervener, no license should be granted to the Applicant if there is not enough water in the Little White Salmon River for both parties. Only after a Washington court has finally determined the inchoate water rights of the intervener in the river should the Commission issue a license if there is a reasonable doubt as to the availability of sufficient water for both the Applicant's proposed Project and the intervener's existing fish farm facilities.

It is Staff's position that it is not necessary to treat this question at length. First, in view of the substantial accretions to the Little White Salmon River

[1] The Washington Statute states: "90.03.460 *Inchoate rights not affected.* Nothing in this chapter contained shall operate to effect an impairment of any inchoate right to divert and use water while the application of the water in question to a beneficial use is being prosecuted with reasonable diligence, having due regard to the circumstances surrounding the enterprise, including the magnitude of the project for putting the water to a beneficial use and the market for the resulting water right for irrigation or power or other beneficial use, in the locality in question."

between the Lapham and Willard Gage, which allegedly have been overlooked by both Applicant and the U.S. Fish and Wildlife Service, it appears that there is considerably more water available from accretions to river flow for hatchery use than was expected. Consequently, there may be considerably less releases for hatchery use than believed necessary. Further, if the Project were constructed, the Licensee could under conditions of the license, be required to release amounts of water necessary for hatchery purposes.

Under these circumstances and also because Applicant failed to properly demonstrate the economic feasibility of the Project, the water right contentions raised by Interior do not warrant further discussion at this time.

Recreation Facilities

The Washington State Department of Game (Washington) contends that the Project will adversely affect the resident fish population of the Little White Salmon River. There will not be sufficient quantities of water in the river below the diversion point to sustain the resident fish population. There is a need for adequate deer protective devices in the canals proposed by the Applicant. Washington alleges that there will be a total loss of steelhead spawning grounds if the Project is licensed. Washington claims that Applicant failed to supply the Department of Game with timely reports about the Project. Washington submits that Applicant's offer of settlement was belated and deficient. The proposed Rock Creek Reservoir does not contain suitable spawning area for trout. Washington states in its Brief that in order to have good fishing on a lake as large as that which would be created by the Rock Creek Reservoir, at least 10,000 pounds of legal-size rainbow trout would have to be planted annually for the term of the Project. The Applicant's offer to plant annually 2,000 pounds of fish is allegedly inadequate on this score.

Washington requests that if license is granted, Licensee should be required to install and maintain at reasonable intervals asphalt footings for deer in strips on the surfaces of Canal No. 1 and Canal No. 2 or crossing ramps, where the depths and velocity of water within the canal appears to be such as to prevent escapement of deer, subject to the approval of the Department of Game. In addition, Licensee should be required to annually reimburse the Department of Game of the State of Washington for the actual cost of rearing and releasing a sufficient number of steelhead fingerlings to provide an adequate number of adult steelhead returnees to the sport fishery in the State of Washington.

Economic Feasibility

Applicant's ability to finance the proposed Project raises several problems. The record shows that on June 8, 1959 the John Nuveen Company advised the Applicant that in the opinion of the underwriters a revenue bond of approximately $9 million can be successfully marketed, provided the total energy output can be satisfactorily sold. Witness Shepeard, Applicant's Chairman said that thus far Applicant had no contracts to sell the power (Tr. 390).

Staff Counsel and Interior contend that the Project's unit cost will be so high that it will not be possible to sell the power profitably. In its Reply Brief the Applicant makes a convincing argument that pursuant to F.P.C. Technical Memorandum No. 1, it is proper to compute the Project's average annual cost over a fifty-year period rather than over forty-four years, as was done in the Staff's computation. This reduces the average annual cost from $769,000 to $715,000. There is also some validity to Applicant's contention that Staff is too conservative in computing the quantity of water that can be beneficially employed by the Applicant. However, the basic unsolved problem is Applicant's

failure to prove that it will be able to dispose economically of the Project's energy output. Applicant's Reply Brief states that by purchasing 50% of its need from Bonneville at the "A–4" rate of $14.50 per kilowatt year, Applicant's total cost of power will be slightly less than if Applicant purchased its entire power supply from Bonneville. Applicant's entire presentation in support of economic feasibility is based on a multitude of assumptions and hopes. The record does not contain specific evidence about the "A–4" rate of $14.50, nor was it discussed in relation to the $20.00 and $21.85 cost per kilowatt year appearing on sheet 3 of Exhibit No. 12, Applicant's Schedule of Projected Amortization and Annual Power Cost. The Project does not provide energy stand-by, it has a single generator and is not able to guarantee delivery to prospective customers. Consequently, the Project depends entirely on Bonneville to carry its energy to an outlet. On the other hand, there is no assurance that Bonneville will not raise the "A–4" rate, particularly since it desires to stem the source of additional surplus power. Such occurrence will automatically increase the Project's unit cost, thus making it more difficult to sell the output.

The record does not contain evidence that any of the 2,206 electricity customers in Skamania County are willing and able to assist with the financing of the Project. In fact, a delegation of residents of Skamania County came to the hearing to oppose the construction of the Project. The signed Protest placed in the record states, *inter alia*, that the initial cost and interest seems out of proportion to the benefits, which could be derived, and that there is no assurance that all the power produced can be marketed. If not, the cost to PUD customers would have to be increased (Tr. 7). The opinion of a small local group does not carry much evidentiary weight. Yet it does reveal lack of popular support of the consumer public within the public utility district. This fact in turn is not likely to help the sale of the proposed revenue bonds. It remains unproven that on the basis of the economic facts in the record the underwriters could successfully sell an $11.9 million issue of revenue bonds for the Project. It is possible that the issuance by this Commission of a certificate may be erroneously taken by some potential purchasers of bonds as assurance of the financial soundness of the Project. *Cf. Carolina Natural Gas Corp.*, 10 FPC 515. However, evidence that a project is financeable should be based on the proof that the project itself is economically feasible. Without an economically feasible project, the prospects of successful financing are remote. *Cf. Board of Mayor and Alderman*, 21 FPC 583, 584. Furthermore, the inquiry into the economic feasibility of a project is, *inter alia*, intended to consider the potential investor. *Cf. Atlantic Seaboard Corp.*, 7 FPC 926, 929; *In re Mississippi River Fuel Corp.*, 9 FPC 198, 208. The very specific condition spelled out by John Nuveen and Company implies that unless the power surplus can be readily and advantageously marketed the Project is not financeable.

In the *First Iowa Hydroelectric Cooperative* matter, 6 FPC 227 at p. 230, the Commission held that only a superficial showing of financial ability would not justify authorizing a license.

The Applicant's problem of marketing the surplus power, amounting to about 80 percent of the project output becomes apparent in light of the staff witness's testimony that even if critical water conditions are assumed, the energy capability would not be needed in the water years of 1967–68 and 1968–69, and that the full peaking capability would not be usable on the predicted load until 1973. During average water years there would be less need for power from Applicant's Project. Mr. McIntyre testified for Bonneville that in the Northwest where we have an all-hydro system it is impossible to develop resources to meet critical year power requirements, and not have surpluses in better than critical year conditions. He also stated that at the present time there is a considerable amount

of surplus peaking capacity available throughout the entire year. Although operation for peaking seems to characterize the Applicant's proposed Project it remains unproven just what kind of sales the Applicant could make.

In *City of Seattle, Washington, Project No. 2144;* and *Public Utility District No. 1 of Pend Oreille County, Washington, Project No. 2250*, 26 FPC 54 at page 137, the Commission in granting the other of two applications denied a license because, *inter alia*, the Public Utility District, had failed to adduce probative and convincing evidence that that Applicant could use or that there is at present, or apt to be within or without the Public Utility's service area, need for a substantial portion of the energy which would be produced.

Interior takes the position that there will not be a deficiency, but rather a surplus of power in the Bonneville Power Administration for many years to come; that the proposed Project would only add additional burdens and costs on the Bonneville Power Administration by forcing it to incur added costs of selling a larger surplus of power; that the power which would be generated by the proposed Project cannot be sold for less than the power produced by the Bonneville Power Administration; that Bonneville can produce and sell power to the Applicant and its consumers for less than the power which would be produced by the proposed Project; that there will be the construction of other larger and more efficient hydroelectric projects in the Columbia River Basin within the next five years which will adequately meet the growing power demands of the area. Interior concludes that the proposed Project is of a marginal nature and will not contribute to the procurement of low cost power in the Columbia River Basin area.

Factors to be considered in determining economic feasibility of a Project include dependability of the energy output and the time when the operations can be used to full capacity. Applicant's claim that there is an immediate and definite need for the full capacity of the Project is based upon estimates made in a certain "West Group Forecast". During cross-examination it was established that a more recent "West Group Forecast" substantially weakens Applicant's claim for immediate need of the output. In fact, the evidence indicates that there is good reason to conclude that full capacity of the Project will not be achieved until 1972. In other words, the evidence in this proceeding is inadequate to support a determination of economic feasibility during the immediate future. This finding would be different had Applicant produced definite proof of an intertie or definite evidence of a substantial market. A license for a hydroelectric project cannot be awarded on a trial basis. Analysis of Applicant's presentation indicates that a substantial part of the output of the Project will not be needed during the next five to seven years. As the case now stands in the foreseeable future the Project is not likely to be of much economic benefit to either Skamania County or to the surrounding areas. The evidence of record fails to bring the more distance future into focus. There is no evidence in the record showing that even a substantial portion of the surplus from the proposed Project can definitely be sold at rates that will satisfy the conditions laid down in the letter from the Underwriters, John Nuveen and Company. It must therefore, be concluded that Applicant has failed to show that its proposed Project is economically feasible.

SUMMARY

Applicant is a Public Utility District of the sparsely populated Skamania County, where 85 percent of the acreage is occupied by a National Forest. Generally speaking, Applicant desires to erect on Federal land a hydro-electric plant for about $11.9 million. Applicant made something less than a convincing showing of financial ability, predicated to some extent on hopes to sell about

80 percent of electric output through Bonneville, which is currently experiencing an electric energy surplus.

Interior is apprehensive of the Project's impact on its adjacent fish facilities costing a couple of million dollars and constituting an important part of the Columbia River Basin hatcheries and Fish Conservation Program. Washington's Department of Game is insisting on expensive remedial action to conserve local recreational aspects. Applicant's case was presented at an inopportune time. The application came too soon and the reasons favoring a license are too few. A new hydro-electric Project invariably crowds somebody. Usually, when the advantages tip the scale, the license is issued to the Applicant. In this case, nearly every defect discussed before could be alleviated if dealt with it alone. However, the cumulative effect of the remedial steps will be expensive and will tend to further increase the already precarious cost per kilowatt hour. Moreover, the aggregate of the defects places the proposed Project in a sub-marginal situation and out of phase with the general needs of the Northwest.

It is difficult to determine the complete hydro-electric requirements of the Northwest in the more distant future. Many new needs might arise. Should new industry settle in Skamania County, the population size and the need for electric energy might increase more rapidly than in former years. The Canadian Treaty might finally get ratified by Parliament, and then due to Canadian storage the peaking capacity and the surplus level in the Northwest will greatly change. After the accumulation of additional experimentation and research data, Interior's need to maintain the status quo of the water used for its hatcheries and nutritional laboratories on the Little White Salmon River might lessen. When sufficient problems are removed the financial companies might come forward and make a firm commitment to underwrite the Project, thus making more apparent Applicant's economic feasibility. However, on the basis of the showing made in this record the Applicant must be denied a license.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the record in these proceedings, it is specifically found and concluded, in addition to the findings and conclusions heretofore stated, that:

1. Applicant, Public Utility District No. 1 of Skamania County, Washington, a municipal corporation of the State of Washington, applied for license for construction of Project No. 2199 on July 27, 1959.

2. Applicant does not presently own or operate any generating facilities. Its entire requirements are purchased from the Bonneville Power Administration.

3. During calendar year 1962 the peak load for the distribution system of the Applicant, Public Utility District No. 1 of Skamania County, was 10,900 kilowatts.

4. The proposed Project, more fully described in the application, will include a Diversion-Intake Structure, Canals, Regulating Reservoir, Tunnel, Penstock, Powerhouse, Switchyard, Power Transmission Lines, and a Diversion Weir below the Powerhouse.

5. Portions of Project No. 2199 will be located upon reservations of the United States, consisting of the Gifford Pinchot National Forest and of other lands owned by the United States. Furthermore, the construction, operation, and maintenance of the proposed Project No. 2199 will affect public reservations of the United States. Consequently, under the provisions of § 23(b) of the Federal Power Act the Applicant may not construct, operate or maintain the proposed Project works until it shall have received a license under the provisions of that Act.

6. The facilities owned and operated by the United States Fish and Wildlife Service which are located within the proposed Project area or its vicinity include the Willard National Fish Hatchery, the Western Fish Nutrition Laboratory, and the Little White Salmon National Fish Hatchery.

7. The Willard National Fish Hatchery and The Little White Salmon National Fish Hatchery are directly dependent upon the Little White Salmon River for the water used in rearing ponds, while water essential for egg incubation may be taken alternatively from the River or from springs at Little White Salmon Hatchery or from a well at Willard Hatchery.

8. The Willard and Little White Salmon Hatcheries play an important role in maintaining salmon runs in the Columbia River Basin, and contribute to comprehensive development of this water resource.

9. The Western National Nutrition Laboratory makes an important contribution to artificial fish propagation through its studies of fish physiology and metabolism.

10. All of the structures involved in this project will be constructed upstream from the limit of the migratory range of any anadromous fish that may frequent the Little White Salmon River.

11. The Little White Salmon River has a small population of native trout. In addition to native trout, the State of Washington, Department of Game, plants trout in the river annually to encourage sports and recreational use of the river.

12. A portion of the stream bed, located in the lower three miles of the river between the Willard National Fish Hatchery and the Little White Salmon National Fish Hatchery will be affected to the extent that the normal flows of the river will, during approximately six months of each year, be diverted through the Project facilities to the extent of the Project capacity.

13. The Secretary of Interior appearing through the United States Fish and Wildlife Service, who has supervision over the three federal facilities located on the Little White Salmon River, has recommended that the license be denied.

14. The total estimated construction cost of the Project is $10,264,300, requiring the issuance of revenue bonds in the amount of $11,909,000 in order to finance.

15. Based on Applicant's load growth estimates it will not need the full output of the project until about 1992 or 1993.

16. Initially, the Applicant would have to dispose of about 80 percent of the Project output outside of its service area.

17. The Applicant is presently purchasing all its power needs from the Bonneville Power Administration paying 3.37 mills per kilowatt hour during the fiscal year of 1962. A ten percent average increase in power cost appears likely.

18. The Applicant will be able to continue to purchase all its power needs from the Bonneville Power Administration as a preference customer for the next ten years and beyond, even though no new resources other than those now under construction are made available to Bonneville.

19. There is reason to believe that additional new resources other than those now under construction will be made available to the Bonneville Power Administration.

20. Geological testimony shows that the significant accretion to the Little White Salmon River flow occurs below elevation 1000 feet and downstream from the Project diversion structure.

21. The Applicant has not made satisfactory adjustment for accretion to the Little White Salmon River from underground sources between the Lapham and Willard Gages in estimating the amount of water available for power production.

22. As a result of using the Lapham Gage flows instead of flows at the diversion structure the Applicant overestimated its annual energy output.

23. When the reduced amounts of water available at the Project diversion structure are taken into consideration with the annual costs which actually must be met during the first years of project operation, the cost of energy at site can reasonably be estimated to be within the range of Bonneville's charges.

24. The power which would be generated by the proposed Project cannot be sold economically for less than the power produced by the Bonneville Power Administration.

25. Project No. 2199 has not been shown to be dependable on any particular load. Applicant intends to operate the Project as a peaking resource.

26. Since there is at the present and for some time in the future, a surplus of peaking capacity in the Pacific Northwest area the Project will not become dependable at its full peaking capability for a number of years.

27. Load forecasts show that without Canadian Storage there will be no need for additional peaking capacity until about 1972.

28. If Canadian Storage is realized there will be no need for the peaking capacity of the Project in the foreseeable future.

29. In the absence of a plan of operation, a load or market, the dependable capacity of the Project is assumed to be equivalent to its prime energy capability of 15,800 kilowatt at site. Based on load estimates Project No. 2199 will not become dependable at its full capacity until the early 1970's if Canadian storage is not realized.

30. If the Project's prime energy capability is considered to be its dependable capacity, and if benefits from pumping are included, in the comparison of annual benefits with annual costs, the costs may exceed benefits by about $118,000.

31. The Benefit to Cost ratio during the period of operation before the Project's full peaking capability become dependable will be negative.

32. The Applicant has not obtained any firm commitment for any of its surplus power; it has not negotiated any contracts for sale of such power; and has not established existence of any potential market for such power.

33. The Applicant has not shown that it can satisfy any of the conditions necessary for financing specified by its own financial consultant.

34. Due to substantial accretion to flows in the Little White Salmon River, and the provisions in Applicant's plans for the Project the Little White Salmon and Willard fish hatcheries will have an adequate quantity of water for their use, if the Project were to be constructed.

35. Reduction of flows in the Little White Salmon River as a result of diversion of water for power development would probably produce a chemical change, however, this does not appear fatal to the hatchery operations.

36. The Little White Salmon Hatchery would be subject to the hazard of having fish diseases introduced into rearing ponds if water were to be supplied to it from the Rock Creek reservoir.

37. Diversion of water from the river would require costly and constant attention.

38. Lowering of the river level will result in a lowering of the static water level in the wells supplying the Western Nutrition Laboratory. However, the wells may still be pumped at the same rate.

39. Lowering of the river level will change the chemical composition of the water in the wells supplying water to the Western Nutrition Laboratory because of the resulting different proportions of river and ground water. The impact of the change in chemical composition of water in the wells at the

Western Nutrition Laboratory cannot be evaluated at this time on the basis of information available now.

40. Should the chemical change in the wells supplying water to the Western Nutrition Laboratory be such that it would change any of the results of experiments now being conducted it would impair the usefulness of studies and experiments made in the past five years.

41. Silting has been a problem in hatchery operation. Operation of a hydroelectric project on the Little White Salmon River would not aggravate this problem and there is some indication that it might alleviate it.

42. Operation of a hydroelectric project on the Little White Salmon River will not materially affect temperatures for hatchery operation.

43. Construction of a hydroelectric project as proposed would increase the hazards of congestion, and would increase the exposure to accidents which might interfere with hatchery operation, unless careful safety precautions are taken, and there is a careful scheduling of hatchery and construction activities.

44. Should there be a reduction in resident trout population in the Little White Salmon River as a result of diversion of water, stream-side fishing will be curtailed some. Stocking of the Rock Creek Reservoir with trout will tend to increase recreational activity in this area.

45. Presence of the open diversion canals would constitute some hazard to wildlife which can be reduced by installation of fences, crossings, and side stripping to enable animals falling into the canal to climb out.

46. The Applicant has shown that it is willing to cooperate in modifying its plans for project design to meet the needs of hatchery operation and wildlife in the area.

47. The necessary precautionary measures will materially increase the unit cost of the Project's power output.

48. The proposed Project poses costly problems to the comprehensive development of the resources of the Little White Salmon River and the Columbia River Basin.

49. The issuance of a license for the proposed Project will interfere with and be burdensome to the facilities of the Department of the Interior.

50. The facilities of the Department of Interior on the Little White Salmon River have made a substantial contribution to the commercial fishing and sport fishing in the Pacific Northwest, and are part of the U.S. Fish and Wildlife Service's continuing program to develop the commercial and sport fishing resources of this nation in the Pacific Northwest.

51. Applicant failed to demonstrate its ability to finance the proposed Project.

52. The proposed Project is economically too marginal in nature and not compatible with the present need to develop inexpensive power in the Columbia River Basin.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission, that:

The application for a license for proposed Project No. 2199 by the Public Utility District No. 1 of Skamania County, Washington, be and the same is hereby denied.

ALLEN C. LANDE,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. G–18512

ORDER ON MOTION TO TERMINATE PROCEEDING

(Issued July 30, 1964)

This proceeding involves an increased rate filing by Southern Natural Gas Company (Southern) for a seven month locked-in period from November 1, 1959 through May 31, 1960. The effective rate of return included in the rate filing was 5.57%. This filing was an outgrowth of the limitations imposed on pipeline rate increase filings by the Court in the *Memphis* case.[1]

On July 31, 1963, Southern sent to its jurisdictional customers two jurisdictional cost of service computations for the seven month period involved. One cost of service included return at 6.5%, the amount allowed in Southern's last rate case (Opinion No. 379) including 1.5% on accumulated deferred taxes. On this basis, Southern had a revenue deficiency of $3,396,575. The other included no return on these funds. On this basis, Southern's revenue deficiency was $2,703,381. Southern also sent a statement of its actual revenues for this period which showed that Southern experienced a return of 5.62%.

A settlement conference was thereafter called by Staff at which it was agreed that Southern should file a motion to terminate this proceeding. All parties, except Staff, further agreed that Southern should be permitted to retain $2,300,000 of possible refunds relative to gas purchased under suspended rates in this period. Staff reserved its position on this issue.

Accordingly, Southern filed a motion on August 21, 1963 to terminate this proceeding on condition that its obligation to refund any portion of the increased rates is discharged and that Southern would retain the first $2,300,000 of possible refunds from gas suppliers and flow through all such refunds in excess of that amount. Staff filed an answer in which it did not dispute the propriety of Southern's rates for the period covered by the instant Docket, but contended that Southern should not be permitted to retain any supplier refunds attributable to jurisdiction sales.

We are satisfied that Southern's rate level in effect during the period covered by the Docket is just and reasonable. Southern's actual rate of return during this period was approximately 5.62%. Based on this showing, which is not disputed by any party, we will discharge Southern's obligation to make refunds of any portion of the increased rates filed in this Docket.

The broad issue of flow through by pipeline companies of supplier refunds is currently before us in a United Gas Pipe Line rate proceeding (Docket No. RP63–1). We consider it more appropriate to await our determination in that case before deciding the issue here. This course of action should not be prejudicial to Southern's jurisdictional customers since Southern has actually received only a minor amount of supplier refunds for the period in question. Thus, the issue is largely an academic one at this time.

The Commission orders:

(A) The proposed increased rates and charges filed by Southern Natural Gas Company in Docket No. G–18512 are just and reasonable and Southern is discharged from any obligation to refund any portion of such increased rates.

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[1] *Memphis Light, Gas and Water Division et al.* v. *F.P.C.*, 250 F. 2d 402 (CADC, 1957); rev. *sub nom. United Gas Pipe Line Co., et al.* v. *Memphis Light, Gas and Water Division, et al.*, 358 U.S. 103, reh. den. 358 U.S. 942.

(B) Action on Southern's motion for an order entitling it to $2,300,000 of possible refunds from gas suppliers for the period covered by Docket No. G–18512 is deferred.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

CUMBERLAND AND ALLEGHENY GAS COMPANY, DOCKET NO. CP64–183; WEIPENN GAS COMPANY, INC., DOCKET NO. CI64–915

ORDER AMENDING ORDER ISSUED JULY 13, 1964

(Issued July 31, 1964)

The order of the Commission issued July 13, 1964, *supra*, p. 100, in the above-entitled matters granted a certificate of public convenience and necessity to Weipenn Gas Company, Inc. (Weipenn) in Docket No. CI64–915 authorizing Weipenn to acquire from Cumberland and Allegheny Gas Company (Cumberland) certain off-system facilities of Cumberland and to render certain natural gas services formerly rendered by Cumberland, as more fully described in said order.

It appears that in view of the relatively minor nature of Weipenn's operations, the provisions of ordering paragraph (C) of the subject order are unnecessary.

The Commission finds:

It is in the public interest and appropriate in carrying out the provisions of the Natural Gas Act that ordering paragraph (C) be deleted from the Commission's order issued July 13, 1964, in Docket No. CP64–183, *et al.*

The Commission orders:

(A) Ordering paragraph (C) be and the same is hereby deleted from the Commission's order issued July 13, 1964, in Docket No. CP64–183, *et al.*, and ordering paragraphs (D), (E) and (F) of said order are hereby re-lettered (C), (D) and (E), respectively.

(B) In all other respects, the Commission's order issued July 13, 1964, in Docket No. CP64–183, *et al.*, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64–292

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 31, 1964)

On June 5, 1964, El Paso Natural Gas Company (Applicant) filed in Docket No. CP64–292 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of four mainline taps and the sale and delivery of natural gas from its interstate pipeline system by use of said taps to three existing

customers, Southwest Gas Corporation, Southern Union Gas Company and the City of Safford, Arizona, for resale, all as more fully set forth in the application.

The locations of the proposed facilities to be constructed are at various points along Applicant's transmission system.

The estimated total cost of Applicant's proposed facilities is $1,760 which will be financed from funds on hand, supplemented by short-term bank loans. The estimated third-year sales to the three customers above-named total 96 Mcf per peak day and 14,800 Mcf per annum, respectively.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 30, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G-242 and G-257 (3 FPC 851).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within twelve months from the date on which this order issues.

Before Commissioners; Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

GARFIELD GAS GATHERING COMPANY, DOCKET NO. CP64-220

FINDINGS AND ORDER GRANTING MOTION FOR WAIVER OF INTERMEDIATE DECISION PROCEDURE, GRANTING MOTIONS FOR LEAVE TO WITHDRAW INTERVENTIONS, ISSUING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND WAIVING FILING REQUIREMENTS

(Issued July 31, 1964)

On March 31, 1964, Garfield Gas Gathering Company (applicant) filed an application, as amended and supplemented, for a certificate of public convenience and necessity, pursuant to Section 7(c) of the Natural Gas Act, for authority to construct and operate certain facilities, operate certain existing facilities and sell and deliver natural gas to Mountain Fuel Supply Company (Mountain Fuel).

Garfield will purchase and gather the gas from various producers in Colorado. Applicant will deliver 9,125,000 Mcf of gas during the first year, at an average daily rate of 25,000 Mcf. The minimum quantity for subsequent years is 18,250,000 Mcf at an average daily rate of 50,000 Mcf. The contract term is for 20 years, and the sale is proposed at an initial rate of 21¢ per Mcf.

A notice of intervention and a petition for leave to intervene were filed by the Public Utilities Commission of the State of Colorado (PUC) and by Rocky Mountain Natural Gas Company, Inc. (Rocky Mountain), respectively.

By notice issued June 2, 1964, this proceeding was consolidated with ten producer applications and set for hearing. These producer applications were later severed from this proceeding by notice issued July 22, 1964.

On July 22, 1964, PUC and Rocky Mountain each filed notices of withdrawal of their notice of intervention and petition for leave to intervene.

On July 27, 1964, a hearing was held, at which time applicant moved that this proceeding be disposed of pursuant to the Commission's shortened procedure as set forth in Section 1.32 (18 CFR 1.32) of the Commission's Rules of Practice and Procedure. All parties and Staff concurred in the motion.

The evidence filed in this proceeding indicates that Mountain Fuel will have need of this additional supply of gas to maintain service to present and potential customers in its existing market area in Utah. This supply of gas is not intended to serve any new market area.

The Commission finds:

(1) These proceedings should be disposed of pursuant to Section 1.32 of the Commission's Rules of Practice and Procedure. (18 CFR 1.32)

(2) Garfield Gas Gathering Company is a "natural-gas company" within the meaning of the Natural Gas Act, subject to the jurisdiction of the Commission.

(3) The construction and operation of facilities and sale of natural gas as proposed by applicant are required by the public convenience and necessity and a certificate therefor should be issued.

The Commission orders:

(A) The request for the omission of the intermediate decision procedure is hereby granted.

(B) Permission is hereby granted to the Public Utilities Commission of Colorado to withdraw its notice of intervention.

(C) Permission is hereby granted to Rocky Mountain Natural Gas Company, Inc., to withdraw its petition for leave to intervene.

(D) A certificate of public convenience and necessity is hereby issued to Garfield Gas Gathering Company for the sale of natural gas in interstate com-

merce for resale as proposed in its application as amended and supplemented, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as more fully described in said application. The certificate issued by this paragraph is not transferable and shall be effective only so long as applicant continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission and shall be accepted in writing and under oath within thirty days after the issuance of this order.

(E) The general terms and conditions set forth in paragraphs (a), (b), (c) and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act shall attach to the issuance of the certificate granted in paragraph (D) hereof.

(F) The time within which the facilities hereby authorized in Paragraph (D) shall be constructed and placed in actual operation as provided in paragraph (b) of Section 157.20 of the Commission's Regulations is hereby fixed at 6 months from the date on which this order issues.

(G) In lieu of the pipline form of tariff, applicant has filed a special rate schedule in accord with Section 154.52 of the Commission's Regulations under the Natural Gas Act. The Commission hereby waives the requirements of Section 154.33 and the second sentence of Section 154.32 thereof with respect to said filing. The schedule so filed shall be effective on the date hereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP64–293

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 31, 1964)

On June 5, 1964, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP64–293 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a tap and metering facilities on its Gulf Coast Line in McLean County, Illinois, to enable it to sell and deliver natural gas to Allied Gas Company (Allied), for resale in the Village of Sibley and the unincorporated community of Cropsey, Illinois.

Applicant states that Allied has obtained a franchise from the Village of Sibley and a certificate from the Illinois Commerce Commission authorizing it to construct and operate the distribution systems in each of the municipalities.

The estimated cost of Applicant's proposed facilities is $17,200, the funds for financing same will be met from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 30, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Natural Gas Pipeline Company of America is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G–325 (3 FPC 330).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Natural Gas Pipeline Company of America, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within ninety days from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. RP61-8

ORDER PRESCRIBING BRIEFING SCHEDULE ON THE RESERVED ISSUE OF PROPER RATE TREATMENT OF LIBERALIZED DEPRECIATION AND ACCUMULATED DEFERRED TAXES

(Issued July 31, 1964)

On June 21, 1962, a "Stipulation And Agreement To Terminate Proceedings" [1] (Stipulation) was incorporated in and made a part of the record in this proceeding. This constituted a settlement of all of the issues in this proceeding, except the issues as to the consolidated effective tax rate [2] and the proper rate treatment of liberalized depreciation and accumulated deferred taxes. The latter, Article IV, Paragraph 2, Transcript 21, pp. 2960–2962 of the aforesaid Stipulation, which is the subject of this order, was reserved for later determination as provided therein.

Article IV, Paragraph 2 of the said Stipulation provides, among other things, that the issue of proper treatment of liberalized depreciation be determined in an

[1] T. 21, pp. 2954–2970 (inclusive).

[2] This issue is not included within the scope of this order.

adjudication by the Commission in this proceeding, Docket No. RP61–8, that the Commission render final decision on this issue pursuant to Section 1.30(c) of the Commission's Rules of Practice and Procedure without the intermediate decision of the presiding examiner; that parties may request the opportunity to file briefs in accordance with a briefing schedule to be prescribed by the Commission; that thereafter parties may request oral argument as to this issue; each party, subject to the foregoing, reserves its right to apply for rehearing and to petition for judicial review of the Commission's decision with respect to such issue.

The aforesaid Stipulation making the provisions set forth above was approved by the Commission in Opinion No. 367, issued October 25, 1962.

On February 3, 1964, the Commission issued its Option No. 417, and on April 15, 1964, its Opinion No. 417–A in Docket No. G–5471, *et al.*, Alabama-Tennessee Natural Gas Company, upon the issue of proper rate treatment of liberalized depreciation and accumulated deferred taxes.

On May 11, 1964, the City of Chicago filed a motion, under Section IV, Paragraph 2 (T. 2960–2962) of the Stipulation and Agreement approved by the Commission in Opinion No. 367, issued October 25, 1962 herein, moving the Commission to issue an order permitting briefs to be filed by the parties, setting briefing dates, permitting oral argument, and thereafter to render a determination on the reserved issue in this proceeding.

On May 19, 1964, Natural filed its Answer to the motion of the City of Chicago, stating that inasmuch as the Commission intends Opinion No. 417, if ultimately sustained by the courts, to be applicable to Natural, and inasmuch as the Commission, subsequent to the issuance of Opinion No. 417, has evolved, in settlement conferences with Panhandle Eastern Pipe Line Company (Docket No. RP64–18), and certain other pipeline companies, agreements providing for prospective rate reductions, that it should be treated similarly. Natural submits as a part of its answer, a rate proposal offering to make certain rate reductions effective October 1, 1965, in accordance with the terms and conditions therein provided. It states that it will waive its right to show cause why the principles of Opinion No. 417 are not factually supportable insofar as Natural is concerned in consideration of the Commission accepting the rate proposal aforesaid. Natural, therefore, opposes the motion of the City of Chicago on the grounds that there is no need for briefs, oral argument on the reserved issue, and no need for a determination herein because Opinion No. 417 is dispositive of the reserved issue.

On May 28, 1964, the City of Chicago filed its reply to Natural's answer. Chicago objects to Natural's rate proposal and Natural's request to terminate this proceeding by placing the proposal aforesaid into effect. It further points out that the reserved issue on liberalized depreciation herein relates to the question of reflecting the use of liberalized depreciation in the cost of service in this proceeding and, since the rates became effective March 1, 1961, Natural by its rate proposal providing for prospective reductions, is repudiating its obligation to refund to its customers amounts collected from and after March 1, 1961. Chicago further states that, based upon the "normalization" method used in Natural's cost of service, pending decision on this issue, the amount of refunds here involved would be in excess of $30 million. Chicago points out that under Natural's proposal, none of these refunds would be passed on to its customers.

On June 2, 1964, the Public Service Commission of Wisconsin filed its reply to the answer of Natural, concurring in, and adopting the aforesaid reply of the City of Chicago.

In view of the conflict between the parties, as outlined above, it is appropriate that the parties, under Section IV, Paragraph 2 of the Stipulation and Agreement, be permitted to file briefs on dates prescribed by the Commission. We will give consideration to the advisability of oral argument herein after we have considered the briefs to be filed.

The Commission finds:

The parties and the Commission Staff should be granted the opportunity to present initial briefs and reply briefs on the reserved issue of liberalized depreciation under Article IV, Paragraph 2 of the Stipulation and Agreement in this proceeding, as hereinafter ordered.

The Commission orders:

(A) Any party in this proceeding, including Commission Staff, desiring to file briefs on the matters presented by the reserved issue of proper rate treatment of liberalized depreciation under Section IV, Paragraph 2 of the Stipulation and Agreement in this docket shall file an initial brief on or before September 28, 1964.

(B) Reply briefs, if any, shall be filed on or before October 27, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

POTOMAC EDISON COMPANY AND SOUTH PENN POWER COMPANY, DOCKET NO. E-7104

ORDER ACCEPTING RATE SCHEDULE FILINGS EFFECTING RATE REDUCTIONS AND TERMINATING PROCEEDING

(Issued July 31, 1964)

Potomac Edison Company (Edison) and its corporate affiliate South Penn Power Company (South Penn) on July 20, 1964, submitted for filing pursuant to Section 205 of the Federal Power Act, proposed rate schedules which would reduce Edison's present "WS" Electric Tariff rates by approximately $150,000 annually. South Penn, a purchaser from Edison under that tariff, proposes to flow through to its resale customers a pro-rata portion of the rate reduction from Edison. Attached Appendix A sets forth in detail the proffered rate schedules of both companies as designated in the files of the Commission. Briefly they are as follows:

Edison—Rate Schedule "WS–HV" for service at 34.5 kv and above to South Penn and Monongahela Power Company; Rate Schedule "WS–LV" for service at 4.16 and 12.47 kv to the towns of Thurmont and Williamsport, Maryland; Rate Schedule "WS–DV" for service at 2.4, 4.16, 7.2 and 12.47 kv for distribution to borderline retail customers of South Penn and the Potomac Light and Power Company.

South Penn—Rate Schedule "WS–HV" for service at 34.5 and above to the Borough of Chambersburg, Pennsylvania; and Rate Schedule "WS–DV" for service at 2.4, 4.16, 7.2 and 12.47 for service to the Borough of Mont Alto, Pennsylvania and borderline retail customers of Potomac Edison Company and Metropolitan Edison Company.

Edison is one of three principal operating subsidiaries of the Allegheny Power System.[1] Its operations are centered in western Maryland and adjacent portions of the states of Pennsylvania and West Virginia.

[1] West Penn Power Company (West Penn) and Monongahela Power Company (Monongahela), other subsidiaries of the Allegheny system, operate primarily in the States of Pennsylvania and West Virginia respectively.

Edison's subsidiary corporations include the Northern Virginia Power Company, Winchester, Virginia, Potomac Light and Power Company, Martinsburg, West Virginia and South Penn, Waynesboro, Pennsylvania.

Edison, West Penn and Monongahela operate under an Intercompany Agreement designated as Edison's Rate Schedule FPC No. 16. Edison, Northern Virginia Power Company and Potomac Light and Power Company (Potomac Light) operate under a separate Intercompany Agreement designated as Edison's Rate Schedule FPC No. 18.

Edison supplies all of the requirements of South Penn and the Towns of Williamsport and Thurmont, Maryland under its WS Tariff. It supplies a very minor portion of the requirements of Monongahela and of Potomac Light under the WS Tariff, the remainder of its service to these companies being made under the Intercompany Agreements referred to above.

By order of the Commission issued June 7, 1963, an investigation was instituted as to the lawfulness of Edison's "WS" Tariff. Numerous cost analyses were prepared and conferences have been held among representatives of that Company, interested State Public Service Commissions and this Commission's staff. The proffered rate schedule filings with their consequent rate reduction result from that order of investigation, those studies and conferences. As filed, the proposed rate schedules are concurred in by representatives of the Public Service Commission in Maryland, Public Utilities Commission of Pennsylvania and Public Service Commission of West Virginia, as well as the staff of this Commission. They would effect the following rate reductions:

Customers	Delivery voltage	Actual revenue at present rates	Dollar reduction	Percent reduction
EDISON				
South Penn	138 & 34.5 kv	$2,394,520	$132,500	5.5
Monongahela	34.5 kv	49,030	6,200	12.6
Town of Thurmont, Md.	(4 kv from 34.5 kv Sub.)	89,090	6,770	7.6
Town of Williamsport, Md.		55,760	4,440	8.0
South Penn	(4 kv from Distribution Sys.)	239,410	(110)	
Potomac Light		215,780	1,140	0.5
		3,043,590	151,000	5.0
SOUTH PENN				
Direct wholesale sales:				
Mont Alto, Pa.	12 kv	19,070	770	4.0
Chambersburg, Pa.	69 kv	53,810	4,390	8.2
Borderline distribution wholesale sales:				
Potomac Edison Company	7 and 12 kv	93,720	170	0.2
Metropolitan Edison Company	2.4 kv	770	20	2.6

We believe this proceeding should be disposed of through acceptance of the proffered rate schedule filings. These schedules will eliminate Edison's collection of approximately $150,000 of annual revenues which are in excess of Edison's cost of service including allowances for return and income taxes. The settlement appears to be a reasonable compromise of the contested issues.

All of the interested parties to this proceeding have indicated their willingness to accept the proffered rate settlement. Our acceptance of the proffered rate filings and termination of this proceeding is not, however, to be taken as indicative of our views as to the appropriate disposition of any of the disputed items associated with Edison's cost of service were this case to be fully tried and decided on the merits as to all contested issues.

In disposing of this case upon the basis of the proffered rate schedules and resulting revenues, we take note of the immediate rate relief which will be afforded thereby and the willingness of South Penn, Edison's corporate affiliate,

to flow through to South Penn's wholesale customers pro rata portions of the reduced rates from Edison.

We note that Edison and South Penn have requested that the rates be put into effect as promptly as practicable. To avoid needless cost of split billing, company representatives agreed that the new rates should apply to meter readings taken on and after July 31, 1964, which would include all service from July 1, 1964.

The Commission finds:

(1) Good cause has been shown that the 30-day notice period provided in Section 205(d) of the Federal Power Act be waived with respect to Edison's Rate Schedule FPC "WS–HV", "WS–LV", "WS–DV" and South Penn's Rate Schedule FPC "WS–HV", "WS–DV", and such rate schedules be allowed to take effect as of July 1, 1964.

(2) It is necessary and appropriate for the purposes of the Federal Power Act to terminate the above entitled proceeding in the manner hereinafter ordered.

The Commission orders:

(A) The 30-day notice period provided in Section 205(d) of the Federal Power Act is hereby waived with respect to the proposed rate schedules referred to in the finding above and they are hereby allowed to take effect as of July 1, 1964.

(B) The issuance of this order shall constitute full notice of the filing and publication of the rate schedules in question insofar as their effective date is concerned.

(C) Acceptance of Edison's and South Penn's rate schedules as herein provided is without prejudice to any findings or orders which have been or may hereafter be made by this Commission in any proceeding by or against the aforementioned companies. Moreover, nothing in this order shall be construed as a waiver in any other respect of the requirements of Section 205(d) of the Federal Power Act or Section 35.11 of the Commission's Regulations under the Act; nor shall this order be construed as constituting approval by this Commission of any service, rate, charge, classification, or any rule, regulation, contract or practice affecting such service or rate provided for in the rate schedules as above designated; nor shall this order be deemed as recognizing a claim, contract or obligation affecting or relating to such service or rates.

(D) The above entitled proceeding, Docket No. E–7104, is hereby terminated.

APPENDIX

POTOMAC EDISON COMPANY

Instrument	Issue date	Rate schedule designation
Tariff including rate schedules WS–DV, WS–LV, WS–HV, Map, Agreement Form and Index of Purchasers (Original Sheet Nos. 1, 2, 3, 4, 4a, 5, 5a, 6, 6a, 7, 7a, 7b, 8).	July 20, 1964	Potomac Edison Company FPC Electric Rate Schedules Volume No. 2. (Supersedes FPC Electric Rate Schedules Volume No. 1.)

SOUTH PENN POWER COMPANY

Electric Tariff including rate schedules WS–DV and WS–HV, Map, Agreement Form, and Index of Purchasers (Original Sheet Nos. 1, 2, 3, 4, 4a, 5, 5a, 6, 6a, 6b, 7).	July 20, 1964	South Penn Power Company FPC Electric Rate Schedules Volume No. 2. (Supersedes FPC Electric Rate Schedules Volume No. 1.)

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued January 2, 1964)

BINDER, *Presiding Examiner:* This is a consolidated proceeding under Sections 7(c) and (e) of the Natural Gas Act (Act) in which Shell Oil Company (Shell), Humble Oil & Refining Company (Humble) and The Superior Oil Company (Superior) seek permanent certificates of public convenience and necessity authorizing sales by them of pipeline quality natural gas for resale in interstate commerce to El Paso Natural Gas Company (El Paso), a regulated pipeline company, at an initial price of 17.7 cents per Mcf at 15.025 psia.[1]

The applicants seek such certificates at the contract price, *i.e.*, without any conditions relating to price. The Staff and the interveners contend that a permanent certificate should issue only upon condition that the initial price inclusive of tax reimbursement and inclusive of any minimum guarantee of liquids shall not be in excess of 13 cents per Mcf at 15.025 psia for pipeline quality gas. Accordingly, the issue to be resolved in this case is the appropriate public convenience and necessity initial price level for the sales of natural gas to be made by applicants under Section 7 of the Act.

The gas committed to El Paso by Shell and Humble is from the East Boundary Butte Field which lies partly in Apache County, Arizona, and partly in San Juan County, Utah. One of Shell's three productive wells is a high gas ratio oil well,[2] and the other two are dry gas wells. Humble's sale involves production from only two wells at this time. One is a high gas ratio oil well, and the other is a dry gas well. The Superior gas is from a one-well field in Apache County, Arizona, which has not been given an official field designation but is a dry gas well. All of the present production is from Apache County, Arizona. The record in this proceeding shows that at this time the applicants have no production in Utah.

An initial service rate applicable to the sales proposed here was not set forth in the Commission's Statement of General Policy No. 61–1.

Each of the contracts covers a 20-year period and provides that the total initial price shall be 17.7 cents per Mcf at 15.025 psia for sweet gas as defined in the contracts for the first five years of the contract, with periodic increases of 1.0 cents per Mcf at five-year intervals following the date of initial delivery. The contracts provide for an adjustment for the extraction of carbon dioxide and hydrogen sulphide when the buyer engages in such extraction. The adjustment becomes operative only when the acid content exceeds 7 percent by volume. When it does so, a proportionate reduction is made for the removal of such excess by the use of a formula which provides as follows:

$$\frac{4\frac{1}{2}¢ \times \text{percent of actual acid gas content-reduction}}{7 \text{ percent}}$$

[1] The Commission issued a temporary certificate on September 5, 1962, to Shell authorizing it to sell natural gas from the East Boundary Butte area to El Paso subject to the condition that "the total price shall not exceed 15.0 cents per Mcf at 15.025." A similar temporary certificate was issued on November 20, 1962 to Humble. Superior has no temporary certificate.

[2] Solution oil gas ratio is defined as the number of cubic feet of gas (measured at a specific temperature and pressure) per barrel of stock tank (residual) oil. Petroleum Subsurface Engineering by Harold Vance (Educational Publishers Inc., 1950). In a number of the states of the United States there are general proration policies limiting the amount of gas which may be produced from a high gas ratio oil well on the basis of 2,000 to one, *i.e.*, 2,000 cubic feet of gas to one barrel of oil.

The contracts provide that if the gas contains more than 7 percent by volume of hydrogen sulphide and/or carbon monoxide, or more than five grains of organic sulphide (mercaptans) per 100 cubic feet, the buyer may refuse to accept delivery, but if the buyer refuses, the seller may install treating facilities and the buyer will then be obligated to take the gas. These contracts also provide that if the seller fails to exercise its option to construct the facilities, the buyer may construct the treating facilities and be entitled to a credit on the purchase price of the gas for the removal of the acid gases to the extent necessary to meet the 7 percent quality limitation. The contracts in the instant case, however, provide that if the computed contract adjustment for acid as determined under the above formula should exceed 6½ cents per Mcf, the seller shall have the option to sell the gas to third parties unless the buyer agrees to a credit for the treatment not in excess of 6½ cents per Mcf.

Shell has estimated the acid gas content of its gas at 5 percent which results in a treating charge for its gas of 3.2 cents per Mcf. Humble, on the basis of the same formula, has estimated its treating charge at 4.32 cents per Mcf. Apparently, each producer will be charged a different amount per Mcf for treating its gas dependent upon its acid content.

There is no provision in the contracts for a difference in price because two of the wells are high gas ratio oil wells, and the balance are dry gas wells. The producers urge that all gas involved in this proceeding is to be considered dry gas.

Each of the producers is required to deliver gas at a pressure sufficiently high to allow the gas to enter El Paso's pipeline. There is no evidence in this proceeding that the matter of the pressure will present any problem to the producers at any specifically determinable time in the future and none of them has any necessity for compressing the gas they are selling at this time. The gas flows from their wells at sufficiently high pressure to enter El Paso's pipeline without compression. If, as, and when, at some undetermined time in the future, the producers find it necessary to go to additional expense to meet their obligations as to pressure, they have the right to seek higher rates pursuant to the provisions of the Act and their contracts.

The gas from all the wells involved here is commingled and delivered to El Paso in Arizona where title passes to the pipeline. Shell has constructed a gathering system which is about ten miles long at a cost to it of approximately $100,000. This system will also be used by Humble.

Assuming arguendo, (a contention which the examiner does not consider to be tenable), that applicants ought to receive some additional compensation above a price which otherwise would be considered as "in line" for installing and operating the gathering facilities, the evidence, relating the probable volumes to be flowed through these facilities over any representative period to the investment in such facilities and the producers' costs of operation thereof, is wholly inadequate on which to base any judgment figure reflecting a reasonable estimate of any additional compensation per Mcf by reason of their installation and operation. It may be further observed in this connection that these facilities are of such size that they can be usefully employed if, as, and when further development of the area occurs and additional gas is gathered through these facilities. Any so-called extra or additional compensation figure per Mcf essayed in this connection would be based on pure conjecture. The employment of some nice round conjectural approximation which is not supported by evidence in the record would be inappropriate in determining the public convenience and necessity initial price. The applicants have the burden of establishing all the elements including initial price which are necessary to establish that the public convenience and necessity will be served by the granting of the applications.

As the Southern California distributors, who are interveners in the proceeding, have pointed out in their brief, the amount of annual purchased gas involved in this proceeding constitutes a relatively small volume. A total average daily volume of approximately 4,000 Mcf per day is involved according to the certificate filings made by the producers. El Paso's annual purchased gas will be affected by over $14,000 for each one cent that the price is increased or decreased from the 15.0 cents price now temporarily in effect. However, when this price is multiplied to reflect the possible effect on El Paso's other present and future purchases in Arizona and other neighboring marketing areas, the real monetary interest of the distributors and the consuming public in California could well prove to be much larger than the immediate impact of these three sales on El Paso's cost of purchased gas. The circumstances, including the possibility of substantial future production in the area, however, serve to emphasize the importance of care and prudence in determining the initial price for the gas proposed to be sold here.

The producers have modeled their contracts insofar as price is concerned upon the Commission's authorization issued in the *Aneth* case, Opinion No. 335 and accompanying order in *El Paso Natural Gas Co., et al.*, Docket No. G–13862, *et al.*, issued February 23, 1960, 23 FPC 369. In the course of this proceeding they have pointed particularly to the authorization issued in relation to the contract of *Western Natural Gas Company*, Docket No. G–13964, one of the producer applicants in such Aneth proceeding. Western, a then affiliate of El Paso, sought and obtained a certificate in the latter proceeding for the sale of dry gas of pipeline quality at the same price per Mcf as that received by the numerous unaffiliated producers all of whom were selling casinghead gas to the pipeline at the same time in the Aneth case. Based very largely upon the alleged comparability of the price situation in the present case to that of the producers in the Aneth case the applicants contend that they should receive the same price for their gas that the producers in such proceeding received. A short review of the facts and circumstances of that case would therefore be helpful in reaching an understanding of the applicants' contentions.

Sixteen of the seventeen independent producer sales certificated in Docket No. G–13862, *et al.*, were casinghead sales. As the Commission explained it in the Aneth decision "approximately 93,000 Mcf would be available from the processing by El Paso of approximately 113,000 Mcf per day of casinghead gas. A further 6,500 Mcf per day would be gas well or dry gas, El Paso producing approximately 2,000 Mcf thereof from its wells. The remaining 4,500 Mcf of gas would come from El Paso's affiliate Western Natural Gas Company." (23 FPC 369, at p. 372.) It will be observed that by far the largest percentage of this gas was casinghead gas. A reading of the Aneth opinion indicates that the Commission was largely preoccupied with the casinghead gas sales, with rather little, if any, emphasis being afforded to the sale of Western's dry gas. The latter, however, was an isolated sale of dry gas in the Boundary Butte Field, which is located not in but near the Aneth Field where the sales of casinghead gas were being made.

This casinghead gas was gathered by El Paso and then processed by the buyer at its plant at Aneth and then transported to El Paso's San Juan plant. A portion of the revenues derived from the extracted liquids in the Aneth case were retained by El Paso as reimbursement for its services in processing the gas from Aneth. In addition to the 17.7 cents per Mcf the producers received supplemental revenues from their share of the extracted liquids. However, the revenues received from the sale of the liquids was not credited against the processing or other costs of extracting such liquids. After the gas was proc-

essed at the Aneth plant the producers in the Aneth case were paid 17.7 cents per Mcf for the residue gas remaining from the extraction process. Thus, in essence, the producers of casinghead gas received 17.7 cents per Mcf for pipeline quality gas compressed to 850 psig and available for transportation at the tailgate of El Paso's Aneth plant.

The Commission's Aneth decision, 23 FPC 369 was thereafter affirmed *sub nom. Texaco Inc.* v. *F.P.C.* (5 Cir. 61), 290 F. 2d 149, and was binding on all parties to that proceeding. The price received by the producers is a historical and legal fact. It cannot be challenged, nor is there any attempt to change or challenge the price received by the producers in such case. The problem here however, is whether such price should be relied on or employed to base the public convenience and necessity initial price in the instant case.

The Staff contends that a more appropriate basis for comparison in determining the price of the dry gas proposed to be sold here is not the casinghead sales at Aneth but the dry gas sales in the San Juan Basin. The Staff has pointed out that the Aneth price level was derived by comparison with El Paso's costs in the San Juan Basin; that the Commission in Opinion No. 335 pointed up the fact that the Aneth gas was casinghead gas and required different price treatment. In other words, San Juan gas was essentially low pressure, dry, sweet gas, while the largest percentage of the gas at Aneth was casinghead gas.

The gas proposed to be sold in this particular proceeding is high-pressure sour gas, but like the San Juan gas and unlike the greater part of the gas sold in the Aneth proceeding it is essentially dry gas. Since the gas involved here and the gas involved in the San Juan sales are both dry gas, the staff is of the opinion that the sales proposed here and the San Juan sales are reasonably comparable, but that the Aneth casinghead sales are not reasonably comparable. The Western Natural gas was geographically close to Aneth. Western's application was consolidated with the other dockets involving casinghead gas and one price was set for all the gas involved in the consolidated proceeding, all of which was sold at the same time to one buyer, El Paso. The price determined for the gas sold by the producers of casinghead gas at Aneth was applied to Western's dry gas production apparently without any real consideration of the difference in the type of gas being sold by Western. As Commissioner Kline in his concurring opinion in the Aneth case pointed out, however, "the gas produced in the Aneth Field is a wholly different type than that produced in the San Juan Basin and is produced in conjunction with oil and is rich in hydrocarbons, while the San Juan Basin gas is dry. In the process of removing liquids from the Aneth gas, substantial revenues are obtained from the sale of liquids." (23 FPC at 381) It was clear that the other producers at Aneth were not producing the same kind of gas as was being produced in the Boundary Butte Field by Western Natural.[2] Moreover, if the size of the volumes involved in the sales which are the subject of camparison or attempted comparison is a factor deserving serious consideration, then it must be said that the volumes involved here are much smaller than those at Aneth and are not comparable for this reason.

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[2] As the Ninth Circuit Court of Appeals pointed out in *United Gas Improvement Co.* v. *Federal Power Commission*, 283 F. 2d 817, at page 823:

> Existing producer prices are relevant for comparative purposes only if they pertain to gas production in the same or an analogous area and if other principal features of the contracts are fairly comparable. Thus the contracts should be comparable from the standpoint of gas reserves and future potentials. The significance of any disparities existing as to these conditions should be explained by Commission findings based upon substantial evidence. Substantial variation in the quality of gas sold should be similarly treated.

In any event, the greater part of the gas which was the subject of sale at Aneth was casinghead gas and not really comparable to the gas sales proposed to be made here nor was it actually comparable to the dry gas being sold by Western. Indeed no such comparison was attempted in the Aneth case.

The Commission offered certain other important, additional, and different reasons or "factors" in Opinion No. 335 for pricing gas in the Aneth proceeding at 17.7 cents per Mcf. The additional rationale offered by the Commission in reaching the 17.7-cent per Mcf price in the Aneth case is set forth in rather succinct form in Commission Opinion No. 335. After a somewhat generalized discussion of the meaning of the CATCO opinion,[4] the Commission in its Aneth Opinion at 23 FPC 369, page 376, *et seq.* explained the reasons for fixing the initial price at Aneth at 17.7 cents per Mcf, in material part, as follows:

> Among the factors which support an initial price of 17.7 cents per Mcf for these producers' sales to El Paso is a comparison of the price proposed for the Aneth Field gas, with the cost to El Paso of gas from the San Juan Basin in northwestern New Mexico, some 75 and more miles distant from the Aneth Field. In accordance with the request contained in our "Aneth' letter", *supra*, El Paso presented evidence purporting to show what it cost the company in 1957 for its natural gas from the San Juan Basin. According to this evidence, the average cost to El Paso in 1957 for natural gas at the outlets of its San Juan processing plants for delivery into the company's main transmission system was 22.61 cents per Mcf in 1957, compared with 22.36 cents per Mcf which it claimed would be the price of Aneth gas in 1962. The presiding examiner was of the view that this claimed cost of San Juan gas was unjustified for the reason, among others, that El Paso had improperly included as costs certain depletion allowances and well-drilling expenses permitted as Federal income tax deductions. He concluded that properly adjusted, the cost to El Paso of San Juan pipeline gas would be approximately 17 cents per Mcf. *However, this conclusion is erroneous since in Opinion No. 326, issued subsequent to the examiner's decision herein, on August 10, 1959, in the El Paso rate case in Docket No. G–4769, 22 FPC 260, the Commission held that these tax benefits were properly includible in the cost of service, but were to be considered by the Commission in fixing the rate of return on the company's well-mouth properties.* [Italics supplied.]

While, as this excerpt clearly indicated, there was some evidence as to costs offered by El Paso in the record in the certificate proceeding, such cost evidence was not as complete as that offered in El Paso's rate case, Docket No. G–4769. El Paso's evidence in the certificate case, however, purported to show "* * * the average cost to El Paso in 1957 for natural gas at the *outlets of its San Juan processing plants* for delivery into the company's main transmission system * * *.

These costs were not what it cost the independent producers at San Juan or at Aneth to produce the gas they were selling in those respective fields. Instead they involved gas costs to El Paso which may be described as being in two categories. One category of gas involved was self-produced and the second category consisted of gas purchased by El Paso from independent producers of gas at San Juan. It will be noted from the above quotation that self-produced gas was involved as well as purchased gas since the Commission refers to El Paso's

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[4] *Atlantic Refining Co.* v. *Public Service Commission of the State of New York*, 360 U.S. 378.

depletion allowances and well-drilling expenses and that such a reference would have no meaning if all they had reference to was gas purchased from others. Moreover, as the above quotation indicates, the costs referred to by the Commission were not the costs to El Paso at the wellhead but the average cost to El Paso of gas produced in the San Juan Basin at the outlets of its San Juan processing plants. Moreover, those costs were figured in Docket No. G–4769 for a different period than they were in the certificate case. In this connection, it should be observed that the Commission after reviewing the record in the Aneth certificate proceeding elected not to consider any of the costs presented in such proceedings for the purpose of determining the price level for the gas at Aneth. Instead, as the Commission's Opinion in the certificate proceeding indicates, it turned to the evidence submitted by El Paso in Docket No. G–4769, a docket which was not consolidated with any of the dockets in the Aneth proceeding and which was confined to a determination of El Paso's rates.

The Commission in the El Paso rate case "* * * arrived at a total cost of service in the amount of $160,693,628 based upon the *test year 1955*, which compares with the presiding examiner's determination of $171,594,444."[5] (*El Paso Natural Gas Company*, Docket No. G–4769, Opinion No. 326, 22 FPC 260, at page 263.) [Italic supplied.] These total costs, of course, included costs in addition to that of acquiring San Juan and other gas.

It will also be noted that the costs to El Paso at San Juan were costs figured on the basis of what they would be "at the outlets of its San Juan processing plants for delivery," *i.e.*, they included prices paid to independent producers, plus the cost of self-produced gas which was substantial, plus additional costs to El Paso involving transportation to its processing plant, plus the cost of gathering and processing. As we have pointed out, El Paso is not only a buyer of gas but is itself a substantial producer in the San Juan Field.

In connection with the employment in the Aneth Opinion of the cost data in the record of the El Paso rate case in Docket No. G–4769 but not the cost data in the Aneth certificate dockets, the Commission in its Aneth decision went on to say:

> *There is, however, data in the record in the El Paso rate case in Docket No. G–4769 bearing on the cost to El Paso of San Juan gas to which we may reasonably look, since the same subject matter and to a considerable extent common issues are involved, and since the record in that rate case provides certain data not contained in the record in the instant certificate proceeding. Together, these data support an initial price of 17.7 cents per Mcf for the sale to El Paso.* Thus it appears on the basis of the record in G–4769 that for the *1955* test year the weighted average cost at the wellhead to El Paso for gas purchased in the San Juan Basin is 11.69 cents per Mcf. If there is added to this a one-cent escalation on January 1, 1959, the price would be 12.69 cents per Mcf. Since the gas involved in the instant case is "pipeline" gas which has been processed and gathered, to place the costs for San Juan gas involved in G–4769 on a comparable basis there should be added some 5 cents per Mcf representing processing and related costs, giving a total of approximately 17.7 cents per Mcf.
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> Some of the producers advance a number of arguments to justify the 20-cent price proposed for the Aneth gas, as contrasted with staff's field price evidence, including explanations based on differences in the terms of the

[5] The examiner referred to was the examiner who presided in Docket G–4769, not the examiner who presided in the Aneth case.

sales contracts, the richer hydrocarbon content of the Aneth gas, differences in delivery pressures, differences in the time of negotiating the contracts, distances from markets, and other circumstances. Some of these circumstances may tend to justify somewhat higher prices than those generally prevailing in the San Juan Field shown by staff's evidence; however, they fall short of meeting the standards of the Supreme Court's Catco opinion in sustaining the 20-cent price proposed.

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Accordingly, considering all the facts, *including a comparison with the costs of San Juan gas, the terms and conditions of the Aneth sales contracts and the respective production, gathering and sales obligations thereunder*, the fact that this price will tend to fix a level for the price of future sales from this area, the evidence of public need for this gas, and the other circumstances bearing on the matter, we conclude that the applicants have failed to show that the public convenience and necessity require the proposed sales at a rate level higher than 17.7 cents per Mcf. Rather than deny the certificates, which is one of the alternatives open to us under the *Catco* rule of the Supreme Court, we believe it necessary to authorize the proposed sales on condition that the initial price be no higher than 17.7 cents per Mcf. [Italics supplied.]

An examination of the Aneth decision shows that in material part the Aneth price was derived by the Commission through its mistaken conclusion as to "includible" costs in the rate case, which conclusion was reiterated and applied in important part to fix the price level in the Aneth certificate case. This conclusion was to the effect that "* * * these tax benefits [*i.e.*, the savings available to producers through depletion allowances and well-drilling expenses] were properly includible in the cost of service, * * *." (23 FPC 369, 376) These incorrectly determined costs at San Juan were employed to set the price level fixed for Aneth gas and caused them to be at a higher level than they would have been if the tax benefits had not been translated into costs. Basically this occurred because the cost of obtaining all gas at San Juan was used as a measuring rod, rather than just the cost of acquiring the gas from other producers, for determining the price level at Aneth. To these inflated costs the Commission added an additional five cents per Mcf for "processing and related costs." The latter figure, of course, had no relationship to the tax benefits but is not a cost which in the examiner's judgment would be followed in this particular manner today to fix producer prices, for reasons which will be discussed hereinafter.

The fact that these tax savings were held by the Commission in El Paso's rate case in Docket No. G–4769, as they were in Aneth Opinion No. 335, to be costs recoverable by the producers was one of the principal reasons which impelled the Fifth Circuit to reverse the Commission's decision in Docket No. G–4769, *El Paso Natural Gas Co.* v. *F.P.C., et al.*, 281 F. 2d 567 (1960). In this connection, the then Commission, among other things, pointed up its conclusion in its Aneth opinion that the examiner's determination of cost data in the certificate proceeding was erroneous because he had held that: "El Paso had improperly included as costs certain depletion allowance and well-drilling expenses permitted as Federal income tax deductions." (23 FPC 369, 376) The then Commission in the El Paso rate case compounded its error with regard to the employment of these depletion allowances and well-drilling expenses when it determined in that case to apply these non-existent costs "in fixing the rate of return on the company's wellmouth properties." (23 FPC 369, 376)

There would be no reason for the Commission to emphasize its views with regard to the tax benefits available to producers in its Aneth decision, nor to

say that "among the factors which support an initial price of 17.7 cents per Mcf" was "the cost to El Paso of gas from the San Juan Basin", unless the Commission were relying upon these costs to support its conclusion regarding a 17.7-cent initial price at Aneth. Moreover, the testimony with regard to field price in the Aneth certificate proceeding is replete with testimony to the effect that the field price for the independent producers of natural gas at San Juan at the time was 11.69 cents per Mcf. This figure was not disputed in the Aneth certificate case. Had the Commission intended to rely solely on the field price of 11.69 cents and an escalation of one-cent, which was anticipated,[6] plus processing and related costs, there would have been no reason for the Commission in its Aneth opinion to expound its views on these improperly "includible costs" on which the Commission said it had relied in fixing the price at 17.7 cents per Mcf at Aneth and to state that these figures supported its initial price.

The Commission carried into its Aneth opinion the same error it committed in the El Paso raté case, Docket No. G–4769 at least insofar as El Paso's costs for self-produced gas was concerned. In addition it brought over into the Aneth decision its determination as to applicable rate of return as determined by it in El Paso's Docket No. G–4769. In connection with tax depletion and well-drilling expenses, the Court of Appeals when the rate case reached it for determination held that:

> * * * there is no statutory authority for the Commission to treat actual savings in taxes to which natural gas companies are entitled any differently than any other cost of service. (281 F. 2d 567, 573.)

In connection with the costs at Aneth and the tax savings element related to that matter the examiner in his initial decision (23 FPC 383 at p. 404, *et seq.*)

> * * * pointed out that El Paso's cost of service study includes as a cost Federal income taxes in the amount of $7,988,218 when in fact El Paso pays no Federal income tax at all and the figure represents savings available through depletion allowances and well-drilling expense.

At page 405 of the same initial decision the presiding examiner pointed out that:

> The elimination of this item of Federal income taxes from El Paso's cost-of-service presentation would reduce the average cost of gas from San Juan as projected by El Paso by 3.3 cents per Mcf.

Despite the language of the Aneth opinion stating that the Commission had relied upon cost figures in Docket No. G–4769 to support its 17.7-cent initial price and despite the fact that the Fifth Circuit subsequently held that the cost of service figures in such docket were incorrect it appears that some of the parties to this proceeding have taken the position that all that the Commission did in the Aneth case was to take the 11.69 cents per Mcf fair field price at San Juan which at the time of the certificate proceedings was considered to be representative for purposes of comparison with the price to be set at Aneth and add to such figure an escalation of one cent per Mcf. This was a rise in price which had not taken place at the period under consideration but which was anticipated. To the figure of 12.69 cents the Commission added an additional 5 cents for processing and related costs and in this manner the Commission reached a price of 17.7 cents per Mcf at Aneth.

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[6] Escalation clauses authorize a producer to seek the amount of the escalation. Under the Act the normal practice in such a situation where a producer desires to take advantage of an escalation clause is to file for an increase in rates. The obligation of the producer in such a proceeding is to establish that he is entitled to such increase. In the Aneth case the Commission simply anticipated the amount of the escalation and awarded such amount in its Aneth price without requiring the establishment of the elements necessary in a Section 4(e) proceeding to obtain an increase in the rates.

The argument, in substance, is that despite the Commission's statement in the Aneth opinion that it was relying on cost figures in Docket No. G–4769 including the depletion allowances and well-drilling expenses, the Commission did not in fact rely on these figures but instead reached a determination of initial price on the basis of adding together the fair field price, an anticipated escalation, and El Paso's processing costs at its San Juan plant.

Assuming, arguendo, that this was the Commission's approach or the approach of the Court of Appeals, it would be inconsistent with present day pricing practices resulting from the Commission's experience in matters of this character since the Aneth decision was issued. It is no longer the Commission's practice to add a cost based differential to a field price to arrive at the appropriate "in line" price.

While the decision of the Court of Appeals in the Aneth proceeding is certainly binding on the parties thereto, it is the examiner's opinion that the rule of *res judicata* has no rigid application to proceedings of the character being considered here for reasons which will be discussed hereinafter. The Aneth decision is not binding insofar as future cases are concerned, and it is not binding here because the facts involved in that proceeding make this matter distinguishable from the Aneth case.

Since the Commission in Docket No. G–4769 was using a different set of figures including a different test period to reach rates than the figures which were employed in the *Aneth* certificate proceeding to reach the initial price, the figure for tax savings which was arrived at in the rate case was $7,704,477 rather than the figure of $7,988,288 which El Paso employed in the certificate case.[7] However, the dollar amounts in these two figures are not too far apart and would not change materially the conclusion that the elimination of the "phantom taxes" from El Paso's cost of presentation would reduce the average cost of gas to El Paso by approximately 3.3 cents per Mcf, *i.e.*, the effect of this one item would lower the figure of 17.7 cents arrived at in Aneth by using El Paso's figures in its rate case to 14.4 cents per Mcf. Apparently by the use of these "phantom taxes" El Paso sought to obtain higher rates than it would otherwise receive in Docket No. G–4769. The use of these "phantom taxes" in the certificate case, however, served to assist its affiliate Western Natural to obtain higher prices at Aneth. The effect of El Paso's approach was also to assist the other producers who were selling gas to obtain higher prices for the gas being sold at Aneth.

In this connection, it may be noted that the Court of Appeals for the District

[7] In the El Paso rate case, Docket No. G–4769, there were over 50 exhibits received in evidence bearing upon the company's cost of service and rate base. There were only very few exhibits relating to cost of service received in the Aneth certificate case. Moreover, a different period was involved. In the rate case the Commission "arrived at a total cost of service in the amount of $160,693,628 based on the test year 1955 * * *." The costs presented in the Aneth case related to the year 1957. In this connection, it is observed that the difference in the test period appears to have had little effect insofar as the 5 cents for processing and related costs were concerned. However, it is not possible at this juncture to determine the materiality of the impact on overall costs of service by reason of the different test period employed in the rate case as compared to the representative period used in the certificate case. Accordingly, the examiner is not taking any position as to the exact effect per Mcf of the employment of the phantom taxes in El Paso's rate case and the Commission's support of its employment in the certificate case. The purpose of calling these matters to the attention of the Commission is to point out the facts with regard to the determination of the 17.7-cent price at Aneth.

of Columbia Circuit in *Atlantic Refining Co.* v. *F.P.C.*, 316 F. 2d 679 (1963), at footnote 11, pointed out that:

> In using the area pricing approach, it must be remembered that the purchaser of natural gas, usually the pipe line company, is a regulated utility. To it, the price of gas is of no great concern, because whatever price it pays can be recovered from the consumer through an increase in rates. Thus a contract between a producer and a pipe line company is not necessarily an arms length transaction. Under the circumstances, if the consumer is to be protected at all, the Commission must do it. And the escalations in the price of gas since Phillips have not been a source of satisfaction to the state agencies charged with consumer protection.

The examiner is fully aware that after the Fifth Circuit Court reversed the Commission's order in Docket No. G–4769,[8] the same Circuit in *Texaco Inc.* v. *F.P.C.*, 290 F. 2d 149 affirmed the Commission's order in the Aneth case which fixed the initial price at 17.7 cents per Mcf. In the Texaco certificate case the court pointed out that the Commission had authority to condition a certificate at a price below the contract figure which at Aneth was 20 cents per Mcf. As to the level of 17.7 cents per Mcf which was authorized in the Aneth proceeding, the court in its Texaco opinion said:

> In its petition for review in number 18543, the State of California, playing its traditional role of stressing the interest of the consuming public, asserts that the 17.7-cent initial price, itself, is not supported by substantial evidence in the record. It contends that the Commission should have denied the certificate out of hand or at most it should have conditioned it upon requiring an initial price of 12.69 cents.
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> As we have already indicated, and as all parties recognize, a section 7 proceeding is not to be equated with a proceeding under section 4 or section 5 to determine a just and reasonable rate. The power and duty of the Commission to give "most careful scrutiny and reasonable reaction to initial price proposals of producers" may be discharged by it without the elaborate and detailed proofs required in a section 4 or section 5 proceeding. We find that the record before the Commission meets the requirements of a section 7 determination that an initial price of 20 cents would not be compatible with public convenience and necessity and that an initial price of 17.7 cents would be.
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> Finding no error in the order here under attack, we conclude that it should be affirmed in all respects.

While there is no doubt as to the correctness of the general principles employed by the court, insofar as they were expressed, the fact is that the price level at Aneth appears to have been arrived at in material part by employing the figures obtained in a formal Section 4 proceeding which the same court said had been incorrectly decided. Accordingly, the initial price at Aneth appears not to have been reached upon the general principles expounded by the circuit court in its opinion or upon any "hold the line", or other concept now considered acceptable by the Commission and the courts.

The Commission's and the Court's conclusions at Aneth were based upon theories which would not be applied today without serious consideration of the specifics of the individual situation under review and without a reasonable showing that the initial price was "in line".[9]

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[8] *El Paso Natural Gas Co.* v. *F.P.C.*, 281 F. 2d 567.

[9] In this connection, see for example, the Commission's Statement of General Policy issued September 28, 1960, 24 FPC 818, in which it set forth Area Price Levels for Natural Gas by Independent Producers including those in the San Juan Basin, New Mexico. The price for initial service in the San Juan Basin was placed at 13.0 cents at 15.025 psia.

The Aneth case was decided by the Commission on the heels of the Catco decision. It was decided at a time when the full ramifications of the Catco decision were not fully understood, or at least appreciated by the then members of the Commission [10], nor indeed in some cases by the courts.[11]

At the time that the Commission and subsequently the court decided the Aneth case, regulatory principles with respect to the certification of producer sales under Section 7 of the Act were still in their early post-Catco stage.

It should be kept in mind in this connection that an outstanding element of the regulatory process is the development of criteria for judgment. The approach of the Commission to initial price regulation under Section 7 had not as yet been fully developed when the Commission reached its determination in the Aneth case, nor when the Fifth Circuit Court decided that matter. In truth, it is still in the course of development, although there has been substantial improvement in the Commission's processes since Aneth.

Conceptually the regulatory process cannot, or at least should not be imprisoned within the framework of a single comparatively early decision like Aneth. To follow this approach, as though the Aneth decision were *res judicata* of all subsequent sales even in areas not far distant from the Aneth Field and even to the point of sales of gas of a different type, would bar the Commission from any future empirical analysis and thus prevent subsequent development of the Commission's processes for the purpose of improving standards which greater experience shows would better protect the public interest.

While the doctrine of *res judicata* may have reasonable application in various types of administrative and judicial proceedings it has no rigid or unvarying application to a proceeding bearing upon a determination by the Federal Power Commission of the present or future public convenience and necessity. A leading case dealing with this general subject is *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 236 F. 2d 289 (1956). At page 291 of this opinion Judge Maris speaking for a unanimous court commented as follows:

> The principal contentions of Panhandle are based upon the premise that, as it asserts, the Commission had in 1947 authorized the partial abandonment of its service to Michigan Consolidated and had determined Panhandle's obligations to that company in proceedings which involved the issuance of a certificate of public convenience and necessity to Michigan-Wisconsin Pipe Line Company,[5] an affiliate of Michigan-Consolidated in the American Natural Gas Company System. It strenuously argues that the action of the Commission in those proceedings must be given effect in this proceeding upon principles of res judicata. The contentions of Panhandle in this regard we find to be wholly without merit.
>
> In the first place the doctrine of *res judicata* can have no application to a proceeding, such as this, which involves a determination of the present or future public convenience and necessity with respect to the continuance or abandonment of natural gas service. For, as Judge Learned Hand said in a somewhat analogous situation in *United States Feldspar Corporation* v. *United States*, D.C.N.Y. 1930, 38 F. 2d 91, 95, "No estoppel is relevant upon that inquiry, no inconsistency important, except as it helps to ascertain the

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[10] See, for example, *Texas Gas Transmission Corporation*, 22 FPC 378; *The California Company, et al.*, 22 FPC 252; *The Superior Oil Company*, 22 FPC 369; *Sunray Mid-Continent Oil Company*, 22 FPC 361; *Sun Oil Company*, 22 FPC 357; all post-Catco determinations, and all of which were reversed by various Courts of Appeals in 287 F. 2d 146 (CADC), cert. denied 365 U.S. 880, 882; 283 F. 2d 817 (CCA 9); 290 F. 2d 147 (CCA 5); 287 F. 2d 159 (CCA 10) and 290 F. 2d 133 (CCA 5).

[11] *E.g.*, *United Gas Improvement Co.* v. *F.P.C.*, 269 F. 2d 865 (3rd Cir. 1959), reversed *Public Service Commission* v. *F.P.C.*, 361 U.S. 195 (1959).

very truth; the inquiry is not to be assimilated to the ordinary suit *inter partes*, where no more is at stake than the settlement of a private dispute." In a situation such as this the Commission is exercising delegated legislative power to make a rule to guide the conduct of the parties in the future. It is not exercising quasi-judicial power to determine past or present rights or liabilities, as was done in the case of In re *Federal Water & Gas Corp.*, 3 Cir., 1951, 188 F. 2d 100, certiorari denied *Chenery Corp.* v. *Securities & Exchange Comm.*, 341 U.S. 953, 71 S. Ct. 1018, 95 L. Ed. 1375, in which this court did apply the doctrine of *res judicata*. That case, upon which Panhandle relies, has no relevance here.

(Footnote omitted.)

While reasonable consideration of gas prices in nearby areas, where the quality of the gas and other relevant circumstances are analogous, for purposes of making comparisons for "hold the line" objectives should be afforded every producer it does not follow that inadequately developed principles employed in an earlier determination should be followed blindly and unanalytically in all subsequent cases. Nor does it follow that additional Commission experience should not be used to improve its administrative processes.

In the Aneth case, for example, the Commission determined the costs at El Paso's processing plant at San Juan and used these processing costs to set the price of gas at Aneth, *i.e.*, five cents per Mcf. The processing costs at San Juan have no rational relationship to the costs of processing at the Aneth plant.[13] Among other things, the two different plants have entirely different amounts invested in them and process different types of gas. The fact is that the costs of processing gas at San Juan had no necessary relationship to the costs of processing gas at Aneth and the equating of these costs to arrive at a price for San Juan had no logical basis whatever. It would not be done today because it would be recognized that one set of costs had no necessary or logical relationship to the other. There are, of course, many other reasons for not following this practice or applying costs reached in this way to the gas being sold here.

In addition, it may be observed that in the Aneth opinion a comparison was between a *price* proposed for Aneth gas with the *cost* to El Paso of gas from the San Juan Basin (23 FPC 369, 376). In this connection, it should be observed that "cost" and "price" are different matters. Cost and price may or may not be the same in a particular or specific instance but as concepts they are not usually equivalents. When they are equivalents, it is usually attributable to coincidence. The employment of this kind of comparison is highly questionable from the standpoint of logic, and it would be unwise to employ or adhere to this kind of comparison in the future.

The Commission traditionally formulates policy, at least insofar as price conditions in contested certificate cases are concerned, upon a case-by-case basis. When the Commission does so, it is, or should be, apparent that it is not the Commission's intention to put itself into a doctrinaire or ideological straitjacket so that it may not take advantage of the experience, knowledge, and expertise which it has acquired since it made an earlier decision. The Commission's policy must be developed gradually, moving from problem to problem, and observing the public and private effects of prior decisions. Without the benefit of such a developing process past decisions of the Commission would tend to

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[13] The Commission in its brief filed with the Court of Appeals called the Court's attention to the fact that the Commission obtained the cost of gathering and processing at San Juan and divided this figure by the volumes going through the plant and arrived at 5 cents per Mcf. (See Comm. Brief, p. 31.) This was an absurd way to ascertain processing costs at Aneth.

become so embedded and so rigid that they would defeat any effort looking towards improvement in its administrative processes.

The views and concepts represented in Opinion No. 335 differ from more recent Commission pricing policy or thinking in a number of material respects. To begin with in Aneth the Commission added a cost-based differential to a field price and it supported its decision as to price level by reliance on erroneously determined costs from another and unconsolidated docket.

The Commission in subsequent cases, particularly in the remanded CATCO proceeding,[13] in the *Socony Mobil Oil Company, Inc.*, Docket No. G–13780, 27 FPC 347 (1962); in *Skelly Oil Company*, Docket No. G–18638, *et al.*, Opinion No. 362, 28 FPC 401 (1962); and in *Texaco Seaboard, Inc., et al.*, CI61–118, Opinion No. 383 issued March 27, 1963, 29 FPC 593, concluded that it would be impracticable, inappropriate and unnecessary to fix initial prices on a cost basis and particularly that it would not consider "fragmentary cost" evidence or unit cost data based upon companywide operations in fixing initial prices under Section 7 of the Act.

In connection with the views expressed by the Commission in its *Aneth* Opinion, the Staff made the following comment in its brief:

> Aside from the fact that the Opinion No. 335, 17.7¢ prices are tainted because of the erroneous treatment of one of the "factors which support[ed]" the price, these 17.7¢ prices should not be used for the further reason that the other supporting factor, field prices adjusted with costs, is no longer considered to be a proper price determinant. The Commission[8] and the courts,[9] in all of the later cases have viewed this type of determination as improper. Thus, both factors, which the Commission considered as support for the prices in Opinion No. 335, the basis for all of the 17.7¢ sales in the record, today are considered to be erroneous and should not be perpetuated in this proceeding. (Footnotes omitted.)

The examiner agrees with the staff that the views expressed in Opinion No. 335 should not be considered as a precedent for establishing a 17.7-cent price for the sales involved here.

As we have pointed out, the sales of natural gas involved in this proceeding are much more like the sales of gas involved in the San Juan Basin than they are like the Aneth sales. The Aneth sales, in general, involved casinghead gas while those in this case are sales involving dry gas.

There is one lone sale of dry gas by Western in the Boundary Butte Field, which is near the East Boundary Butte Field where Shell and Humble are making sales in this proceeding. It was this single sale of dry gas in which the Commission in the Aneth case authorized a price of 17.7 cents per Mcf.

Lengthy testimony by a staff expert bearing generally upon comparable and "in line" prices appears in this record. The staff's expert witness was of the opinion that a lone dry gas sale, such as Western's, would be a wholly insufficient and inadequate basis on which to formulate a line in this proceeding for a price determination which would reasonably meet Section 7 standards.

The staff's documentary evidence was set out generally in the form of its usual price exhibit and was accompanied by an oral exposition of the exhibit and the staff expert's general position regarding pricing.

The staff witness presented a tabulation of field price data which was based upon existing negotiated producer prices of recent volumes and under which sub-

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[13] See *Continental Oil Co.*, 27 FPC 96 (1962); see also *Skelly Oil Company*, Opinion No. 362, issued August 30, 1962, Opinion No. 362–A issued December 18, 1962, 28 FPC 1065. See also *California Oil Co., Western Division* v. *F.P.C.*, 315 F. 2d 652 (CA10, No. 7148, March 1963).

stantial volumes of gas moved in interstate commerce from the same general geographic production area to a common point of collection for delivery to a common market.

Since the contracts under consideration involved here relate to gas produced beyond the boundaries of one of the pricing areas established under the Commission's policy statement, the price line was referenced by the witness to a substantial number of permanently certificated contracts applicable to nearby areas having gas of either a comparable or possibly comparable character. The staff's exhibit and testimony were referenced to authorized sales in the Aneth area of San Juan County, Utah, the Boundary Butte Field in southern Utah, and the San Juan Basin of New Mexico as possibly comparable sales. The reasons why the Aneth Opinion No. 335, in the examiner's opinion, should not be considered as forming any precedent for establishing prices in this proceeding have been discussed hereinabove.

In addition to these reasons it further appears that the quality of the gas, which is the subject of these proceedings, is inferior to the quality of the major part of the gas sales involved in Opinion No. 335 since the average Btu content at Aneth is higher than the average Btu content at East Boundary Butte Field by approximately 20 percent. In addition, the impurities at the East Boundary Butte Field are greater than those which obtain at Aneth or San Juan. In this connection, it may be observed that the applicants here have a ceiling on processing costs to remove impurities for which they may be charged by the pipeline, whereas Western's contract has no such limitation on the costs to remove impurities. (See pages 483, 484, *supra*.)

The staff exhibit and evidence show that San Juan sales with two exceptions are all wellhead sales and are all made at an initial price of not more than 12 cents. The San Juan area price is a price applicable to pipeline quality gas as that term is generally understood in the San Juan area. In this connection, the California distributors have pointed out:

> The Application of that in-line price [i.e. the San Juan area price of 12 cents per Mcf] to the instant sales should be consistent with the Commission's purpose to stabilize prices at levels which buyers have been paying for pipeline quality gas in an established producing area and in adjacent or analogous areas where a new field is undergoing production and development. Thus, where gas is customarily purchased from the producer at the tailgate of a processing plant, subsequent to gathering and processing, the price for pipeline quality gas reflects that practice and, under the in-line price theory, no allowance may be made for processing and gathering upon the certification of a new sale from that area or an adjacent area.[14]

The examiner agrees with the California distributors' statement.

The staff witness pointed out that the sales in the San Juan Basin were numerous, that the gas was of the same type as the gas being offered by the applicants in this proceeding, *i.e.* dry gas, and that the sales in the San Juan Basin upon which he was relying were recent and involved substantial volumes. Specifically, the witness referred to substantial volumes of gas moving in interstate commerce from the San Juan Basin in very recent dates including San Juan contracts dated 1960, 1961, and 1962, as well as the type and quality of the gas, the facilities to be provided, and the services to be rendered. This gas was generally sold at 12 cents per Mcf or less.

The staff witness, however, suggested by his testimony that a price of 13 cents rather than a price of 12 cents per Mcf would meet "in-line" standards as

[14] See joint initial brief of the California distributors, p. 21.

recently enumerated by the Commission. One of the reasons for this conclusion appears to be that in the case of East Boundary Butte gas, *i.e.*, the gas being sold here, the producers are not contractually entitled to receive any additional payment for liquids whereas the producer-sellers in the San Juan Basin gas are entitled to a payment of not less than 1 cent per Mcf. In this situation the staff witness apparently equated this case to those which involved "unusual" services. Assuming, arguendo, that such was the situation in this proceeding, a 13-cents per Mcf initial price would appear adequate to satisfy such a claim.[15] In *Panhandle Eastern Pipe Line Company*, Opinion No. 350, issued January 15, 1962, 27 FPC 35, the Commission pointed out that:

> Apart from some specific service or forbearance in connection with a sale of gas, or some circumstance with respect to the conditions of its sale which affects its character as pipeline quality gas, the value of the gas to the purchaser is not a consideration in the certification of initial prices under our area pricing policy. (Footnote omitted.)

This Commission position is relevant to the producers' claim that the gas involved there has some special economic value because it could be employed as "swing gas" by El Paso which claims to have a greater need for dry gas than casinghead gas.

Based upon all the facts adduced in this record, the briefs which have been submitted, and the considerable volume of oral argument contained in the transcript, the examiner has concluded that a permanent certificate should issue to each of the applicants in these proceedings only upon condition that the initial price inclusive of tax reimbursement and inclusive of any minimum guarantee of liquids shall not be in excess of 13 cents per Mcf at 15.025 psia for pipeline quality gas.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, the evidence adduced and the briefs filed, the presiding examiner finds and concludes, in addition to the findings and conclusions hereinbefore stated that:

(1) Each of the applicants named in the caption of this decision is a "natural, gas company" within the meaning of the Natural Gas Act as an independent producer of natural gas, as that term is defined in Section 154.91(a) of the Commission's Regulations, engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption and such sales together with the construction and operation of any facilities are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(2) Each of the applicants named in the caption is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(3) The sale of natural gas as proposed by each of the applicants herein together with the construction and operation of any facilities subject to the juris-

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[15] The Court of Appeals in *The Atlantic Refining Company* v. *F.P.C.*, 316 F. 2d 676, 679, pointed out that even in a case like the Atlantic case where there was a difficult question as to which of the two prices should be used as the initial price, the nature of the Act requires the choice of the lower prices. "In arriving at initial rates under Section 7, the Commission, of course, does not foreclose a company from obtaining an increase under Section 4. * * * Since there is no mechanism for refund of overcharges under Section 7, if the Commission is to err in setting an initial rate, it should err on the low side because the company, under Section 4, can immediately increase the rate, subject to disallowance by the Commission after a full rate proceeding, the public being protected with reference to refunds in the interim."

diction of the Commission necessary therefor are required by the public convenience and necessity and a certificate authorizing the same should issue to each of them upon the terms and conditions of the order herein, which terms and conditions are required by the public convenience and necessity.

(4) The public convenience and necessity requires that the initial price charged by the independent producers named in the caption for the sales proposed in their certificate applications in this proceeding be not greater than 13 cents per Mcf at 15.025 psia, inclusive of tax reimbursement and inclusive of any minimum guarantee for liquids, and that the take-or-pay requirement in their contracts be revised in accordance with the final order of the Commission to be issued in Docket R–199 commenced by Notice of Proposed Rulemaking dated May 22, 1961, provided, however, that the applicants shall not be required to file take-or-pay provisions for less than 80 percent of the annual contract quantities.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission on appeal, or upon its own motion as provided in the Commission's Rules of Practice and Procedure, that:

(A) A certificate of public convenience and necessity is hereby issued to each of the applicants referred to in finding (1) for the sale of natural gas in interstate commerce for resale as proposed in their applications, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, upon the terms and conditions of this order.

(B) The certificate to be issued to each of such producer applicants is hereby conditioned to prohibit any total initial price, including all reimbursements and charges, greater than the 13 cents per Mcf at 15.025 psia, inclusive of tax reimbursement and inclusive of any minimum guarantee of liquids, from the date of issuance of this order until such price may be lawfully changed in the manner provided by the Natural Gas Act.

(C) The certificate of such producer applicants shall be conditioned so that the take-or-pay for requirement in each contract is subject to the provisions of the Commission's final order in Docket No. R–199 as of the effective date of that order, provided, however, that the producers shall not be required to file take-or-pay provisions for less than 80 percent of the annual contract quantities.

(D) The certificates issued herein are conditioned upon their acceptance in writing by the respective producer applicants within 30 days of the issuance of this order.

(E) The certificates issued herein are not transferable and shall be effective only so long as each of said applicants continues the acts and operations herein authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(F) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 of the Commissions Regulations under said Act requiring the filing of rate schedules for the service herein authorized and is without prejudice to any findings or orders which may have been or hereafter may be made by the Commission in any proceeding now pending or hereinafter instituted by or against the applicants. Further, the action taken in these proceedings shall not foreclose nor prejudice any further proceeding or objection relating to the operation of any price or related provisions in the gas contracts here involved.

SAMUEL BINDER,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

AREA RATE PROCEEDING, ET AL., DOCKET NO. AR61-2, ET AL.

ORDER ON PROTEST TO PARTICIPATION OF KENNETH L. SMITH AS A WITNESS AND MOTION TO STRIKE EVIDENCE

(Issued August 3, 1964)

On July 7, 1964, a group of respondents [1] filed a formal protest to the participation of Kenneth L. Smith as a witness in these proceedings and moved to strike his testimony and exhibit. The protest lies under our Rules of Practice and Procedure, 18 CFR 1.10(c). Mr. Smith's participation is sponsored by the "Municipal Distributors" [2] which filed an answer on July 16, 1964. Mr. Smith was formerly Assistant Chief of this Commission's Bureau of Natural Gas. Respondents contend, that our rule governing the appearances of former employees, 18 C.F.R. 1.4(c), applies to and should exclude Mr. Smith's participation in these proceedings. We are cited to no reported decisions under that rule as now in effect.

Rule 1.4(c) provides in pertinent part:

> *Appearances of former employees.* No person having served as a * * * officer, expert, * * * accountant * * *, or other employee of the Federal Power Commission may * * * act as * * * expert witness * * * in connection with any proceeding or matter before the Commission which such person has handled, investigated, advised or participated in the consideration thereof while in the service of the Commission unless he be expressly authorized by the Commission on a verified showing that such participation would not be contrary to the public interest and would not be unethical or prejudicial to the interests of the Commission.

There is no question that Mr. Smith did serve as an officer, expert, accountant and employee of the Commission and that he now would appear as an expert witness in a proceeding. There is a controversy as to whether Mr. Smith has "handled, investigated, advised or participated in the consideration" of the "proceeding or matter" in which he would now participate. There is a further controversy as to whether Mr. Smith's appearance "would not be contrary to the public interest and would not be * * * prejudicial to the interests of the Commission." There is no suggestion that Mr. Smith's appearance might be "unethical".

This matter was first raised by counsel for the Municipal Distributors who filed a request on November 5, 1963, supported by Mr. Smith's accompanying affidavit, that the Commission either authorize Mr. Smith's participation or advise that Rule 1.4(c) did not apply. Counsel did not serve the other parties to this proceeding, which is not required under our rules since the request does not go to the merits of the case. On November 27, 1963, we granted the requested

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[1] Amerada Petroleum Corporation, The Atlantic Refining Company, Cabot Corporation, E. Cockrell, Jr., Cities Service Oil Company, Continental Oil Company, Gulf Oil Corporation, Humble Oil & Refining Company, Kerr-McGee Oil Industries, Inc., Pan American Petroleum Corporation, Phillips Petroleum Company, The Pure Oil Company, Shell Oil Company, Sinclair Oil & Gas Company, Socony Mobil Oil Company, Inc., The Superior Oil Company and Texaco Inc.

[2] Memphis Light, Gas and Water Division; City of Dyersburg, Tennessee; Gibson County Utility District; City of Humboldt, Board of Public Utilities; Jackson Utility Division of the City of Jackson, Tennessee; City of Brownsville, Tennessee; Town of Covington, Tennessee; Tipton County Utilities Company, Inc.; Crockett Public Utility District; and Bells Public Utility District; and American Public Gas Association.

authorization subject to subsequent consideration of any formal protest; we noted that counsel's letter and Mr. Smith's affidavit indicated that Mr. Smith's prior participation in the proceeding "was at an early stage and was of a limited nature." We did not serve our authorization on the parties but deposited it together with the incoming correspondence in the public files. See 18 CFR 1.36(c)(11). Mr. Smith's prepared testimony, which discloses his former employment, was presented by the Municipal Distributors on December 10, 1963.

Rule 1.4(c) was intended to protect the public from conflicts of interest, not to give rise to a new head of adversary litigation. The stated purpose of the rule in its present form "is to permit the appearance before the Commission of its former officers and employees in all cases where no question of conflict of interest would result from such participation". *Order No. 184*, 15 FPC 792, 793; 21 Fed. Reg. 1047. Certainly the rule does not give private persons the right to have an opponent's testimony stricken on the mere assertion, unsupported by fact, that a conflict of interest exists.

Our authorization of November 27, 1963, was granted subject to any formal protest because we wanted to reserve the right to consider such additional facts as a protestant might bring to light. The present protest does not reveal any new facts. The instant proceeding was instituted by order issued May 10, 1961, and the only staff actions concerning the proceeding involved prehearing conferences commencing in Baton Rouge, La. on June 26, 1961, with respect to general problems involved in the proceeding as then contemplated, and on November 28, 1961, with respect to a cost questionnaire which was required by Commission order of May 25, 1962. The resignation of Mr. Smith became effective on January 12, 1962, and the case-in-chief of the Commission staff was not introduced in evidence until December 10, 1963. Furthermore, the initial evidence adduced by the Commission staff in the first area proceeding, Docket No. AR61–1, was not introduced in evidence until November 15, 1962, ten months after Mr. Smith left the employ of the Commission. We have once more considered all of the facts available to us and conclude that Mr. Smith's appearance as an expert witness in this proceeding would not be contrary to the public interest and would not be prejudicial to the interests of the Commission.

Mr. Smith is expressly authorized to act as an expert witness in this proceeding.

The protest is rejected and the motion to strike is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP64–240

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT

(Issued August 3, 1964)

On April 14, 1964, Arkansas Louisiana Gas Company (Applicant) filed in Docket No. CP64–240 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon two compressor stations known as Applicant's Trees Station and Rogers Station, respectively, all as more fully set forth in the application on file with the Commission.

Applicant for reasons of obsolescence proposes to abandon (1) the Trees Station consisting of seven gas engines, single tandem, double acting, horizontal type, manufactured in 1913, and moved to the present location in 1926 and

1928 (four engines rated at 450 Hp and three engines rated at 500 Hp, a total of 3,300 Hp) and (2) the Rogers Station consisting of three gas engines, twin tandem, double acting, horizontal type, installed in 1911, each rated at 1,300 Hp. The engines have not been operated for several years.

The net salvage value of the facilities to be abandoned has been computed on the basis of $5 per horsepower, or a total of $36,000.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 30, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorizations sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Arkansas Louisiana Gas Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 26, 1943, in Docket No. G–252 (3 FPC 910).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval therefor should be granted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application in this proceeding, are hereby granted to Applicant.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP64–263

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT

(Issued August 3, 1964)

On April 29, 1964, Arkansas Louisiana Gas Company (Applicant) filed in Docket No. CP64–263 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon its Terry Compressor Station located in Texas, consisting of six (6) Cooper-Bessemer gas engines, type 80, twin, single acting, horizontal, each rated 170 Hp, all as more fully set forth in the application on file with the Commission.

The facilities described above proposed to be abandoned by the Applicant have not been operated for several years due to their obsolescence and the fact that new sources of gas supply provide volumes of gas for the markets formerly

served by the Terry Station. No service will be discontinued as a result of the abandonment of the obsolete facilities. The net salvage value of all the facilities to be abandoned has been computed on the basis of $5 per horsepower, or a total of $5,100.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 30, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Arkansas Louisiana Gas Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 26, 1943, in Docket No. G–252 (3 FPC 910).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval therefor should be granted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application in this proceeding, are hereby granted to Applicant.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

KENNEBEC RIVER PULP & PAPER COMPANY, INC., PROJECT NO. 2364

ORDER ISSUING LICENSE (MAJOR)

(Issued August 3, 1964)

Application was filed on May 10, 1963 by Kennebec River Pulp & Paper Company, Inc. (Applicant) of New York, New York, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2364, known as the Abenaki Development, located on the Kennebec River, in Somerset County, Maine, in the towns of Anson and Madison.

According to the application, project regulatory dams were built in 1907, followed in 1922 by the construction of a ground wood mill and necessary dam and canal required for the operation of the mill. These facilities have remained unchanged to date. In 1961, Applicant purchased the Abenaki mill and power plant and land necessary for operation of the mill. Applicant has installed an Allis Chalmer generator on the number 5 water wheel and a power line and appurtenances thereto to make it possible to transmit surplus electric power to the upper mill.

The Abenaki Development has a total installed capacity of 4,866 horsepower connected to generators having a total rated capacity of 3,650 kilowatts and 9,100 horsepower connected to wood grinders. The energy generated by the project is used wholly in Applicant's pulp and paper mills.

Abenaki is a low head (42-foot) run-of-river plant. The hydraulic capacity of the plant, when operating at nameplate rating is about 3,800 c.f.s. River flows greater than 3,800 c.f.s. can be expected approximately 53 percent of the time as indicated by Applicant's flow duration curve filed as part of the application. The estimated equivalent annual average generation is 78,613,000 kwhr, indicating a plant factor of about 86 percent.

The New England-New York Interagency Committee, Gold Book, recommends a high dam across the Kennebec River about one and one-half miles below the town of Madison to develop the head between the Weston Project No. 2325[1] reservoir and the Anson Project No. 2365 tail water.[2] The higher head project would have an installed capacity of 24,000 kw. The reservoir created by the dam would have a gross capacity of about 4,500 acre feet and would inundate the Abenaki project. An alternative project also recommended by NENYIAC, is a low dam at the same location with an installed capacity of 8,800 kw which would not inundate the Abenaki project. The report indicates, however, that if the Abenaki project is modernized for continued operation for pulp and paper production, the low Madison dam may be the most desirable development. Provision is hereinafter made in the interest of a more comprehensive plan of development of the Kennebec River in the reach involved herein.

In its order issued May 21, 1954,[3] the Commission found that the Kennebec River from its mouth at least up to Moosehead Lake[4] constitutes navigable waters of the United States within the meaning of Section 3(8) of the Federal Power Act. The basis for this finding was that the Kennebec River has been used extensively for the transportation of substantial quantities of sawlogs for a long period of time, beginning in the early 1800's and has been navigated by canoes, bateaux and steamboats.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, advised that the plans of the project structures affecting navigation were satisfactory, and that such plans have been approved pursuant to Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project certain conditions in the interests of fish and wildlife resources.

The Department of Health, Education and Welfare, in reporting on the application, advised that neither the water supply nor water quality control are significantly affected by the project, and the granting of a license for the project is not expected to create or intensify vector problems.

For the reasons set forth in our Opinion No. 357 (27 FPC 830), the license herein granted shall have a termination date of 1993. Since there was no substantial project construction after 1935, we will make the effective date of the license May 1, 1954, the first day of the month in which we determined the Kennebec River to be a navigable water, as set forth above.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of New York, is authorized to do business in the State of Maine, and has submitted sat-

[1] Application for license for which has been filed by Central Maine Power Company and Skowhegan Water Power Company.
[2] Applicant's application for license for which is pending.
[3] Central Maine Power Company, Docket No. E-6456 (13 FPC 1076).
[4] Moosehead Lake is the source of Kennebec River.

isfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(2) No conflicting application is before the Commission. Public notice of the filing of the application has been given as required by the Act. No protests or petitions to intervene have been received.

(3) The issuance of a license for the project as hereinafter provided will not affect a Government dam or the development of any water resources for public purposes which should be undertaken by the United States.

(4) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(5) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 14,000 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(6) The 3,400-foot transmission line described in paragraph (B) below, and included in the application for license, is part of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project.

(7) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to Kennebec River Pulp & Paper Company, Inc. (Licensee) of New York, New York, under Section 4(e) of the Federal Power Act (Act) for a period effective as of May 1, 1954, and terminating December 31, 1993, for the continued operation and maintenance of the Abenaki Development (Project No. 2364), located on the Kennebec River, a navigable water of the United States, in Somerset County, Maine, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Constructed Project No. 2364 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purpose of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: Sheet 1 (FPC No. 2364-1) General Map of Project Area.

(ii) A concrete gravity overflow dam approximately 780 feet long its height varying from several feet to approximately 25 feet with the crest at an elevation of 219.65 feet (U.S.C. & G.S.) and topped by 3-foot flashboards; a 25-foot log sluice in the center of the dam; a headgate section about 200 feet long channeling water into a forebay approximately 830 feet long and 160 feet wide; water from forebay is channeled into a grinder room through 7 tubes developing a gross head of 42 feet; the grinder room is equipped with two 2550 hp and two 2000 hp turbines directly connected to wood grinders and 3 turbines connected to generators having a combined capacity of 3,650 kw; a 3,400-foot transmission line; and

appurtenant facilities; the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L: Sheet 1 (FPC No. 2364–2) entitled "Detail Map Showing the Project Dam", and

Sheet 2 (FPC No. 2364–3) entitled, "Section Views of Dam".

Exhibit M: consisting of one typewritten page entitled, "Equipment" filed in the Commission May 10, 1963.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–3 (Revised November 1, 1963) entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (30 FPC 1658), which terms and conditions, designated as Articles 1 through 27, are attached hereto and made a part hereof, except for Article 4 thereof; and subject to the following special conditions set forth herein as additional articles:

Article 28. The project, including its operation and maintenance and any work incident to additions or alterations authorized by the Commission whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and of any such alteration thereof, and shall notify him of the date upon which work with respect to any alteration will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 29. The Licensee shall pay to the United States the following annual charge:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purposes is 14,000 horsepower.

Article 30. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance and depreciation thereon as the Commission shall determine to be equitable, and shall pay to the United States for the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the costs of making the determinations pursuant to the then current Commission Regulations under the Federal Power Act within 60 days from the date of rendition of a bill therefor and, upon failure to do so, shall thereafter be subject to the payment of the penalties specified in the then current Regulations. The Licensee shall have the right to pay such amounts under protest within the 60-day period and to reconsideration of the amounts billed or a hearing as provided by the then current Regulations under the Act.

Article 31. The right, power, and authority is reserved to the United States to construct or to the Commission to issue a license authorizing the construction, operation and maintenance of a hydroelectric project which will more completely utilize the water resources of the reach of the Kennebec River in which the project is located.

Article 32. The acceptance of this license by the Licensee shall constitute its stipulation, consent and agreement made upon its own behalf and upon the behalf of its successors and assigns for the benefit of the United States, or the person or persons hereinafter constructing, operating and maintaining such more complete hydroelectric project or his or their successors and assigns, that said Licensee, its successors or assigns, shall surrender its license at such time as the project becomes inoperative by reason of inundation by such more complete hydroelectric project; Provided, that Licensee shall be paid the net investment in Project No. 2364 upon surrender of its license; and Provided further, that Licensee shall not be entitled to any compensation for severance damages sustained by reason of inundation or destruction of the project or project works of Project No. 2364.

Article 33. The Licensee shall, within one year from the date of issuance of this license, file with the Commission a detail map, Exhibit K.

Article 34. The Licensee shall, within one year from the date of issuance of this license, file with the Commission for approval a recreational use plan for the project which shall include not only recreational improvements which may be provided by others, but the recreational improvements the Licensee plans to provide.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license for the project.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

NORTHERN ILLINOIS GAS COMPANY, DOCKET NO. CP64-243

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE AND DELIVERY OF NATURAL GAS

(Issued August 3, 1964)

On April 17, 1964, Northern Illinois Gas Company (Applicant) filed in Docket No. CP64-243, an application pursuant to Section 7(a) of the Natural Gas Act for an order directing Northern Natural Gas Company (Northern Natural) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant, and to sell natural gas to Applicant for ultimate distribution and sale, by Applicant's subsidiary, Allied Gas Company (Allied), to the public in and near the City of East Dubuque, Illinois, all as more fully set forth in the application on file with the Commission.

Applicant seeks to have Northern Natural construct approximately 1.5 miles of 3-inch gas main, together with regulating and metering facilities at a total estimated cost of $42,000.[1] The odorizing and regulating facilities will be constructed by Applicant at a cost of $7,750. Applicant's subsidiary, Allied, is to construct and operate a gas distribution system in and near the City of East Dubuque, Illinois, at a total estimated cost of $308,200.

Applicant estimates that during the first three years of operation the annual and peak day gas requirements of the distribution system to be constructed and operated by Allied will be: 59,000 Mcf and 519 Mcf, 75,000 Mcf and 671 Mcf, and 91,000 Mcf and 828 Mcf, respectively. No increase in contract demand is required as these volumes will be delivered from Applicant's existing 92,250 Mcf contract demand from Northern.

On October 1, 1963, the City of East Dubuque, Illinois, granted Allied a franchise to construct and operate a gas distribution system in and near the City of East Dubuque. Subsequently on March 10, 1964, the Illinois Commerce Commission granted Allied a certificate of public convenience and necessity authorizing it to construct and operate a distribution system and to transact the business of furnishing gas service to the public in and near the City of East Dubuque, Illinois.

Northern Natural indicates by answer filed May 15, 1964, it has no objection to providing the requested service if the Commission finds such service is required by the present and future public convenience and necessity.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on June 23, 1964 (29 F.R. 7957). No protest, petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

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[1] Applicant has agreed to reimburse Northern Natural for the actual cost of facilities to be constructed by Northern Natural.

(2) Applicant, Northern Illinois Gas Company, an Illinois corporation having its principal place of business in Aurora, Illinois, is a corporation legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act, and has received the necessary local franchises to render the service proposed.

(3) It is necessary and desirable in the public interest to direct Northern Natural Gas Company to establish physical connection of its transportation facilities with facilities proposed to be constructed by Applicant and to sell and deliver natural gas to Applicant up to 828 Mcf per day for ultimate distribution and sale by Applicant's subsidiary, Allied Gas Company in and near the City of East Dubuque, Illinois, under Northern Natural's appropriate rate schedule.

(4) The requirement that Northern Natural serve Applicant, as hereinafter ordered, will not (a) place an undue burden upon Northern Natural, (b) require Northern Natural to enlarge its transportation facilities or (c) impair Northern Natural's ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Northern Natural for distribution in the City of East Dubuque, Illinois, within one year from the date of the issuance of this order.

The Commission orders:

(A) Northern Natural Gas Company be and is hereby directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, as hereinbefore described, and to sell and deliver up to 828 Mcf per day to Applicant for resale as hereinbefore described. Such service shall be rendered pursuant to Northern Natural's presently filed appropriate rate schedule.

(B) Northern Natural shall report to the Commission the date of commencement of service to Applicant within 15 days after such service begins.

(C) Applicant shall be prepared to receive service from Northern Natural as directed herein within one year from the date of issuance of this order.

(D) Northern shall file pursuant to Part 154 of the Commission's Regulations an acceptable superseding service agreement reflecting the additional delivery point to Applicant.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

THE OHIO FUEL GAS COMPANY, DOCKET NO. CP64-214

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 3, 1964)

On March 26, 1964, The Ohio Fuel Gas Company (Applicant) filed in Docket No. CP64-214 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities necessary for the activation and operation of a proposed additional underground storage area, referred to as the Lucas extension of the Weaver Storage Field, Ashland County, Ohio, all as more fully set forth in the application.

Applicant proposes to construct and operate approximately 30.1 miles of 4½-inch to 20-inch storage lines and to install and operate two 3,400 horsepower compressor units at the existing Lucas Compressor Station. Further, Applicant

proposes to convert 48 existing producing wells to storage use and to drill an additional 152 wells over a three year period beginning in 1964.

The proposed storage addition will be located adjacent to Applicant's existing Weaver 3–A and 3–D Storage Fields. The proposed field will be joined with the Weaver 3–A and 3–D Fields to operate as a single combined unit having access to both existing Lucas and Weaver Compressor Stations.

The proposed field will have an ultimate storage capacity of 30,000,000 Mcf of gas and be capable of a 100,000 Mcf maximum daily withdrawal potential.

The estimated total cost of the proposed project is $6,969,512. Financing for the project will be secured through the parent company, The Columbia Gas System, Inc.

Applicant states that the proposed additional storage project is necessary to provide increased capacity to serve the growing requirements of existing markets and to assure adequate market service for the winter 1965–66 and thereafter.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 30, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, The Ohio Fuel Gas Company, an Ohio corporation having its principal place of business in Columbus, Ohio, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 21, 1945, in Docket No. G–371 (4 FPC 1033).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The proposed construction and operation of the subject facilities and the proposed storage operations by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (1), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(6) It is appropriate and in the public interest that Applicant should be required to submit semi-annual reports as hereinafter ordered.

(7) Maximum storage pressure of 1,150 psig for the proposed additional field should not be exceeded without further authorization by the Commission.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, The Ohio Fuel Gas Company, to construct and operate the proposed facilities necessary to activate and operate a proposed

additional underground storage area, as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Comission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 24 months from the date on which this order issues.

(D) The certificate issued by paragraph (A) above is hereby conditioned as follows:

(1) Applicant shall submit semi-annual reports, coinciding with the termination of injection and withdrawal cycles, containing the following information:

(a) Total volumes of natural gas injected and withdrawn during each month of the cycle and the volume in storage at the end of the cycle;

(b) The maximum daily withdrawal rates experienced during the cycle and working pressure on maximum days, and

(c) Shut-in wellhead pressure of each observation and active storage well.

(2) The above-described semi-annual reports shall be filed until Applicant's shut-in wellhead pressure of 1,150 psig is reached and thereafter until two additional injection and withdrawal cycles have been completed.

(3) Maximum storage pressure of 1,150 psig for the proposed additional field shall not be exceeded without further authorization by the Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

PUGET SOUND POWER & LIGHT COMPANY, PROJECT NO. 1292

ORDER APPROVING SURRENDER OF LICENSE (TRANSMISSION LINE)

(Issued August 3, 1964)

Application was filed on November 16, 1960 by Puget Sound Power & Light Company, under Section 6 of the Federal Power Act (Act), for surrender of its license for transmission line Project No. 1292, affecting lands of the United States within the Snoqualmie and Wenatchee National Forests.

By its order issued November 4, 1960, the Commission, among other things, denied a joint application by Puget Sound Power & Light Company (Massachusetts) and Puget Sound Power & Light Company (Washington) to transfer the license for Project No. 1292 for the reason that the lines under the license for that project were not primary lines within Section 3(11) of the Act. The subject application was filed pursuant to a request therefor in Commission letter of November 4, 1960.

By letter dated April 10, 1963, the Forest Service submitted a copy of a Special Use Permit for the lines, issued December 26, 1962, for the continued occupancy of National Forest lands by the lines.

Annual charges under the license have been paid through December 31, 1960. The license instrument was returned with the application for surrender.

The Commission finds:

(1) Public notice of the application has been given. No protests or petitions to intervene have been received.

(2) Acceptance of surrender of the license for transmission line Project No. 1292 is appropriate, as hereinafter provided.

The Commission orders:

Surrender of the license for transmission line Project No. 1292 is hereby accepted, effective as of December 31, 1962, subject to the payment of annual charges through said date in the amount of $20.00.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

ST. MICHAELS UTILITIES COMMISSION, AND COMMISSIONERS OF ST. MICHAELS, MARYLAND v. THE EASTERN SHORE PUBLIC SERVICE COMPANY OF MARYLAND, DOCKET NO. E–7114; STOCKTON LIGHT AND POWER COMPANY (OF MARYLAND), AND STOCKTON LIGHT AND POWER COMPANY (OF VIRGINIA) v. THE EASTERN SHORE PUBLIC SERVICE COMPANY OF MARYLAND, DOCKET NO. E–7117; DELAWARE POWER AND LIGHT COMPANY, THE EASTERN SHORE PUBLIC SERVICE COMPANY OF MARYLAND, THE EASTERN SHORE PUBLIC SERVICE COMPANY OF VIRGINIA, DOCKET NO. E–7137

ORDER ACCEPTING RATE SCHEDULES FOR FILING, GRANTING MOTION FOR SEVERANCE AND DISMISSAL OF ILLEGAL OVERCHARGE ISSUE OF COMPLAINT OF STOCKTON LIGHT AND POWER COMPANY, AND AMENDING ORDER INSTITUTING INVESTIGATION AND PROVIDING FOR HEARING

(Issued August 3, 1964)

On June 1, 1964, Delaware Power & Light Company (Delaware) and its wholly-owned subsidiary, The Eastern Shore Public Service Company of Maryland (Maryland Eastern Shore) submitted for filing with the Commission four rate schedule supplements which would effect rate reductions for two Delaware customers and two Maryland Eastern Shore customers. The Companies request a retroactive effective date of May 1, 1963 for all four filings and plan to refund to the four customers all amounts collected on and after May 1, 1963, in excess of the Companies' Standard Resale Service Schedules determined to be applicable to St. Michaels, Maryland, in Commission Opinion No. 427, issued May 13, 1964, 31 FPC 1161, in Docket No. E–7114, *St. Michaels Utilities Commission, et al.* v. *The Eastern Shore Public Service Company of Maryland*, and voluntarily offered to three other customers which have wholesale contracts similar to St. Michael's contract with Maryland Eastern Shore. The proposed refunds, with interest thereon at six percent per annum, total approximately $106,500 for the four customers. One filing, for service to St. Michaels, is made in compliance with the Commission order in Opinion No. 427. The other three filings are made, according to the Companies, as a result of Opinion No. 427. The four rate schedule supplements, as ordered below, will be added to the general investigation of the companies' wholesale rates, ordered and set for hearing by Commission order issued November 18, 1963, 30 FPC 1305.

On June 1, 1964, Maryland Eastern Shore submitted for filing with the Commission, pursuant to Commission Opinion No. 427 and order issued May 13,

1964, in Docket No. E–7114, its Resale Service Schedule No. 1, for service to St. Michaels, Maryland, complainant in that proceeding. That submittal, in the form of a supplemental rate schedule, embodies the rates and charges reflected in Maryland Eastern Shore's Resale Service Schedule No. 1, previously filed with the Commission as a part of Maryland Eastern Shore's FPC Electric Tariff, Original Volume No. 1. The proffered schedule has been designated as Supplement No. 3 to Maryland Eastern Shore's Rate Schedule FPC No. 7.[1] The Company requests an effective date for the filing of May 1, 1963, in accordance with Opinion No. 427.

On June 26, 1964, Maryland Eastern Shore filed with the Commission a report showing the details of its calculations resulting in the refund to St. Michaels, in accordance with Paragraph (C) of Opinion No. 427. Pursuant to Paragraph (F) of that order, the illegal overcharge phase of the proceeding in Docket No. E–7114 shall be deemed terminated upon acceptance by the Commission of the foregoing rate schedule supplement as well as a release from St. Michaels to Maryland Eastern Shore for claimed overcharges.

On November 18, 1963, the Commission issued an Order in Docket No. E–7137[2] instituting investigation and ordering a hearing as to the lawfulness of all wholesale rates and charges of Delaware Power and its wholly owned subsidiaries, Maryland Eastern Shore and The Eastern Shore Public Service Company of Virginia. Maryland Eastern Shore's Rate Schedule FPC No. 7 and its FPC Electric Tariff are included in that investigation order. That docket was consolidated for hearing purposes with Docket No. E–7117 and the remaining issues in Docket No. E–7114.

On June 1, 1964, Maryland Eastern Shore submitted for filing with the Commission as a rate schedule supplement, pursuant to Section 205 of the Federal Power Act, its Resale Service Schedule No. 1 (with the requirement of that schedule for execution of a service agreement pursuant to the Company's FPC Electric Tariff, Original Volume No. 1 deleted), for service to Stockton Light and Power Company (Stockton). Maryland Eastern Shore requests an effective date of May 1, 1963, and states that it proposes to refund to Stockton all amounts collected in excess of the rates and charges reflected in the Resale Service Schedule No. 1 rate on and after May 1, 1963, with interest thereon at six percent per annum to June 1, 1964, a total amount of approximately $8,671. The filing will result in a reduction in rates to Stockton.

On July 25, 1963, Stockton filed with the Commission a complaint against Maryland Eastern Shore, Docket No. E–7117, alleging, inter alia, that Stockton's contract with Maryland Eastern Shore, Rate Schedule FPC No. 4, entitled Stockton to the rate benefits of Resale Service Schedule No. 1 from May 1, 1963, without the execution of a new service agreement. That issue was set for hearing by the Commission's order issued November 18, 1963.

In submitting the Stockton filing, Maryland Eastern Shore states that it is doing so as a result of the Commission's decision in Opinion No. 427 interpreting its rate schedules involving St. Michaels and Maryland Eastern Shore. Stock-

[1] On June 15, 1964, St. Michaels protested that the rate schedule filing was not in compliance with Opinion No. 427. A subsequent exchange of correspondence between counsel for St. Michaels and Maryland Eastern Shore shows that Maryland Eastern Shore is filing the rates and charges reflected in Resale Service Schedule No. 1, intended the deletion from the proffered documents of the following portions of Resale Service Schedule No. 1 which appear as a part of the Company's FPC Electric Tariff, Original Volume No. 1: "Availability," "Character of Service," "Service Agreement" and "Billing."

[2] Amended February 7, 1964, 31 FPC 395.

ton's contractual arrangements reflect considerations similar to those set forth in St. Michaels' contract with Maryland Eastern Shore. On June 2, 1964, Maryland Eastern Shore filed with the Commission a Motion for Severance and Dismissal of Illegal Overcharge Allegation of Complaint of Stockton Light and Power Company, stating that for the purpose of terminating further controversy on the illegal overcharge issue, it is willing to satisfy Stockton's claim on this issue. As an attachment thereto, Maryland Eastern Shore filed a Consent by Stockton agreeing to the severance and termination of the illegal overcharge phase of Docket No. E–7117 upon the terms stated in the Motion, including the refund and filing of the reduced rate with the Commission.

Maryland Eastern Shore's supplemental rate schedule for service to Stockton has been designated Supplement No. 2 to its Rate Schedule FPC No. 4. FPC No. 4 is also included in Docket No. E–7137.

On June 1, 1964, Delaware Power submitted for filing with the Commission, pursuant to Section 205 of the Federal Power Act, its Resale Service Schedule No. 1, (with the requirement of that schedule for execution of a service agreement pursuant to the Company's FPC Electric Tariff, Original Volume No. 1 deleted), for service to the City of Dover, Delaware and the Town of Middletown, Delaware. These filings result in a reduction in rates to both customers. Delaware Power's Resale Service Schedule No. 1 is on file with the Commission as a part of Delaware Power's Electric Tariff, Original Volume No. 1. Delaware Power requests an effective date of May 1, 1963, for both filings, and states that it proposes to refund to Dover and Middletown all amounts collected in excess of the Resale Service Schedule No. 1 rate on and after May 1, 1963, with interest thereon at six percent per annum to June 1, 1964, a combined total of approximately $79,860 for the two customers.

Delaware Power states in making these filings that it is doing so as a result of Commission Opinion No. 427 in Docket No. E–7114. That proceeding as noted, involves a subsidiary of Delaware Power.

The rate schedule submittal for service to Dover has been designated Delaware Power & Light Company's Supplement No. 3 to its Rate Schedule FPC No. 28. The rate schedule submittal for service to Middletown has been designated Delaware Power & Light Company's Supplement No. 4 to its Rate Schedule FPC No. 12. Delaware Power's Rate Schedules FPC Nos. 28 and 12 are both included in Docket No. E–7137.

The Commission finds:

(1) It is necessary and appropriate for purposes of the Federal Power Act and good cause has been shown that the 30-day notice period provided in Section 205(d) of the Federal Power Act be waived with respect to The Eastern Shore Public Service Company of Maryland Supplement No. 3 to Rate Schedule FPC No. 7; The Eastern Shore Public Service Company of Maryland Supplement No. 2 to Rate Schedule FPC No. 4; Delaware Power & Light Company Supplement No. 3 to Rate Schedule FPC No. 28; and Delaware Power & Light Company Supplement No. 4 to Rate Schedule FPC No. 12, and such rate schedules be allowed to take effect as of May 1, 1963.

(2) It is appropriate for purposes of the Federal Power Act that Maryland Eastern Shore's Motion for severance and dismissal of illegal overcharge issue of the Complaint of Stockton Light and Power Company be granted.

(3) It is necessary and appropriate for purposes of the Federal Power Act that Paragraph (A) of the Commission's Order issued November 18, 1963 in Docket Nos. E–7114, E–7117, E–7137, as amended, be further amended to include the rate schedules listed in finding (1) above.

The Commission orders:

(A) The 30-day notice period provided in Section 205(d) of the Federal Power Act is hereby waived with respect to the proffered rate schedules referred to in finding (1) above and they are hereby allowed to take effect as of May 1, 1963.

(B) The issuance of this order shall constitute full notice of the filing and publication of the rate schedules in question insofar as their effective date is concerned.

(C) The Motion filed June 2, 1964, by Maryland Eastern Shore requesting severance and dismissal of the illegal overcharge issue of the complaint of Stockton Light and Power Company is hereby granted.

(D) Paragraph (A) of the Commission's Order issued November 18, 1963, in Docket Nos. E–7114, E–7117 and E–7137 is hereby amended to include the rate schedules listed in Finding (1) above.

(E) Nothing contained in this order shall be construed as a waiver in any other respect of the requirements of Section 205(d) of the Federal Power Act or Section 35.13 of the Commission's Regulations under the Act, nor shall it be construed as constituting approval by this Commission of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such service or rate provided for in the rate schedules as above designated, nor shall this order be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate.

(F) This order is without prejudice to any findings or orders which have been or may hereafter be made by this Commission in any proceeding now pending, or hereafter instituted, by or against the aforementioned companies.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP64–245

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT

(Issued August 3, 1964)

Transcontinental Gas Pipe Line Corporation (Applicant) filed an application in Docket No. CP64–245 on April 20, 1964, and a supplement thereto on May 25, 1964, pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon 13.67 miles of its 4-inch purchase lateral pipeline in Calcasieu Parish, Louisiana (Vinton Lateral) and 3.76 miles of 4-inch purchase lateral in Acadia Parish, Louisiana, (South Bayou Mallet Lateral) all as more fully described in the application and supplement thereto.

The facilities proposed to be abandoned were originally utilized in taking into Applicant's system natural gas purchased from independent producers in the fields in which the respective facilities are located. Deliveries of natural gas by means of the South Bayou Mallet facilities have now ceased due to exhaustion of gas supplies; and the portion of the Vinton Lateral to be abandoned is no longer needed due to the subsequent construction of parallel 12-inch and 20-inch laterals required for the transportation of larger volumes of gas purchased elsewhere.

Applicant intends to effect a sale in place of the lines proposed to be abandoned. The present net book values of the portions of the Vinton Lateral and

the South Bayou Mallet Lateral proposed to be abandoned are $112,011.39 and $34,444.21, respectively.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 30, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application, supplement and exhibits, submitted in support of the authorization sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued May 29, 1948, in Docket No. 704 (7 FPC 24).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, as supplemented, are used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval therefor should be granted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application as supplemented, in this proceeding, are hereby granted to Applicant.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP64-269

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued August 3, 1964)

On April 30, 1964, United Gas Pipe Line Company (Applicant) filed in Docket No. CP64-269 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon, by sale to United Gas Corporation certain natural gas facilities located in Bogalusa, Louisiana and places in Mississippi described as follows:

1. D'Iberville, Mississippi:

1.6 miles of 2-inch D'Iberville line between Milepost 1.3 and Milepost 2.9, located in Sections 3 and 10, Township 7 South, Range 9 West, Jackson County, Mississippi, and Section 9 and Surveys 21 and 22, Township 7 South, Range 9 West, Harrison County, Mississippi.

2. Bogalusa, Louisiana:

(a) 0.2 mile of 8-inch line, being a portion of the 8-inch tie-over Bogalusa Junction line between Milepost 2.6 and Milepost 2.8, located in Section 38, Township 3 South, Range 13 East, Washington Parish, Louisiana;

(b) 0.7 mile of 8-inch line, being a portion of the 8-inch tie-over Bogalusa Junction line between engineering stations 50+98 and 87+17, located in Sections 26 and 27, Township 3 South, Range 13 East, Washington Parish, Louisiana; and

(c) 0.04 mile of 8-inch, 2.3 miles of 10-inch and 0.15 mile of 12-inch line downstream from the present town border station, located in Sections 44, 12, 13, 45, 46, 39 and 38, Township 3 South, Range 13 East, Washington Parish, Louisiana.

3. Bay St. Louis, Mississippi:

6.9 miles of 4-inch old Bay St. Louis line between Milepost 0.0 and Milepost 0.9 and between Milepost 3.2 and Milepost 9.2, located in Sections 21, 33, 32 and 31, Township 7 South, Range 11 West; Sections 33 and 36, Township 7 South, Range 12 West, and Sections 1, 2, 3 and 4, Township 8 South, Range 12 West, Harrison County, Mississippi.

4. Philadelphia, Mississippi:

0.5 mile of 6-inch line, located upstream from present town border station, located in Section 36, Township 11 North, Range 11 East, Neshoba County, Mississippi.

Applicant proposes to sell to United Gas Corporation, which is its parent company, and one of its customers the 12.3 miles of pipelines on the basis of cost of the line depreciated as of June 30, 1964, amounting to $39,271.

United Gas Corporation will continue to operate the facilities as a part of its distribution systems so that no abandonment of service will result. Due to the increase of population along the route of the subject facilities they are now being used as distribution facilities.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 30, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as found by the Commission in its order of November 10, 1942, in Docket No. G–232 (3 FPC 863).

(2) The facilities to be abandoned, as hereinbefore described, are subject to the jurisdiction of the Commission and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by United Gas Pipe Line Company of the facilities hereinbefore described, all as more fully described in the application in this proceeding, be and the same are hereby granted.

(B) The Applicant shall advise the Commission of the date of said abandonment within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward and David S. Black.

B. TIMAEUS (DECEASED), PROJECT NO. 1929

REFERENCE TO ATTORNEY GENERAL FOR SUIT TO REVOKE LICENSE

(Issued August 4, 1964)

On August 20, 1957 the Commission issued a new minor-part license to B. Timaeus, of Pistol River, Oregon, for Project No. 1929 for a period of 10 years, effective as of December 3, 1956.

The project is located on Little Boulder Creek, in Jackson County, Oregon, and affects lands of the United States. The only part of the project presently occupying lands of the United States consists of 85 feet of tailrace on approximately 0.04 acre. The tailrace is of natural drainage, no actual channel having been constructed by the licensee.

Article 11 of the license fixes annual charges in the amount of $5.00 for the costs of administration of Part I of the Federal Power Act, and in the amount of $5.00 for the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands.

Our statement of annual charges for the calendar years 1958 and 1959 was mailed to Taylor and Miller,[1] legal representatives of the deceased licensee, on December 31, 1959. Annual charges, in the amount of $10.00, are owing for each of the calendar years 1958 through 1963. Section 11.31(e) of the Commission's Regulations provides for the imposition of a penalty, in case of delinquency in payment, of 5 percent of the total amount so delinquent, assessed and added to the total charges which shall apply for the first month or part of month so delinquent with an additional penalty of 3 percent for each full month thereafter until the charges and penalties are satisfied in accordance with law.

The Commission finds:

The above-mentioned failure to pay the annual charges owing under the license for Project No. 1929 constitutes a violation of the terms of the license and the Regulations of the Commission under the Federal Power Act.

The Commission orders:

The afore-mentioned violation of the terms of the license for Project No. 1929 and of the Regulations of the Commission under the Federal Power Act is hereby referred to the Attorney General for the institution of proceedings under Section 26 of the Federal Power Act for revocation of the license for Project No. 1929, for collection of annual charges and penalties thereon, and for restoration of the lands of the United States involved to a condition satisfactory to the Department of the Interior.

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[1] 140 Gauntlet Street, Gold Beach, Oregon, % Wm. E. Taylor, Esquire.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward* and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. RP64-17

ORDER DENYING MOTION FOR OMISSION OF THE INTERMEDIATE DECISION

(Issued August 5, 1964)*

On July 22, 1964, the Presiding Examiner in the above-entitled proceeding transmitted to the Commission a motion to omit the intermediate decision procedure which was made by Cities Service Gas Company at the conclusion of the hearing in this matter. Cities Service urges that an intermediate decision is unnecessary since there is no controversy among the parties with respect to the facts here involved. Cities Service recognizes, however, that decision of this case will require the drawing of inferences from, and the application of legal doctrines to, the stipulated facts.

Commission staff counsel and counsel for the Secretary of the Army oppose the instant motion, stating that the Commission should have the benefit of an expression of the Examiner's views. Counsel for Army states that since this is a novel case, the intermediate decision may be particularly desirable. The only other party hereto, the Corporation Commission of the State of Kansas, was not present at the time the motion was made and has taken no position thereon.

The Commission finds:

It has not been demonstrated, under the circumstances of this proceeding, that the public interest would be served by omission of the intermediate decision procedure.

The Commission orders:

Cities Service Gas Company's motion to omit the intermediate decision procedure in the above-captioned proceeding is hereby denied.

*This matter was decided prior to the death of Commissioner Woodward who participated in the decision.

OPINION NO. 431-A

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. RP61-3; COASTAL TRANSMISSION CORPORATION, DOCKET NO. RP61-4

OPINION AND ORDER DENYING REHEARING

(Issued August 5, 1964)*

Syllabus

1. Commission *rejects* contention that with respect to "no-profit-to-affiliates" rule it promulgated new criteria and to company's detriment applied same to facts occurring at time former criteria governed. P. 519.
2. Even assuming opinion expressed new rule, application thereof to past transactions does not invalidate such rule. P. 520.
3. Once the representatives of the several firms had become members of the promotional group further relationships were not at arm's-length. P. 520.
4. Affiliation having once been established, promoters profits do not represent cost at all. P. 520.

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*Opinion No. 431-B, issued October 2, 1964, denied rehearing with respect to opening record, 32 FPC 908. Reversed, *Florida Gas Transmission Co.* v. *F.P.C.*, 362 F. 2d 331 (CA5-1966). Petition for rehearing pending.

5. If entire profit of affiliated contractor is disallowed, Commission cannot allow as a cost a portion of that profit which was paid in Federal income taxes. P. 520.
6. Points not raised in exceptions are automatically waived under Section 1.31 (c) of Rules. P. 521.
7. Affidavits of former members as to the interpretation they intended to be placed on language of Commission opinions is not a customary basis for interpreting such decisions and, in circumstances here, is not proper.– – Commission cannot inquire into mental processes of a Commissioner nor ascertain what he considered. P. 521.
8. Where, during period in question, no taxes were payable on consolidated return nor any liability incurred for taxes, pipeline, under *Cities Service*, could not accrue any liability for taxes. P. 522.
9. Argument that because of elimination of construction profits from cost, Company's tax depreciation will be greater than depreciation allowed on books for cost of service purposes [with resultant windfall to jurisdictional customers] is not an issue before Commission now– – it will have to be determined in a proceeding affecting pipeline's rates. P. 522.
10. Commission *denies* applications for rehearing and petition to reopen proceedings.

Commissioners O'Connor and Woodward *dissenting*.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward* and David S. Black.

SWIDLER, *Chairman:*

Florida Gas Transmission Company and the Florida Public Utilities Commission on July 7, 1964 filed applications for rehearing of our Opinion No. 431 and accompanying order issued June 8, 1964, 31 FPC 1402. There we found that $7,936,545 representing profits of four affiliated engineering and construction firms, along with the related amount of $250,565 of interest during construction, should be eliminated from Florida Gas plant accounts. We also found that accruals for income tax purposes on the books of the predecessor Coastal Transmission Corporation were improper because there was no tax liability for the corresponding period on the basis of the consolidated tax return. In general the issues are treated in our original opinion, and no purpose will be served in repeating our discussion except for the comments below.

Florida Gas contends that we have promulgated new and different criteria and to the detriment of the company have applied them to facts that had occurred at a time when the former criteria governed. In our opinion we have not adopted a new rule but have applied an old rule to new circumstances. For instance, Florida argues that "the no-profits-to-affiliates" rule has always required a finding of "control" and that such control must exist at the time of the execution of the contracts which created the costs. Without defining the limits reached by the earlier cases, in the present case based on the circumstances discussed in our original opinion we found (31 FPC 1402 at 1406, 1407) that the construction and engineering group though never in a position of legal control in the sense that they had majority stock control, from the beginning occupied a dominating position which as a practical matter precluded any independent action to give the principal construction and engineering assignments to anyone else so long as the inside group's bids were not grossly out of line. The circumstances shown in the record and discussed in our opinion traced the continuing effect of this control up to the period when the contracts were actually executed.

*This matter was decided prior to the death of Commissioner Woodward who participated in the decision.

Assuming that in so holding, our opinion expressed a new rule for determining whether to exclude the profits of affiliates this does not invalidate it. In numerous cases unnecessary to cite here courts, while reluctant to proceed retroactively, have applied new rules of law to past transactions. As said in *S.E.C.* v. *Chenery Corp.*, 332 U.S. 194, 203, cited by Florida Gas, "Every case of first impression has a retroactive effect, whether the new principle is announced by a court or by an administrative agency." The court added: "But such retroactivity must be balanced against the mischief of producing a result which is contrary to a statutory design or to legal and equitable principles. If that mischief is greater than the ill effect of the retroactive application of a new standard, it is not the type of retroactivity which is condemned by law."

In the present case the "mischief" is permitting the plant accounts of the company to be distorted by this kind of cost, so that there will be little choice in a rate case but to require the consumers of the gas to pay a return on insiders' profits for the expected life of the property. Furthermore, as stated in our original opinion, the language of the Commission's Opinion No. 301 (16 FPC at p. 142), regardless of differences of opinion as to its meaning, at least should have raised a question in the minds of the promoters of Florida Gas or its predecessors as to the treatment that might be accorded the profits item.

Florida Gas argues that there was no basis on which to find that the engineering and construction firms formed an "affiliated group." We did not find, nor did we need to find, that they agreed with each other or that they were formally affiliated with each other. The four firms were affiliated with Houston Texas or its predecessor, and the records make clear that they combined their talents and financial resources to promote the pipeline project not only as investors but also as persons having special interests in the profits to be made from the pipeline's construction. While Florida Gas points out that the original organizer, Mr. J. O. Mack, negotiated separately with representatives of the several firms, these negotiations were at arm's-length, if at all, only to the extent Mack may have had some original control as to which persons he would select from those approaching him with an interest in construction and engineering profits from a successful pipeline. Once the representatives of the several firms had become members of the promotional group further relationships were not at arm's-length. The Houston Texas board could as a practical matter not repudiate the oral agreements and, as related in the original opinion, the influence of these early relationships carried forward to the execution of the formal contracts four years later.

Both the Florida Commission and Florida Gas argue that we were in error in citing language in the *St. Croix* case, 3 FPC 13, 21, to the effect that it is impossible to determine what is reasonable cost where an affiliation exists. They point out that evidence was presented in this case that would have enabled us to determine the reasonableness of the pipeline costs. We cited the *St. Croix* case to show the infirmities which exist in any attempt to determine costs where the relationship between the parties is one of affiliation. Actually such evidence is irrelevant and was properly stricken by the examiner. Once the affiliation is established, the profits of the promoters of the project do not represent cost at all, and for this we cited *Louisville Hydro-Electric Company*, 1 FPC 130, 133.

Florida Gas also argues that the $7,936,545 in profits which we deleted from its plant accounts should have been reduced by the amount of the Federal income taxes on these profits. Obviously if we disallow the entire profit of the affiliated contractor we cannot allow as a cost a portion of that profit which was paid in Federal income taxes. If Florida Gas' plant accounts should not include profits between affiliates it would indeed be an anomaly to include taxes

that have been incurred only because of such profits. Furthermore, we note that Florida Gas did not raise this point in its exceptions, and under Section 1.31 (c) of our Rules has thus waived it.

Florida Gas finally contends, as does the Florida Commission, that we have misinterpreted the language of Opinion No. 301, particularly the statement by the Commission that: "While as we have already stated, the cost of the proposed facilities appears to be reasonable, in view of this fact, this cost will be carefully scrutinized in any future proceeding dealing with accounting or rates of Houston Gas."

Florida Gas says it made a complete disclosure of the facts and would interpret the Commission's language to mean that the estimated cost of the facilities, including the profits, appears reasonable but in view of the relationships outlined the Commission is going to scrutinize the costs carefully after they are incurred to make sure that the actual costs are, in fact, reasonable. In support of its position Florida Gas has appended copies of affidavits from three former members of the Commission who participated in the issuance of Opinion No. 301, and has asked that the record be reopened to receive these affidavits.

The Florida Commission contends that the language is clear and unambiguous and that it is sheer sophistry for this Commission to seek an interpretation that converts the quoted language into a warning that "scrutiny" would be synonymous with "non-acceptance" of amounts in excess of the costs of the engineering and construction firms.

The affidavits submitted by Florida Gas, in general, state that it was not the intention of the Commission when Opinion No. 301 was issued on December 28, 1956, to apply the no-profits-to-affiliates rule or to warn the applicant that it might be applied later. The affidavits of Chairman Kuykendall and Commissioner Kline state that there was no intention that the rule be applied later; otherwise the opinion would have so stated. Commissioner Connole states his view that the Opinion No. 301 treatment "accorded to these estimated costs, including the estimated profits, as disclosed, would be disposed of if a future proceeding dealing with such matters should ever be before the Commission, but no decision was reached nor warning intended nor recommendation made that such profits should be eliminated from the capital plant accounts—." Chairman Kuykendall was in the majority; Commissioners Connole and Kline dissented, although on rehearing Commissioner Kline joined the majority and Commissioner Connole concurred. The remaining two members of the majority, Commissioners Digby and Stueck, are now deceased.

Affidavits of former members as to the interpretation they intended to be placed on language of Commission opinions is not a customary basis for interpreting Commission decisions and, at least in the circumstances here, we do not think it is proper. As Florida Gas concedes, we cannot inquire into the mental processes of a Commissioner nor ascertain what he considered. *United States* v. *Morgan*, 313 U.S. 409, 422; *Chicago, B & Q Ry. Co.* v. *Babcock*, 204 U.S. 585, 593. There are a number of cases (see 97 CJS 514) including *Covey* v. *American Distilling Company*, 132 F. 2d 453 (CA7) cited by Florida Gas, that accept evidence from a Judge in a prior proceeding as to the matters litigated. Frequently these cases involve the application of the doctrine of *res judicata* to a court judgment where the identity of the issues is a matter of some importance. However, none of the cases called to our attention involves admission of evidence as to what a judge or a Commissioner meant by a full opinion setting forth his determinations and the reasons for them. In somewhat different circumstances the Supreme Court has said that judgment "ought never to be overthrown or limited by the oral testimony of judge or juror of what he had in mind at the time of the decision." *Fayerweather* v. *Ritch*, 195 U.S. 276, 307.

We have before us an opinion which does not in terms even discuss the applicability of the no-profits-to-affiliates rule, pro or con. As Commissioner Connole's affidavit indicates, it expressly leaves open for further consideration the entire question. The majority on Opinion 301 found the estimated total costs (including the profits) reasonable for purposes of granting a certificates to the proposed pipeline. For other purposes they left these costs for later scrutiny. See *Coastal Transmission Corp.*, Docket No. G–18338, *et al.*, 26 FPC 677, at 685. Assuming arguendo that one Commission could bind its successors on a matter of this sort, they did not limit this scrutiny, and they did not say how this scrutiny was to be conducted. The problem of the method and scope of the scrutiny was deferred. The intervenor who had raised the issue in the certificate proceeding could not have contested the failure of the Commission to apply the rule since it had not decided against him. We, of course, express no opinion as to what individual members of the Commission may have thought or intended. The affidavits are an attempt to add something to the opinion that was not there before and cannot be retroactively added to it.

Thus the argument of the Florida Commission that the language of Opinion No. 301 is unambiguous and that the cost of the facilities cannot mean only cost less profits is besides the point, for the language does not define the scrutiny to be applied. Likewise the argument of the Florida Commission that we should have found that Florida Gas had made full disclosure does not affect the result. There is no issue here on this point, and, irrespective of full disclosure, the costs of the pipeline were subject to scrutiny under Opinion No. 301. Our response to the Florida Commission also applies to the dissenting statement of Commissioner Woodward.

Commissioner O'Connor's dissent points to possible losses to investors. Where such losses are the result of insider's profits, the investors may have legal remedies through the courts, whereas the consumers must depend upon the action of the regulatory bodies having rate and accounting jurisdiction.

On the question of Coastal's taxes Florida Gas continues to argue that Coastal could have accrued taxes on its books although no taxes were payable on the consolidated return on the theory, apparently, that taxes will be payable in later years. It cites our Uniform System of Accounts Section 7 "Current and Accrued Liabilities" as permitting the accrual of taxes as accrued liabilities even though payable more than one year from date. This section, however, assumes that whenever payable the item constitutes a liability. Here, during the period in question, no taxes were payable on the consolidated return, nor was there any liability incurred for taxes. Therefore Coastal, in accordance with the *Cities Service* case,[1] could not accrue any liability for taxes.

Florida Gas further argues that because of the elimination of the construction profits from cost the company's tax depreciation will be greater than the depreciation allowed on its books for cost of service purposes with a resultant windfall to jurisdictional and nonjurisdictional customers. This is an issue not before us here and will have to be determined in a proceeding affecting Florida Gas' rates. The nonjurisdictional rates appear to be subject to the jurisdiction of the Florida Commission.

The Commission finds:

(1) The assignments of error and grounds for rehearing set forth in the applications for rehearing of Florida Gas Transmission Company and the Florida Public Utilities Commission present no new facts or principles of law which were not considered by the Commission when it issued its Opinion No. 424 and order or which, having now been considered, warrant any change in or modification of said Opinion and Order.

[1] *Cities Service Gas Co.*, 30 FPC 158, July 15, 1963.

(2) The petition by Florida Gas to reopen the record to receive the affidavits should be denied.

The Commission orders:

(A) The applications for rehearing filed by Florida Gas and the Florida Commission are hereby denied.

(B) The petition to reopen filed by Florida Gas is hereby denied.

Commissioners O'Connor and Woodward* *dissenting.*

O'CONNOR, Commissioner, *dissenting:*

In my dissenting statement to Opinion No. 431, I strenuously contended that a Commission which neither timely nor definitively disposed of a significant, appropriately raised issue, violated not only the specific terms of the Natural Gas Act, but also a moral obligation to the industry and the investing public.

Three affidavits have recently been filed by the still-living members of the 1956 Commission. All three, which I consider as though introduced in evidence before the Presiding Examiner, verify that the no-profits rule was raised and considered during the certification deliberations. All three indicate that the Commission was cognizant of the possible consequences of its invocation. Two of them recognize the obligation of specificity, which then-Commissioner Kline characterizes as a ". . . duty as a member of the Commission to protect the interests of all groups, and not to approve a certificate if such action might lead to entrapment of future investors." [1]

Because of these affidavits, I appreciate more clearly the prominence the no-profits issue attained during the Houston Texas certification proceedings. Consequently, I am even more convinced that the then-Commission was derelict in its failure to clearly dispose of that issue, and that this Commission is estopped to dispose of it now. The recent 5th Circuit reversal in *Hill* v. *F.P.C.*,[2] which admonished the Commission for declining "to undergo the judicial travail of weighing [a record] on which complete information was furnished," reinforces my convictions.[3]

A point made by Florida Gas indicates the financial severity flowing from the majority's decision. Eliminating costs from a utility's Plant Account reduces not only its gross return, but, for purposes of accounting under the Uniform System of Accounts, its annual credit to Reserve for Depreciation. In calculating its net income for tax purposes, however, the plant account elimination will not be made, although the elimination will be indicated by a reduced return. This results in an actual tax liability, assuming the current corporate tax rate of 50%, that is lower by 50% of the difference between the two depreciation figures.[4] Under the "actual taxes" figure, the lower—actually paid—tax charge will be included in the company's cost of service.

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* This matter was decided prior to the death of Commissioner Woodward.

[1] Affidavit of Arthur Kline, filed in Application for Rehearing of Opinion No. 431, filed by the Florida Gas Company.

[2] 335 F. 2d 355 (July 23, 1964).

[3] The Commission will be squarely faced with this travail in the *Natural Gas Pipeline Company of America* proceedings, Docket No. CP62-243, where the Staff, contrary to its position in G-9262, is requesting a ruling on the affiliation question contemporaneous with certification.

[4] Thus, where prior to elimination the gross income was $100 and the sole expense a depreciation figure of $50, the books, for both Federal income tax purposes and Uniform System of Accounts purposes, would indicate a tax liability of $25. Assuming elimination from plant decreased gross income to $90, the depreciation charge for tax purposes would remain at $50, but would decrease for purposes of accounting under the Uniform System of Accounts. Assuming a decrease to $40, the tax liability for accounting purposes would remain at $25, (50% of $90—$40), but the actual tax liability would be but $20 (50% of $90—$50).

Thus, the net effect of the majority's decision is to preclude from recovery, through the allowance for depreciation, over $8,000,000 in plant costs; to give solely to the ratepayers the $4,000,000 benefits of a legitimate tax deduction; and to deny a return to investors of over $7,375,000.[5] The impact, obviously, falls upon the investor but for whom this concededly valuable project could never have been financed. The unfortunate investor, lulled into a regrettably false sense of security by regulatory inaction, now finds himself entrapped through no fault of his own.

This outcome is onerous when one considers that the excluded costs were not fictitious or watered, but were eminently reasonable. It is particularly onerous when one considers that their exclusion results from applying a rule, born out of the early abuses of the electric power industry, which was neither designed for, nor necessitated by, the historical development of the natural gas industry.

Three other points have appeared in both the majority's basic opinion and their order denying rehearing which require comment.

The first involves the majority's desperate attempt to attribute some meaning to the troublesome language in Opinion No. 301. In so doing, they engage in a bit of contorted interpretation. The language, to them, says that the engineering and construction profits are includable for testing the economic feasibility of Houston Texas, but that they are potentially excludable in any subsequent rate-making or accounting proceeding. Assuming this was the language's *raison d'etre*, one legitimately wonders how a meaningful feasibility determination can be made when the rate base—upon which dollars of return are dependent—remains subject to sizable diminution. Particularly is this true when the basis for diminution is readily visible at the time of certification.

The second point lies in the majority's embarrassing inability to decide who is affiliated to what. Are the engineering and construction companies collectively affiliated to Houston Texas, or severally affiliated? Only through collective association does their conclusion of affiliation have even remote validity, for no individual company was sufficiently influential to direct the policies of Houston Texas by itself. The obvious problem with a theory of collective affiliation, however, is the absence of an agreement, either explicit or implicit, to act as a collective entity, or of any evidence that they even so considered themselves. Consequently, the majority hinges their decision on an individually-affiliated theory, even though—by twenty-eight year old standards—this requires finding that *each* company had the power to direct the policies of Houston Texas. The majority tries to obscure their difficulties with this position by referring to the individual companies as a "group". This is a nifty nametag, but as a smokescreen, it shields little.

The third point lies in their repeated insistence that the Mack interests, up until 1958, the date the final contracts were executed, continued to be completely dependent upon the construction and engineering companies. I doubt this to be true. Prior to 1956, these companies conferred a great benefit upon J. O. Mack: they stayed with him when others, feeling the project would never be certificated and thus the large expenses attributable to preliminary studies never recovered, refused to commit themselves. Prior to certification, the withdrawal of any one of the companies may well have quashed the entire project. In 1956, however, Houston Texas received its certificate of public convenience and necessity. From this date forward, a different picture was presented. Had any of the companies then decided to withdraw, the Mack interests would have had little difficulty in

[5] This figure is the 30 year return at 6¼% assuming a depreciation rate of 3½% on a declining rate base.

finding others: outside financing had been negotiated, federal sanction had been acquired, and thus recoupment of expenses—plus a reasonable profit—was the likely result for any company offered the role. The control, which may have existed either collectively or severally in the original companies in the pre-certificate days, doubtlessly did not carry over to the post-certificate days. Any assertion to the contrary does not recognize the practicalities of the industry.

For reasons expressed in my original statement to Opinion 431, and supplemented here, I dissent to this opinion and order denying rehearing. Although I remain convinced that the reasonableness of the questioned costs has been proven, in order to perfect the record, I would remand this issue for further consideration.

WOODWARD, Commissioner, *dissenting:*

When Opinion 431 issued,[1] I dissented on the issue pertaining to consolidated taxes.[2] The Petitions for Rehearing of that Opinion and Order[3] have compelled further analysis and, for reasons hereinafter stated, I must now respectfully dissent to the Opinion and Order Denying Rehearing.

The elimination of profits is barred by res judicata and estoppel, as well as by equity. While the limits of these doctrines in the field of administrative law is the subject of controversy, Davis sees an increasing tendency to apply them in order to do equity.[4]

The issue in the original cost case involved a determination of the proper amounts to be recorded by Houston Texas in its plant account as the actual legitimate original cost of its facilities which were constructed in 1958 and 1959, pursuant to the authorization of this Commission issued in December, 1956, in its Opinion and Order No. 301.[5]

In that Opinion, the Commission unequivocally stated that while "the cost of the proposed facilities appears to be reasonable—this cost will be carefully scrutinized in any future proceeding dealing with accounting or rates . . . ." The words used are plain and unambiguous; they have commonly and universally accepted meanings. The costs involved included allowances for *profits and fees*[6] and they were subject to full disclosure to the Commission in the initial certificate proceeding. This fact is uncontroverted in the record.

The Commission raised no objection to the cost evidence nor did it find any disqualifying inadequacy as to the correctness of the plant accounts submitted by the applicant. Significantly, however, our predecessors did find it necessary to impose several conditions in the certificate *relating to other matters.*

In short, "cost" cannot now be held to mean only cost less profits any more than "scrutiny" of those costs can be held to be synonomous with exculsion of reasonable profits. The word "cost" referred to the pipeline's cost since the Commission never discussed the contractor's cost.

The profits in issue arose solely from construction and engineering services rather than stock ownership and allowance of the total costs, admittedly, would result in no higher costs to be recovered from consumers than would be recovered

[1] Opinion No. 431, Opinion and Order on Accounting for Construction Profits and Consolidated Tax, Adopting Examiner's Decision With Modification, issued June 8, 1964.

[2] See dissenting statement accompanying Opinion No. 396, issued July 15, 1963, in Cities Service Gas Company, Docket No. G–18799, 30 FPC 158.

[3] Application of Florida Gas Transmission Company for Rehearing of Opinion 431 and accompanying order issued June 8, 1964, and Petition to Reopen and argument in support thereof.

Petition of Intervenor Florida Public Utilities Commission for Rehearing of Opinion No. 431 and accompanying order.

[4] Davis, *Administrative Law,* § 17.09, 18.02 and supplements.

[5] Opinion No. 301 (16 FPC 118), issued December 28, 1956.

[6] Emphasis supplied throughout this statement unless otherwise indicated.

had other independent contractors constructed the pipeline. On its face, such a result is not derogatory of the public interest and this fact cannot be ignored or deemed irrelevant; it is the core of the responsibility which Congress has committed to the custody of this Commission.

Here, there was no write-up of rate base through inter-affiliate sales; there was no artificial inflation of rate base through a write-up of assets in a pooling-of-interest transaction. Nothing evil or secretive transpired. Houston Texas contracted for its work with well-established concerns experienced in the business, not on a cost-plus-a-fee basis which would guarantee the contractors a profit, but on the basis of a fixed price per unit of work, placing all risk of loss on the contractor. The evidence tendered to substantiate these facts is complete and convincing and it proves that there has been no inflation of the rate base. Absent a showing of misrepresentation, concealment or fraud, the Commission has no reason to seek now to employ a concept entirely different from that provided in Opinion 301. There has been no such showing.

There is another, perhaps decisive issue in this proceeding—the disallowance of amounts of construction costs now recorded in the plant accounts of Houston Texas would constitute a modification of the original certificate since that certificate, in effect, permitted payment of "reasonable" costs.

Under the facts and circumstances before us, we do not possess authority to achieve such a result any more than did the Interstate Commerce Commission in *United States* v. *Seatrain Lines*, 329 U.S. 424. There the Court held that the Commission, under the Interstate Commerce Act, could not limit a certificate once it had been issued. Similarily, there is no provision in the Natural Gas Act for modification or revocation of a certificate, partial or otherwise.

The entire amount of engineering and construction costs, including profits, should be allowed if they were reasonable and compared favorably with similar construction costs to other companies. Failure to admit evidence to this effect precludes a proper determination by the Commission of the original cost issue in this proceeding. The matter should be remanded to the Examiner with instructions to admit evidence as to reasonableness of cost, and to submit further findings and conclusions to the Commission for consideration.

Rehearing should be granted and Opinion and order No. 431 should be reversed and set aside.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward* and David S. Black.

HIGHLAND OIL COMPANY, DOCKET NOS. G–19866 AND RI60–283

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, AND TERMINATING PROCEEDINGS

(Issued August 5, 1964)

On May 15, 1964, Highland Oil Company (Highland) submitted an offer of settlement in these proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves proposed increased rates for sales of natural gas made to Tennessee Gas Transmission Company (TGT) by Highland. The offer relates to a sale made under Highland's FPC Gas Rate Schedule No. 1 in Duval County, Texas (Texas R. R. Com. District #4). The proposed increased rates of 15.0952¢ and 17.24347¢ per Mcf were suspended by order of the Commission for the statutory period, and were made effective by Highland on April 1, and October 6, 1960, respectively.

*This matter was decided prior to the death of Commissioner Woodward who participated in the decision.

Under the terms of the offer, Highland proposes to eliminate the favored-nation, price redetermination and their periodic escalation provisions from its rate schedule and to establish a 15¢ per Mcf rate for the subject sale. Highland's annual revenues will be decreased about $5,200 from the presently effective rates. No protests or objections have been filed to the offer.

Highland, in its offer, proposes to refund all amounts collected, subject to refund, for sales of natural gas to TGT under the subject rate schedule in excess of the settlement rate.[1] The estimated total dollars to be refunded approximates $18,800, exclusive of interest.

The proposed settlement is consistent with the provisions of the Second Amendment to the Commission's *Statement of General Policy No. 61–1*, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Highland's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservation of the right to file increases to cover future tax increases. Nor, may our action herein be construed as constituting approval of any future rate increase that may be filed under the subject rate schedule, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Highland's rate and rate schedule.

The Commission finds:

The proposed settlement of each of the above-designated proceedings, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Highland on May 15, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Highland on May 15, 1964, is hereby approved in accordance with the provisions of this order.

(B) Highland shall file, within 30 days from the date of issuance of this order, a notice of change in rate providing for the 15¢ per Mcf rate specified in its offer of settlement, and an executed contractual amendment to its FPC Gas Rate Schedule No. 1, eliminating the favored-nation, price redetermination, and the periodic escalation provisions therefrom. The notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Highland shall refund to TGT to the date of issuance of this order the difference between the rates collected subject to refund under the rate schedule herein and the settlement rate, making account for proper charges, with simple interest at 7 percent, and shall report to the Commission, in writing, within 30 days from the date of issuance of this order, the amount of such refund, showing separately the amount of principal, and interest, and the bases for determination, together with a copy of a release from TGT with respect to such refunds.

(D) Upon notification by the Secretary of the Commission that Highland has complied with the terms and conditions of the order, the rate and charge of 15¢ per Mcf at 14.65 psia, specified in its offer of settlement, subject to any applicable contract deductions, shall be effective as of the date of issuance of this order, the above designated proceedings shall be deemed terminated insofar as they relate to Highland's FPC Gas Rate Schedule No. 1, and severed from the con-

[1] Highland's FPC Gas Rate Schedule No. 1 is subject to a dehydration charge by TGT, for which allowance must be made in computing the refund.

solidated area rate proceeding (Texas Gulf Coast Area) in Docket No. AR64-2 without further order of the Commission.

(E) The acceptance by the Commission of Highland's offer of settlement, is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Highland, including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward* and David S. Black.

PACIFIC POWER & LIGHT COMPANY, PROJECT NO. 1136

ORDER AMENDING LICENSE (TRANSMISSION LINE)

(Issued August 5, 1964)

Application was filed on January 30, 1964, and supplemented on April 24, 1964, by Pacific Power & Light Company, Licensee for transmission line Project No. 1136, for amendment of its license for the project affecting lands of the United States within the Fremont National Forest and lands formerly within the Klamath Indian Reservation.

The application was filed in response to the Commission's letter dated June 6, 1963 requesting the Licensee to apply for amendment of Article 10 of the license (the annual charge article) to reflect the fact that Federal trusteeship over the property of the Klamath Indians was terminated on August 13, 1961 by Proclamation issued by the Secretary of the Interior on August 10, 1961 (68 Stat. 718; 25 U.S.C. 564(g)). The termination of trusteeship removed the basis for the imposition of annual charges for the occupancy by the project transmission line on the former Indian lands.

Annual charges under the license for the occupancy by the transmission line of Indian lands totaling $166.32 ($55.44 per annum) for the calendar years 1961 through 1963 have been paid by the Licensee, and are being held on special deposit. This sum will be refunded to the Licensee.

The Commission finds:

It will not be inconsistent with the public interest to amend subparagraph (ii) of Article 10 of the license to adjust the annual charges specified therein.

The Commission orders:

(A) Subparagraph (ii) of Article 10 of the license for Project No. 1136 is hereby amended to read as follows:

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, $16.20.

(B) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgement of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

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*This matter was decided prior to the death of Commissioner Woodward who participated in the decision.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

DAIRYLAND POWER COOPERATIVE, MINNKOTA POWER COOPERATIVE, INC., SOUTH CENTRAL RURAL ELECTRIC COOPERATIVE, INC., DOCKET NO. E-7113

ORDER DEFERRING FURTHER PROCEEDINGS

(Issued August 6, 1964)

This proceeding was instituted by the Commission on July 22, 1963, 30 FPC 365, to determine whether it had jurisdiction under the Federal Power Act over electric companies organized in the cooperative form and financed by loans from the Rural Electrification Administration, which owned or operated facilities for the interstate transmission or sale at wholesale of electric power. The hearings have been completed and all briefs are in, but the examiner has not yet issued his initial decision.

On July 31, 1964, the Senate Appropriations Committee issued its report on the Independent Offices Appropriations, 1965. The committee refers (p. 8) to the fact that hearings have recently been held on a bill to clarify Congressional intent with respect to the matters in issue in this proceeding, and indicates that while the bill is now pending before the Senate Commerce Committee for consideration, it may not be possible to complete action thereon this calendar year. Stating the Appropriations Committee's belief that "the assertion of additional Federal regulatory authority over REA cooperatives by the FPC should await the decision of the Congress on pending legislation", the Committee expresses its intent that the Commission defer action in the present proceeding until the Congress can give additional attention to the jurisdictional question involved.

In the light of the foregoing, the Commission has concluded that its proceedings in the instant case should be deferred to permit further Congressional consideration of the matter. Accordingly, the examiner is directed to defer issuing his initial decision herein until January 1, 1966.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward* and David S. Black.

JACK W. GRIGSBY (OPERATOR), ET AL., DOCKET NOS. RI61-96 AND RI62-536

ORDER CONDITIONALLY ACCEPTING OFFERS OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND TERMINATING PROCEEDINGS

(Issued August 6, 1964)

On June 18 and 22, 1964, Jack W. Grigsby (Operator), *et al.* (Grigsby) filed offers of settlement in these proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offers involve proposed increased rates for sales of natural gas made to United Gas Pipe Line Company (United) by Grigsby and relate to sales made under Supplement No. 5 to Grigsby's FPC Gas Rate Schedule No. 6, Supplement No. 3 to its Rate Schedule

*This matter was decided prior to the death of Commissioner Woodward who participated in the decision.

No. 7 and Supplement No. 3 to its Rate Schedule No. 8. The sales under Rate Schedule Nos. 6 and 7 are made in the State of Mississippi, and the sale under Rate Schedule No. 8 is made in South Louisiana. Each of the proposed increased rates were suspended by order of the Commission for the statutory period, were made effective by Grigsby by appropriate motion, and have been charged and collected subject to refund.

Under the terms of the offers, Grigsby proposes to withdraw its increased rate filings for the sales made by it to United in Mississippi and thereby reduce the rates to 20¢ per Mcf, and to reduce the rate for the sale in South Louisiana to 19.25¢ per Mcf. This sale is in the Crescent Farms Field and is surrounded by the same circumstances we considered in *Cities Service Company, et al.*, Docket No. G–8921, *et al.*, 28 FPC 1108, for a sale in the same field to the same purchaser, and we there approved the same settlement rate sought here. Accordingly, we shall approve Grigsby's proposed settlement rate for its sale.

Under the terms of the offers, Grigsby proposes to refund all of the monies charged and collected, subject to refund, above the settlement rates. However, it proposes that it should be relieved of its obligation to pay appropriate interest on the amounts to be refunded under the sales made by it to United in Mississippi. Grigsby has offered no sound basis for granting its request which is inconsistent with our approach in previous settlement cases. Consequently, we must deny Grigsby's proposal to be relieved of its interest obligation under its FPC Gas Rate Schedule Nos. 6 and 7.

However, for the past two years the Commission has approved numerous producer rate settlements involving the jurisdictional sales of natural gas. These settlements have been of great value to all segments of the natural gas industry and to consumers generally by assisting in the establishment of stability in gas prices to the consumer and revenues to the industry. There have been three essential elements in each of the settlements: (1) settlement rates consistent with rates established by our *Statement of General Policy No. 61–1*, as amended, (2) a moratorium on increased rate filings above the applicable ceiling; and, (3) appropriate refunds. The refund period was determined through use of a cost of service study of the company involved, with refunds required for all periods after the unit costs so determined equalled unit revenues.

These settlements have involved large producers having diversified operations where cost of service studies could be used for the limited purpose of determining refund periods but have not been applicable to the sales of small producers where cost of service studies would not be meaningful.

We have explored various methods of applying the settlement technique to the sales of small producers so that they and the consumers might obtain the benefit of such settlements. We have calculated the average percentage of amounts collected subject to refund above the settlement rates which the large producers have been required to refund under approved settlements and we propose to require the same average percentage of refunds by small producers without reference to individual cost studies. Accordingly, we shall be prepared to approve small producer settlements meeting the criteria as to level of rates and moratorium provisions where the producer agrees to make the following percentage of refunds above settlement rates:[1]

Years	Refunds
1963 and thereafter	100%
1961 and 1962	70%
1957 through 1960	25%

[1] The procedure outlined here has no applicability to settlement proposals under the Second and Seventh Amendments to the *Statement of General Policy No. 61–1.*

Therefore, we shall conditionally approve Grigsby's settlement proposal to require refunds with interest in accordance with the foregoing.

In affording the small producers the same opportunity to settle and terminate all of their pending rate proceedings which we have accorded the larger producers, we believe it to be in the public interest to require that the small producers agree to a 36 month moratorium on proposed rate increases above the applicable ceiling for each of their filed rate schedules as is generally agreed to by large producers in their company-wide settlements. Therefore, we shall condition our approval of Grigsby's proposal to require it to agree to a filing moratorium on each of its filed rate schedules of 36 months from June 1, 1964. Provided, however, Grigsby may reserve the right to file during such period to reflect any possible tax reimbursement increases or changes in the applicable area ceilings if contractually authorized so to do.

For all of the reasons set forth in our order issued July 8, 1964, in *Humble Oil & Refining Company*, Docket No. G–9287, et al., 32 FPC 49, we shall require Grigsby to retain the amounts of refund ordered herein until further order directing the nature of their disposition and also to submit within 45 days of this order to the Commission and to United a detailed report setting out the amount of refund related to each rate schedule, the volume of gas sold thereunder and the period covered. We shall also by separate action direct the pipeline purchaser within ten days from the receipt of such report, to submit a report of its own setting forth whether it intends to pass on all or part of such refund amounts to its customers and the names of such customers and amounts of refund each would receive, or, if it claims the right to retain any portion of the refunds, a brief statement as to the legal or equitable basis for such claim. In the event such reports indicate that the refunds will flow through to ultimate consumers or distribution companies not subject to the Commission's jurisdiction, the Commission will authorize the release of such refund sums by Grigsby (unless a state regulatory authority after notification of the sum to be made available to a company subject to its regulatory jurisdiction asks us to defer releasing the funds until it can determine their ultimate disposition). In the event a pipeline purchaser from United (or a pipeline customer of such a pipeline) indicates that it is asserting a claim to retain substantial refund sums the Commission will by further order prescribe the procedure for determining the relative rights to such funds of such pipeline or its customers.

We find that approval of the proposal settlements, as conditioned herein would serve the public interest.

However, we desire to make it clear that acceptance of Grigsby's offers of settlement shall not be construed as approval of any future increased rates that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Grigsby's rates and rate schedules.

The Commission finds:

The proposed settlement of each of the above-designated proceedings, on the basis described herein, as more fully set forth in the offers of settlement filed with the Commission by Grigsby on June 18 and 22, 1964, and as herein conditioned in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offers of settlement filed with the Commission by Grigsby on June 18 and 22, 1964, are hereby approved in accordance with the provisions of this order.

(B) Grigsby shall file, within 30 days from the date of issuance of this order, a notice of change in rate to its FPC Gas Rate Schedule No. 8 providing for the 19.25¢ per Mcf rate specified in its offer of settlement. The notice of change shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) The notices of change in rate filed by Grigsby to its FPC Gas Rate Schedule Nos. 6 and 7, which were designated as Supplement Nos. 5 and 3 respectively, shall upon Grigsby's acceptance and compliance with the terms and provisions of this order be deemed withdrawn without further order of the Commission.

(D) Grigsby shall compute the difference between the rates collected subject to refund and the related settlement rates for the periods such rates were collected subject to refund, to the date of this order, together with interest as specified in each docket to the date of this order, in accordance with the percentages hereinabove set forth. Grigsby shall within 45 days from the date of this order submit a report to the Commission, and serve a copy on United setting out the amount of refunds related to each rate schedule (showing separately the principal and applicable interest), the bases used for such determination and the periods covered.

(E) Grigsby shall retain the amounts shown in the report required under paragraph (D) above, subject to further order of the Commission directing the disposition of those amounts.

(F) If Grigsby elects to commingle these retained refunds with its general assets and use them for its corporate purposes, it shall pay interest thereon at the rate of 6% per annum on all funds thus available from September 15, 1964, to the date on which they are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission.

(G) If Grigsby elects to deposit the retained refunds in a special escrow account, Grigsby shall tender for filing on or before September 15, 1964, an executed Escrow Agreement, conditioned as set out below accompanied by certificate showing service of a copy thereof upon United. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Grisby and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(1) Grigsby, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such Agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable only for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the trust account for the quarterly period.

(H) Grigsby shall, file with the Commission within 30 days from the date of the issuance of this order, an original and one copy of its acceptance or rejection of the terms and conditions of this order, including specifically its agreement to a filing moratorium on each of its filed rate schedules of 36 months from June 1, 1964.

(I) Any party to the proceedings having objections to the terms of this Order shall within 30 days from the date of issuance of this Order set forth such objections in writing to the Commission (Original and one copy), and by serving copies on the other parties.

(J) If as a result of any objections filed pursuant to paragraph (I) hereof, the Commission by subsequent order changes Grigsby's duties and obligations hereunder, Grigsby's acceptance of this settlement order shall not be binding on it without its express agreement.

(K) Within 90 days from the date of this order, Grigsby shall make such filings under its rate schedules as are required to make effective the terms of the settlement proposals.

(L) Upon full compliance by Grigsby with all the terms and provisions of this order, the Section 4(e) proceedings in Docket Nos. RI61–96 and RI62–536, shall terminate.

(M) Upon termination of the Section 4(e) proceeding in Docket No. RI62–536 in accordance with paragraph (L) above, said proceeding shall be severed from the consolidated proceedings in Docket No. AR61–2.

(N) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Grigsby, the Commission staff, or any affected party hereto, in any proceedings now pending, including area rate or similar proceedings, or hereafter instituted by or against Grigsby or any other companies, person or parties affected by this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MOUNTAIN FUEL SUPPLY COMPANY, DOCKET NO. CP64–207

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 6, 1964)

On March 19, 1964, as supplemented on April 3, 1964, Mountain Fuel Supply Company (Applicant) filed in Docket No. CP64–207 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and

necessity authorizing the construction and operation of 6.3 miles of 24-inch pipeline between Wanship and Coalville, Utah, replacing the existing 16-inch pipeline in this location; 9.0 miles of 16-inch pipeline between Henefer and Morgan, Utah, replacing and relocating 11.5 miles of 14-inch pipeline between these towns, and 4.3 miles of 16-inch pipeline between Echo Reservoir and Coalville, Utah, replacing the existing 14-inch pipeline between these points, all as more fully set forth in the application, as supplemented.

The proposed project will advance Applicant's continuing program of reconditioning and upgrading its transmission system to permit Applicant to operate these pipelines at higher pressures with increased reliability. Also a part of the existing 14-inch pipeline in Weber Canyon must be relocated to make way for the further construction of Interstate Highway No. 80 along the bottom of Weber Canyon.

Applicant estimates the cost of the proposed construction to be $922,000, with the cost of removal and salvage value of lines replaced estimated at $84,216 and $72,308, respectively, or a net cost of $933,908. Applicant will finance the proposed facilities from funds on hand and short-term loans.

On May 27, 1964, Dennis L. Sargent and Tonya A. Sargent filed a Protest to the subject application, alleging that if the line were relocated service to them would be discontinued. The Sargents received service from the 14-inch line between Henefer and Morgan proposed to be replaced and relocated. Such sale is subject to the jurisdiction of the Public Service Commission of Utah. Under different circumstances in view of the protest, we may set the matter for formal hearing. However, on July 24, 1964, Applicant further supplemented its application by filing a copy of an order of the Public Service Commission of Utah, issued July 22, 1964, conditionally authorizing the abandonment of service. The abandonment was permitted subject to the completion of construction of the relocated pipeline and Mountain Fuel converting all of the gas-burning appliances of such customers to liquefied petroleum gases and the installation of the necessary lines and tankage to operate the liquefied petroleum system, or, at the option of such customers, a cash payment representing the actual cost thereof. The Utah Commission also found that Applicant's present 14-inch line is situated along the bottom of Weber Canyon where there is also located a major highway designated as a part of the interstate highway system. Further, the Utah Commission found that Applicant's line must be relocated to accommodate the new interstate highway and that the highway system will occupy a substantial part of the property now occupied by certain direct retail customers; hence, such customers' future existence in that location is rendered uncertain.

After consideration of allegations set forth in the protest and in the light of the action of the Utah Commission, we find it unnecessary to order a formal hearing herein.

After due notice, no petition to intervene, notice of intervention or other protest to the granting of the application has been filed.

At a hearing held on August 6, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplements and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Mountain Fuel Supply Company, a Utah corporation having its principal place of business in Salt Lake City, Utah, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 15, 1940, in Docket No. G–154 (2 FPC 288).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction, replacement relocation and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction, replacement, relocation and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Mountain Fuel Supply Company, to construct, replace, relocate and operate the proposed facilities as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MOUNTAIN FUEL SUPPLY COMPANY, DOCKET NO. CP64-221

DECLARATION OF EXEMPTION

(Issued August 6, 1964)

Mountain Fuel Supply Company (Applicant) filed an application on March 31, 1964, for exemption of its Orem-Uintah Basin Pipeline facilities from the provisions of the Natural Gas Act, pursuant to Section 1(c) thereof.

Upon the basis of the application filed, the exhibits appended thereto, and the files of the Commission, it appears that:

(1) Applicant is a Utah Corporation operating as a public utility in the States of Utah and Wyoming where it is engaged in the distribution of natural gas subject to the jurisdiction of the public service commissions of these states. Part of the gas so distributed is produced in Utah, Wyoming and Colorado and is transported in interstate commerce pursuant to certificate authorization from the Federal Power Commission.

(2) Applicant's Utah markets are further served by its intrastate Orem-Uintah Basin Pipeline running from fields in east central Utah to the Provo-Orem area near Utah Lake.

(3) Applicant proposes to purchase gas from Garfield Gas Gathering Company, (Garfield) under the terms of an agreement which provides that Garfield will deliver such gas to Applicant at a point in the Uintah Basin inside the State of Utah where the same will be delivered into Applicant's intrastate Orem-Uintah Basin Pipeline. Applicant's intrastate and interstate facilities are not interconnected.

(4) All natural gas received by Applicant for transportation through said Orem-Uintah Basin Pipeline is to be consumed ultimately within the State of Utah, and all of the subject facilities are located within said state; and

(5) The Utah Public Service Commission has certified to the Federal Power Commission that it has and is exercising regulatory jurisdiction over the rates, service and facilities of Applicant.

Wherefore, The Commission declares, by reason of the foregoing:

Mountain Fuel Supply Company, with respect to the operation of its Orem-Uintah Basin Pipeline is exempt from the provisions of the Natural Gas Act, and the orders, rules and regulations of this Commission issued thereunder.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward* and David S. Black.

WISCONSIN MICHIGAN POWER COMPANY, DOCKET NO. E-7174

ORDER ACCEPTING RATE SCHEDULES FOR FILING, PROVIDING FOR HEARING AND SUSPENSION OF PROPOSED RATE SCHEDULE CHANGE

(Issued August 6, 1964)

Wisconsin Michigan Power Company (Wisconsin-Michigan), Milwaukee, Wisconsin, on June 26, 1964, tendered for filing, pursuant to Section 205 of the Federal Power Act, proposed changes in its filed rate schedules which, as amended by substitute filings made on July 24, 1964, purports to increase, as of August 3, 1964, its present rates and charges for wholesale electric service to ten electric utility and municipal customers: Wisconsin Public Service Corporation, Upper Peninsula Power Company, City of Crystal Falls, Michigan, and the Cities of Kaukauna, Shawano, Clintonville, New London, Oconto Falls, Florence, Wisconsin and Oconto Electric Cooperative, Oconto Falls, Wisconsin. The proffered rate schedule supplements have been tentatively designated in the files of the Commission as Wisconsin-Michigan's Supplement No. 4 to Rate Schedule FPC No. 12, Supplement No. 4 to Rate Schedule FPC No. 25, Supplement No. 4 to Rate Schedule FPC No. 36, Supplement No. 3 to Rate Schedule FPC No. 43, Supplement No. 3 to Rate Schedule FPC No. 33, Supplement No. 7 to Rate Schedule FPC No. 24, Supplement No. 2 to Rate Schedule FPC No. 41, Supplement No. 4 to Rate Schedule FPC No. 39, Supplement No. 2 to Rate Schedule FPC No. 38, and Supplement No. 6 to Rate Schedule FPC No. 32.[1]

Over-all, the proffered rates and charges would increase Wisconsin-Michigan's present rates to the aforementioned electric utilities and municipalities by approximately $209,000 per annum for all customers based upon 1964 deliveries of

*This matter was decided prior to the death of Commissioner Woodward who participated in the decision.

[1] Applicable to the electric utilities and municipalities in the order as previously listed.

power and energy. For the twelve-month period ending May 31, 1964, Wisconsin-Michigan's revenues from those customers totaled $2,005,270. Applying the proffered supplemental rate schedules to those deliveries, Wisconsin-Michigan's operating revenues for service to those customers would be increased to $2,214,339.

As a result of the subject rate filings proffered initially on June 26, 1964, objections were filed by certain of the Wisconsin municipal customs of Wisconsin-Michigan and by the Oconto Electric Cooperative. Subsequent to the modification of those filings by the filings of July 24, 1964 (the latter had the result of reducing the proposed rates to the smaller customers), those cities withdrew their objections but reserved their right to press them in the event the Commission should object to the modified filings or suspend the rates as to Oconto Electric Cooperative or other purchasers. The cooperative by its letter of counsel dated July 13, 1964, objects generally to the filing of the new rates insofar as they would apply to it.

We are setting for hearing and suspending the rate increase as it applies to Oconto Electric Cooperative (Supplement No. 6 to Wisconsin-Michigan's Rate Schedule FPC No. 32) for a period of one day from August 3, 1964, the date upon which the rate previously was proposed to be made effective, until August 4, 1964.[2] We accept the rate increase as it applies to the other named wholesale customers of Wisconsin-Michigan. The hearing and one day suspension will permit an adjudication of the question presented as to whether or not the cooperative can justify a lower rate for itself than for Wisconsin-Michigan's other wholesale customers while at the same time avoiding any undue discrimination in the event that we should subsequently determine that no such differential is appropriate.

On June 9, 1964, we adopted Opinion No. 432 and accompanying order, Docket No. E-7026, 31 FPC 1445, in which we rejected, as discriminatory, prior rate increases of Wisconsin-Michigan to the investor owned and municipal electric systems as listed above when no increase was proposed for the cooperative. We made clear that on the record in that case the company had not justified a higher rate for the municipalities than for its cooperative customers. We specifically stated, however, that "We recognize that the cooperative did not participate in this proceeding and we, therefore, make no findings in this case which would in any way prejudice Oconto's rights (*supra*, pp. 1451—1452)." We also made clear (*id.* at 1452) that since Oconto was not before us we could not prescribe the exact level of rates for all of Wisconsin-Michigan's customers or determine what if any differential in the rates to the cooperatives may be justified.

The increased rates and charges proposed by Wisconsin-Michigan for all of its customers follow, in general, the rate form and rate level reflected in the schedule of rates and charges set forth in Opinion No. 432, Appendix B. Slight changes in the form of the demand block rates reduce Wisconsin-Michigan's charges to smaller wholesale purchasers by approximately $6,800 annually from the over-all maximum cost of service of Wisconsin-Michigan reflected in Opinion No. 432. Small purchases are made by Florence and Oconto Falls, Wisconsin, Crystal Falls, Michigan, Upper Peninsula Power Company, and

[2] By telegram dated July 31, 1964, we advised Wisconsin-Michigan as follows:

Please be advised that the Commission has suspended for a period of one day from August 3, 1964 to August 4, 1964, the rate schedules which you filed on June 26, 1964, insofar as they proposed to increase the rates to Oconto Electric Cooperative above those previously in effect because such rates and charges may be unjust, unreasonable, or otherwise unlawful. Otherwise, the filed rates may go into effect as of August 3, 1964. The Commission's order will follow by mail.

Suring division of Wisconsin Public Service Corporation. Purchasers of larger amounts of power and energy from Wisconsin-Michigan include Clintonville, Kaukauna, New London, Shawano, Wisconsin and Oconto Electric Cooperative.

We have examined the rates as filed and believe that no reason exists for suspending them so far as they apply to the several municipal and investor owner systems involved. These rates are all at levels which are either at or below those which were expressly indicated as appropriate in Opinion No. 432. We believe, however, that despite the fact that Wisconsin-Michigan in filing its new rates has chosen not to attempt to make or justify any differential between the cooperative and its other wholesale customers, Oconto should be given the opportunity to make a factual showing in support of its position.

A principal contention of Oconto appears to be that there are "socio-economic factors" which would justify a different wholesale classification for a cooperative than for the other wholesale customers of Wisconsin-Michigan. As the cooperative indicates, this is an issue which is presented in several pending cases in which comprehensive records as to this matter have already been made or are in the process of being made. Under these circumstances, we believe that the interest of all parties can best be served by deferring hearing in this proceeding until the Commission has formulated its basic policy upon this issue in the other pending proceedings. At such time we will, we believe, be able to evaluate the similar claims of the cooperative here, as well as such other arguments it may then wish to present, on a more expedited basis.

The Commission further finds:

In view of the foregoing, it is necessary and appropriate for the purposes of the Federal Power Act that the Commission, pursuant to the authority of that Act, particularly Sections 205, 206, 308, and 309 thereof,

(1) accept the following proposed rate schedules of Wisconsin-Michigan for filing to become effective as filed rate schedules August 3, 1964:

Supplement No. 4 to Rate Schedule FPC No. 12, Supplement No. 4 to Rate Schedule FPC No. 25, Supplement No. 4 to Rate Schedule FPC No. 36, Supplement No. 3 to Rate Schedule FPC No. 43, Supplement No. 3 to Rate Schedule FPC No. 33, Supplement No. 7 to Rate Schedule FPC No. 24, Supplement No. 2 to Rate Schedule FPC No. 41, Supplement No. 4 to Rate Schedule FPC No. 39, Supplement No. 2 to Rate Schedule FPC No. 38;

(2) enter upon a hearing concerning the lawfulness of Wisconsin-Michigan's filed rate schedule for service to Oconto Electric Cooperative as proposed to be supplemented in the manner provided in proposed Supplement No. 6 to its Rate Schedule FPC No. 32; and that the operation or effectiveness of such proposed supplemental rate schedule under the Federal Power Act be suspended and the use thereof deferred, all as hereinafter provided.

The Commission orders:

(A) Wisconsin-Michigan's rate schedules as referred to in finding (1) above, are accepted for filing to become effective August 3, 1964.

(B) A public hearing be held concerning the lawfulness of Wisconsin-Michigan's Rate Schedule FPC No. 32, as supplemented and proposed to be supplemented in the manner provided in its proffered Supplement No. 6 thereto, at a time and place to be specified by notice of the Secretary.

(C) Pending such hearing and decision thereon, the operation under the Federal Power Act of the proffered rate schedule supplement referred to in paragraph (B) above, is suspended and the use thereof deferred until August 4, 1964. On that date, the proffered rate schedule supplement shall take effect

in the manner prescribed by the Federal Power Act, subject to further order of the Commission.

(D) During the period of suspension Wisconsin-Michigan's currently effective Rate Schedule FPC No. 32, and Supplement Nos. 3 and 5 on file with the Commission shall remain and continue in effect.

(E) Unless otherwise ordered by the Commission, Wisconsin-Michigan shall not change the terms or provisions of its proffered supplemental rate schedule referred to in paragraph (B) above or those of its rate schedule and supplements thereto on file with the Commission and referred to in paragraph (D) above, until this proceeding has been disposed of, or until the period of suspension has expired.

(F) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426 in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.37) on or before August 30, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward* and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64-99

FINDINGS AND ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 7, 1964)

On April 21, 1964, El Paso Natural Gas Company (Applicant) filed an application to amend the Commission's order issued February 18, 1964, 31 FPC 422, in Docket No. CP64-99 by authorizing Applicant to participate in the cost, as to its undivided one-third interest herein, of drilling two additional observation wells into Zone No. 1 of the Jackson Prairie Storage Unit, Lewis County, Washington, all as more fully set forth in the application to amend.

The order of February 18, 1964, authorized Applicant to construct and operate certain facilities; to sell and deliver natural gas and, with respect to Applicant's interest therein, to share in the cost of the facilities to be constructed and operated by The Washington Water Power Company (Water Power), all solely for the purpose of testing the Jackson Prairie Storage Unit.

The application indicates that the subject additional wells are intended to evaluate any possibility of gas migration. The observation wells utilized so far have indicated a restriction of flow.

The two additional wells will be drilled by Water Power, as operator of the storage unit, at an estimated cost of $27,000 each, for a total expenditure of $54,000.

By letter, dated May 21, 1964, Applicant was issued a temporary certificate.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on July 3, 1964 (29 F.R. 8442). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's

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*This matter was decided prior to the death of Commissioner Woodward who participated in the decision.

order issued February 18, 1964, in Docket No. CP64-99 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued February 18, 1964, in Docket No. CP64-99 be and the same is hereby amended by authorizing Applicant to participate in the cost, as to its undivided one-third interest therein, of drilling two additional observation wells into Zone No. 1 of the Jackson Prairie Storage Unit, Lewis County, Washington, all as hereinbefore described and as set forth in the application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP64-249

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 7, 1964)

Florida Gas Transmission Company (Applicant) filed an application on April 22, 1964, and a supplement thereto on May 13, 1964, in Docket No. CP64-249, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the transportation of natural gas on a direct preferred interruptible basis to the City of Fort Pierce, Florida, (City) for use by the City in its existing Henry D. King Municipal Generating Station, all as more fully set forth in the application, as supplemented.

Applicant proposes to construct and operate approximately 8.1 miles of 6-inch pipeline extending from its existing main pipeline in St. Lucie County, Florida, to the City's generating station. The natural gas will be used by the City in its plant for the generation of electricity for distribution to its residential, commercial and industrial customers in and near Fort Pierce, Florida. The maximum peak day and annual requirements of the City's generating station are estimated to be 6,250 Mcf and 1,642,000 Mcf, respectively.

The estimated cost of the facilities necessary to the sale and delivery of the proposed volumes to the City of Fort Pierce is $200,000, which will be defrayed from Applicant's current funds.

Since the requested service will require an additional delivery point the Applicant should file a superseding service agreement reflecting the additional delivery point for service to the City of Fort Pierce.

The natural gas requirements of the generating plant will be subject to curtailment when necessary to meet the Applicant's firm service requirements. An appropriate condition to provide for such curtailment will be attached to the certificate issued in this proceeding.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 6, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Florida Gas Transmission Company, a Delaware corporation having its principal place of business in Winter Park, Florida, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued July 3, 1963, in Docket No. CP63–277 (30 FPC 27).

(2) The proposed construction and operation of facilities and transportation of natural gas, as hereinbefore described and as more fully described in the application and exhibits, as supplemented, in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificate be granted on the express condition that the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Applicant for firm resale service to its customers.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the transportation of natural gas as more fully described in the application and supplement thereto in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 3 months from the date on which this order issues.

(D) The certificate issued in paragraph (A) above is granted on the express condition that the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Applicant for firm resale service to its customers.

Before Commissioners: Joseph C. Swidler, Chairman, L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

HUMBLE OIL & REFINING COMPANY, DOCKET NOS. G-9287 AND G-9288, ET AL.[1]

ORDER UPON MOTION FOR REHEARING OR RECONSIDERATION

(Issued August 7, 1964)

On July 8, 1964, 32 FPC 49, we issued an order in these proceedings conditionally approving a rate settlement proposal filed by Humble Oil & Refining Company (Humble) on May 25, 1964. Subsequently, on July 24, 1964, Humble filed its motion for rehearing or reconsideration of certain conditions and provisions of that order.[2] We have given due reconsideration to those conditions and provisions of our order of July 8, 1964, in the light of Humble's motion.

Humble states that our order of July 8, 1964, placing several conditions on the acceptance of the settlement, constitutes a rejection of the negotiated settlement and, in fact, is the offer of a different settlement. We, of course, could have rejected the settlement for the reasons set forth in our conditional approval but, consistent with our practice in other settlements,[3] we preferred to indicate the basis of an acceptable settlement which accords with the principles evolved in such other producer settlements. Recognizing that changes had been made in the proposal submitted by Humble, we provided for acceptance or rejection by Humble of the altered settlement and for the filing of objections by other parties.

Humble takes exception to our conditioning its proposal so that the refund period under all of its rate schedules included in the proposal be for the same period of time. Humble had proposed that the refund period under its FPC Gas Rate Schedule Nos. 39 and 126 be for a shorter period of time than for all other rate schedules involved in the settlement. Humble states that during the settlement conferences it was proposed to settle these sales at Sandy Hook (Rate Schedule No. 39) and Gwinville (Rate Schedule No. 126) at 17¢ per Mcf for past deliveries and the area price (or last firm rate, where applicable) for the future.

Humble again, as in its proposal, cites the fact that it has made substantial development and has added acreage in the Gwinville field. However, as we pointed out in the July 8 order, the additions and the development were entirely within the original "contract acreage", and for the reasons set forth in that order distinguishes Humble's proposal from others where we have granted "exceptions" to the applicable area ceiling.

The differing refund dates approved by us in *Socony Mobil Oil Company, Inc.*, Docket No. G-12193, *et al.* (Order issued May 5, 1964) 31 FPC 1101, which was cited by Humble concerned two separate corporations. Refunds were required for the so-called "Republic" rate schedules from April 1, 1960, to December 31, 1961, during which sales were made by Republic Natural Gas Company. However, after Republic merged with Socony, and all sales were made by Socony under its own rate schedules, the refund date applied to all rate schedules. We do not believe the *Socony* situation to be at all analogous with Humble's proposal.

The settlement cited by Humble in *Cities Service Production Company, et al.*, Docket No. G-9510, *et al.*, 28 FPC 1114, and the "exception" there granted was

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[1] The additional dockets involved herein are set forth in Appendices A, B and C attached to the order of July 8, 1964, issued herein.

[2] Filings supporting Humble's motion have been made by Alabama Gas Corporation, Southern Natural Gas Company and Consolidated Natural Gas System Companies.

[3] *E.g.:* Hunt Oil Company, Docket No. G-9065, *et al.*, 30 FPC 220.

based on the dedication of the deeper horizons at the time of settlement and not on the elimination of favored-nation clauses as Humble avers. The base contract had contained a depth-limitation clause.

In the settlement in *Gulf Oil Corporation, et al.*, Docket No. G–9520, 29 FPC 837, cited by Humble, the sale made at Gwinville by Gulf to a different purchaser than Humble's was considered as an "exception" because it involved a contemporary package renegotiation of four old contracts coupled with negotiation of three new contracts all in separate fields adding considerable reserves under the old and the new contracts, and is not comparable to Humble's situation at Gwinville.

As a final support for its proposal for a different refund date for its Gwinville and Sandy Hook sales, Humble avers that "the parties looked to the overall economic effect as a guide." It then cites percentages of amounts of monies refunded in other general rate settlements, and amounts of proposed increased rates disallowed. We do not believe that amounts refunded by other large producers is determinative of the refunds to be made by Humble. The parties have used cost of service studies to determine when refunds should begin and that date having been determined should be applicable in the same manner to all of Humble's rate schedules.

For all of the above reasons, and those set forth in our order of July 8, 1964, we affirm our conditional approval of the settlement proposal to require Humble to make refunds under its Rate Schedule Nos. 39 and 126 in the same manner, and for the same period of time, as we required for its other rate schedules where collection was made subject to refund.

Next, Humble takes exception to the conditions imposed upon five rate schedules, pending certification, in Texas Railroad Commission District Nos. 3 and 4 (Rate Schedule Nos. 325, 341, 342, 349 and 350) by which we required Humble to make future adjustment to conform with the ultimate in-line price determination, and required refunds from the date of the order of July 8, 1964, if any of the rates were reduced. Humble states that such rates are presently involved in either the *H. L. Hawkins, et al.* proceedings, Docket No. G–18077, *et al.*, or the *Turnbull & Zoch Drilling Co. (Operator), et al.*, proceedings, Docket No. G–17960, *et al.* It further states that in each instance the rate presently being charged is the "guideline" rate, and in view of the pendency of the aforenamed proceedings the issues regarding its rates should be left for final determination in those proceedings. Further, Humble states it desires to continue to participate in each of the proceedings. In view of the foregoing, we shall amend our order of July 8, 1964, by deleting therefrom ordering Paragraph (D), and striking Docket Nos. CI63–1057 (Rate Schedule No. 325), CI64–297 (Rate Schedule No. 349), CI64–298 (Rate Schedule No. 341), CI64–299 (Rate Schedule No. 350), and CI64–677 (Rate Schedule No. 342) from Page 2 of Appendix C to the order.

Humble's next point regards the severance of its proceedings from the consolidated proceedings in *Sunray DX Oil Company, et al.*, Docket No. G–4281, *et al.*, as provided by ordering Paragraph (O) of the order of July 8, 1964. Humble states that such severance was in accordance with the settlement proposal as filed, but it notes that the hearings in those proceedings have been concluded, and that it has filed an initial brief therein. Accordingly, it requests that it be permitted to continue to participate in those proceedings as an intervenor. We find that although the time for filing petitions to intervene has terminated, the unusual conditions herein cause us to find that good cause exists, and it is in the public interest to permit the continued participation of Humble in such proceedings as an intervenor.

Humble states that ordering Paragraph (E) of the order of July 6, 1964, relating to refunds does not clearly state that its refund obligation would be

limited to the difference between the rate collected subject to refund and the related settlement rate or rate not subject to refund, whichever rate was higher. It was our intention to require refunds down to the last firm rate where the settlement rate was lower and we shall amend the order to so provide. Consequently, we shall amend the first sentence of ordering Paragraph (E) of the order of July 8, 1964, to read:

> (E) Humble shall compute the difference between the rates collected subject to refund and the related settlement rate or rate not subject to refund, whichever rate was the greater, for the period from May 1, 1961, to the date of this order, together with interest as specified in each docket to May 31, 1964.

* * * * * * *

Humble requests that in view of its motion, the time limitations set forth in the order of July 8, 1964, be extended for the number of days ensuing between that date and the date of issuance of this order. Such a request is reasonable, and accordingly we shall grant an extension of the time limitations of our order by 30 days.

The Commission finds:

(1) The participation of Humble Oil & Refining Company in the consolidated proceedings *Sunray DX Oil Company, et al.*, Docket No. G–4281, *et al.*, may be in the public interest.

(2) Except as it is granted hereby, the motion for rehearing or reconsideration filed by Humble on July 24, 1964, should be denied.

The Commission orders:

(A) Humble Oil & Refining Company be, and it is hereby permitted to become an intervener in the consolidated proceedings in *Sunray DX Oil Company, et al.*, Docket No. G–4281, *et al.*, subject to the rules and regulations of the Commission: Provided, however that the participation of such intervener shall be limited to matters affecting asserted rights and interests affecting it as set forth in its motion for rehearing or reconsideration filed on July 24, 1964; and provided, further, that the admission of such intervener shall not be construed as recognition by the Commission that it might be aggrieved because of any order or orders of the Commission entered in such consolidated proceeding.

(B) The order of July 8, 1964, issued herein, be and it is hereby amended to delete ordering Paragraph (D) therefrom, and striking Docket Nos. CI63–1057 (Rate Schedule No. 325), CI64–297 (Rate Schedule No. 349), CI64–298 (Rate Schedule No. 341), CI64–299 (Rate Schedule No. 350), and CI64–677 (Rate Schedule No. 342) from Page 2 of Appendix C to such order.

(C) The first sentence of ordering paragraph (E) of the order of July 8, 1964, issued herein, be and it is hereby amended to read:

> (E) Humble shall compute the difference between the rate collected subject to refund and the related settlement rate or rate not subject to refund, whichever rate was the greater, for the period from May 1, 1961, to the date of this order, together with interest as specified in each docket to May 31, 1964. * * *

(D) The time limitations set forth in ordering Paragraphs (E), (F), (G), (H), (I), (J) and (M) of the order issued herein on July 8, 1964, are each extended an additional 30 days in addition to each of the time limitations set forth therein.

(E) Except as modified hereinabove, the motion for rehearing or reconsideration filed in these proceedings present no issues of fact or law which were

not fully considered by the Commission, or which upon now being considered require any change or modification of the order issued herein on July 8, 1964, and the motion is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

INTERSTATE POWER COMPANY, DOCKET NO. CP64-143

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 7, 1964)

On December 23, 1963, as amended on February 10, 1964, Interstate Power Company (Applicant) filed in Docket No. CP64-143 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a pipeline between the Rock River near Prophetstown, Illinois, and the Mississippi River near Albany, Illinois, all as more fully described in the application, as amended.

The proposed facilities consist of approximately 13.2 miles of 12-inch pipeline with required valves and miscellaneous connecting material and will be operated in parallel with existing facilities for increased line capacity to provide for normal future system load growth and potential new customers.

The total estimated cost of the proposed facilities is $472,710, which cost will be financed by company funds or short-term bank borrowing.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, as amended, has been filed.

At a hearing held on August 6, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, amendment and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Interstate Power Company, a Delaware corporation having its principal place of business in Dubuque, Iowa, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 3, 1951, in Docket No. G-1547 (10 FPC 873).

(2) The facilities hereinbefore described, as more fully described in the application, as amended, in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act

and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Interstate Power Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application, as amended, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

INTERSTATE POWER COMPANY, DOCKET NO. CP64-176

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 7, 1964)

On February 6, 1964, Interstate Power Company (Applicant) filed in Docket No. CP64-176 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities in order to render natural gas service in the Village of Erie, Illinois, all as more fully set forth in the application.

Applicant proposes to construct and operate 5.3 miles of 2-inch pipeline in order to supply natural gas to Applicant's proposed gas distribution system in Erie. A tap is to be located in Whiteside County at the crossing of Applicant's existing 9-inch main transmission line under Highway 2.

Applicant states that it will serve Erie from gas volumes available under contract with Natural Gas Pipeline Company of America. The estimated third year peak day and annual natural gas requirements of Erie are 410 Mcf and 42,998 Mcf, respectively.

The total estimated cost of the proposed facilities (including distribution facilities) is $131,180, which cost will be financed from company funds or short-term borrowing

It appears that Applicant has obtained appropriate authorizations from Erie and the Illinois Commerce Commission.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 6, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Interstate Power Company, a Delaware corporation having its principal place of business in Dubuque, Iowa, is a "natural-gas company"

within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 3, 1951, in Docket No. G–1547 (10 FPC 873).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Interstate Power Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MISSISSIPPI RIVER FUEL CORPORATION, DOCKET NOS. RP61–21, RP63–2, CP63–13; MISSISSIPPI RIVER TRANSMISSION CORPORATION, DOCKET NO. CP63–12

ORDER APPROVING PROPOSED STIPULATION OF AGREEMENT AND TERMINATING PROCEEDINGS

(Issued August 7, 1964)

On March 16, 1964, Mississippi River Fuel Corporation (Fuel), and its subsidiary, Mississippi River Transmission Corporation (Transmission), jointly filed a stipulation and agreement dated March 12, 1964, proposing settlement of the captioned proceedings, seeking Commission approval thereof and termination of the proceedings in these dockets. The stipulation, which resulted from conferences among Fuel, Transmission and their resale customers, was agreed to by all those resale customers and by the Missouri Public Service Commission. Thereafter, representatives of Fuel and Transmission conferred with members

of the staff of this Commission. As a result of these conferences, the aforementioned stipulation and agreement was revised as of May 6, 1964.

On May 27, 1964, Fuel and Transmission filed a motion for approval of the revised stipulation, termination of the rate proceedings, and issuance of a certificate of public convenience and necessity in Docket No. CP63–12, as purported to be amended in accordance with the revised stipulation. The Commission, by order issued June 9, 1964, 31 FPC 1512 in these proceedings, deferred action on that motion and prescribed further procedures in these matters. The Commission's order noted that in view of the position of certain parties on the applications in Docket Nos. CP63–12 and CP63–13, any action on the motion to the extent that it requested approval of the proposed settlement agreement was premature and would have to await Commission disposition of the issues in these certificate dockets on a formal record that would ultimately come before the Commission.

Pursuant to the procedure outlined in the order issued June 9, 1964, Transmission on June 15, 1964 filed an amendment to its application in Docket No. CP63–12 and Fuel as of the same date, filed a notice of withdrawal of its application in Docket No. CP63–13.

At the hearing held on July 6, 1964, in the certificate proceeding, a stipulation was introduced into evidence resolving the differences between the parties in those proceedings.

By separate order issued this day in Docket Nos. CP63–12 and CP63–13, we have issued a certificate of public convenience and necessity to Transmission, in accordance with the application as amended in Docket No. CP63–12. We now have before us the stipulation and agreement as revised May 6, 1964 in proposed settlement of the rate proceedings in Docket Nos. RP61–21 and RP63–2.

The stipulation and agreement as revised May 6, 1964, provides in major part as follows:

1. Fuel will refund to its jurisdictional customers, the following principal sums:

i. $1,400,000 applicable to the period from June 15, 1961 through December 31, 1962 (this represents the period during which the proposed increase in Docket No. RP61–21 was in effect, subject to refund);

ii. $1,277,500, applicable to the period from January 1, 1963 through April 30, 1964;

iii. $79,750 per month (or a pro-rata portion thereof for a partial month) for each month after April 30, 1964, until the date upon which the revised tariff of Transmission, as the successor company, is made effective.

In addition to the above principal amounts, Fuel will pay to each customer the related amount of interest at the rate of 7 percent per annum, computed as provided in Article 2 of the revised stipulation. Up until the effective date of Transmission's revised tariff, referred to above, Fuel will continue to collect its rates presently effective in Docket No. RP63–2, subject to further refunds described below.

2. Fuel will refund to its customers, in accordance with the provisions of Article 3 of the stipulation, all amounts it may receive from suppliers applicable to gas purchases from June 15, 1961 to the effective date of Transmission's revised tariff. However, no further refunds are required to be made by Fuel of amounts received from United Gas Pipe Line Company or other suppliers prior to March 12, 1964, the date of signing of the agreement by the parties, inasmuch as the jurisdictional customers' portion of such refunds is included in the principal refunds referred to above.

3. Transmission's rates, which became effective April 1, 1964, shall continue in effect until the effective date of Transmission's revised tariff, provided, how-

ever, that as set forth in Article 4 of the stipulation, Transmission will refund to its jurisdictional customers any amounts received from its suppliers applicable to gas purchases from such suppliers prior to the effective date of Transmission's revised tariff.

4. Transmission will file a revised tariff, subject to the approval of the Commission, in the form set out in Exhibit 13 in Docket No. CP63–12, as modified by the pro-forma sheets attached to the revised stipulation. In addition to the rate schedules providing for interruptible and stand-by service, such revised tariff will provide for contract demand service under Rate Schedule CD–1, containing basic monthly rates of $1.89 per Mcf of contract demand and 23.20¢ per Mcf of natural gas delivered under that rate schedule. If, on the proposed effective date of such revised tariff, the rates and charges of Trunkline Gas Company, one of Transmission's suppliers, are higher or lower than Trunkline's rates which became effective April 1, 1964, Transmission will adjust the rates and charges contained in the pro-forma tariff sheets attached to the stipulation, in accordance with the method set out in Article 6 thereof, to reflect such change in Trunkline's rate. Further, the revised tariff will not include the 72 percent annual and 40 percent daily minimum take-or-pay provisions contained in Fuel's presently effective tariff.

5. Transmission agrees to pass through to its jurisdictional customers, pursuant to the method set out in Article 7 of the stipulation, any refunds it receives from suppliers whose rates are being collected, subject to refund, after the effective date of Transmission's revised tariff. The refunds thus to be passed through will be those applicable to gas purchased during the period from and after the effective date of Transmission's revised tariff and so long as the rates contained in that tariff, or as modified, to give effect to suppliers' rate reductions (as described below) remain in effect.

6. Transmission agrees to reduce its jurisdictional rates in the manner set out in Article 8 of the stipulation, to give effect to any reduction in the prospective rates of any of its suppliers which is made effective by any final or non-applicable order of the Commission, during the period from and after the effective date of Transmission's revised tariff and so long as the rates contained in that tariff, or the rates reduced pursuant to Article 8, remain in effect.

7. Transmission agrees that it will not file for an increase in the rates and charges of its Rate Schedule CD–1, which will be contained in its revised tariff, to become effective prior to July 1, 1966, except under the contingencies set forth in Article 9 of the stipulation.

The stipulation also provides that it shall become effective when the Commission issues an order approving such stipulation and agreement and terminating the above dockets; when the Commission issues a certificate of public convenience and necessity to Transmission in Docket No. CP63–12; and when the Commission issues an order making the revised tariff to be filed by Transmission, effective without suspension.

The stipulation further sets out that it was entered into by the parties as a negotiated settlement, without prejudice to such parties in any other proceeding and without acceptance or agreement to any methods or principles underlying the provisions of the agreement. The agreement requests that the Commission waive the requirements of its General Rules and Regulations, particularly Part 154 thereof, to the extent necessary to effectuate all the provisions of that agreement.

The Commission is of the view that the proposed settlement is in the public interest and that the results thereof are within the range that could reasonably be expected if the proceedings were all to go through the decision making

process. On the basis of all the foregoing, we believe the proposed settlement should be approved as hereinafter provided:

The Commission finds:

(1) The proposed settlement of these rate proceedings, upon the basis set forth in the revised stipulation and agreement identified above and incorporated herein, is appropriate and in the public interest in carrying out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter provided and ordered.

(2) Good cause exists for the Commission to waive its applicable Rules and Regulations under the Natural Gas Act, in order that the revised tariff sheets to be filed, pursuant to Article 6 of the stipulation, may become effective as hereinafter provided.

The Commission orders:

(A) The settlement of these proceedings upon the basis of the revised stipulation and agreement filed May 27, 1964, which is made a part hereof by reference thereto and as modified by the stipulation introduced into evidence in Docket Nos. CP63–12 and CP63–13, is hereby approved and made effective as proposed therein.

(B) Fuel, within the time and in the manner set forth in the aforesaid stipulation and agreement, shall refund to its jurisdictional customers the principal amounts and applicable interest herein-above set forth.

(C) Fuel and Transmission shall comply with each of the provisions of the revised stipulation and agreement.

(D) Within 20 days of making any refunds required pursuant to the provisions of the revised stipulation and agreement, Fuel and Transmission shall report to the Commission, showing separately the amounts of principal and interest so paid, together with a computation showing the manner in which such refunds was determined, and shall serve a copy of this report upon each customer and upon interested state commissions.

(E) Within 60 days from the date of issuance of this order, Transmission shall file a revised tariff acceptable to the Commission, in the form and containing the provisions set out in Exhibit 13 in Docket No. CP63–12, as modified by the pro-forma sheets attached to the revised stipulation and agreement, to be effective from and after the date of filing subject only to such changes as provided for under the terms of the revised stipulation and agreement.

(F) Upon compliance with the terms and conditions of this order, the proceedings in Docket Nos. RP61–21 and RP63–2 are terminated, subject to the terms of the revised stipulation and agreement as to future pass-through of refunds and rate reductions.

(G) This order is without prejudice to any findings or orders which have been made or may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, Fuel, Transmission, the Commission staff, or any other party affected by this order, in any proceeding now pending or hereafter instituted by or against Fuel or Transmission or any other person or parties affected by this order.

Commissioner Black *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MISSISSIPPI RIVER TRANSMISSION CORPORATION, DOCKET NO. CP63–12; MISSISSIPPI RIVER FUEL CORPORATION, DOCKET NO. CP63–13

ORDER GRANTING MOTIONS FOR LEAVE TO AMEND AND WITHDRAW AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 7, 1964)

On July 16, 1962, Mississippi River Transmission Corporation (Transmission) filed an application, as supplemented, in Docket No. CP63–12 for a certificate of public convenience and necessity, pursuant to Section 7(c) of the Natural Gas Act, for authority to acquire and operate the pipeline facilities of Mississippi River Fuel Corporation (Fuel) and the interest of Fuel in Storage Corporation, a wholly owned subsidiary of Fuel.

In addition to its pipeline facilities, Fuel presently owns gas production in the Sligo and Hico-Knowles Fields of North Louisiana, which is taken into its pipeline system as part of its overall gas supply. Contingent upon acquisition of its pipeline facilities by Transmission, Fuel proposed to sell the gas from these fields to Transmission as set forth in its application filed July 16, 1962, in Docket No. CP63–13.

Notice of both applications was issued November 16, 1962. (29 F.R. 11476.)

A hearing was scheduled to be held March 25, 1963, on a consolidated record, but was continued March 12, 1963, until further notice at the request of the applicants.

Petitions to intervene in both proceedings were filed by Oklahoma Illinois Gas Pipeline Company (Oklahoma Illinois), Owens-Illinois Glass Company (Owens-Illinois), Laclede Gas Company (Laclede), Granite City Steel Company, *et al.* (Granite City Group), St. Charles Gas Corporation (St. Charles), and Illinois Power Company (Illinois Power).

Pursuant to a notice issued February 7, 1964, a hearing was convened on a consolidated record March 2, 1964, and was recessed to March 24, 1964. Subsequent notices of continuance of these proceedings were issued at the request of the applicants.

On June 15, 1964, Transmission filed an amendment to its application in Docket No. CP63–12 which, among other things, excluded Fuel's interest in Storage Corporation from the proposed acquisition and included a transfer by Fuel to Transmission of the on-system gas producing properties in the Sligo and Hico-Knowles Fields.

On the same date, Fuel filed a notice of withdrawal of its application in Docket No. CP63–13.

Pursuant to a notice issued by the Presiding Examiner, a prehearing conference was held and concluded June 18, 1964.

On July 6, 1964, formal hearing was resumed. Counsel for Transmission thereupon presented a stipulation signed by Transmission, Fuel, Oklahoma Illinois, Owens-Illinois, and the Granite City Group. This stipulation, in addition to specifying that nothing in the language of the stipulation entered into between Fuel and Transmission and their customers dated March 12, 1964, as revised May 6, 1964, could be used to prejudice Oklahoma Illinois, Owens-Illinois and Granite City in the determination of Docket No. CP62–243, *et al.*, would in effect, preclude the signatories thereto from referring or adverting to any changes of fact which may be effected by reason of the acquisition by Transmission of the properties of Fuel or making any argument with respect thereto

in connection with the ultimate determination of the proceedings upon competitive applications to render additional service to the St. Louis area filed by, among others, Oklahoma Illinois in the comparative hearing heretofore held in *Natural Gas Pipeline Company, et al.*, Docket No. CP62–243, *et al.*

The stipulation (page 6) further provides, however, that "*Upon acceptance* and acknowledgement *by* the parties and *the Commission of the within stipulation*, due and timely execution of the functions of the Commission imperatively and unavoidably require that the intermediate decision procedure be dispensed with . . . ." (Emphasis supplied). It appears from the foregoing quoted portion of the stipulation that the signatories thereto may have intended by such stipulation to preclude the Commission from considering, in connection with the disposition of the competitive applications involved in the Docket No. CP62–243, *et al.* proceedings, not only the language in the earlier stipulation between Transmission, Fuel and their customers (which of course cannot bind the Commission in deciding Docket No. CP62–243, *et al.*) but also any changes of fact which may be effected by the approval of the merger sought in these proceedings.

We stated in our opinion in *Arkansas Louisiana Gas Company, et al.*, Docket No. G–17567, *et al.*, 27 FPC 697, 702, "Such a merger [referring to Transmission and Fuel] appears to be in the public interest because service and rates should not be affected by such an artificial corporate division," and we believe that the present merger proposal, as modified to incorporate within the resulting pipeline, Fuel's Sligo and Hico-Knowles production properties, will achieve this objective. However, we cannot bind ourselves to ignore the effects of the merger or of any resolution of the pending rate cases involving Fuel (Docket Nos. RP61–21 and RP63–2) in connection with the considerations of other applications particularly competitive applications upon which a comparative hearing has been held. We observe that there are parties to the proceedings upon the competitive applications who are not parties to this merger proceeding and who are not signatories to the stipulation under consideration, whose rights could in any event not be affected by the stipulation. Of course, no language agreed to by any of the parties either in the stipulation entered into between Transmission and Fuel and their customers, or in the subsequent stipulation between Transmission, Fuel and Oklahoma Illinois, Owens-Illinois and Granite City can properly preclude us from considering any matters of which we can appropriately take notice at the time the Docket No. CP62–243, *et al.*, proceedings are before us.

In its application, Transmission asserts that a combination of the Transmission and Fuel pipeline operations will provide a single uniform rate to all resale customers presently served by the two companies, and points out that the acquisition should result in simplification of Commission regulation as well as increasing the flexibility and efficiency of operation of the corporate structure of the resulting merged company. With Sligo and Hico-Knowles going to the merged company we agreed that the public interest would be served by a merger: in eliminating the possibility which previously existed of discrimination in rates or services between customers of the two commonly controlled but separately operated pipelines in favor of non-jurisdictional customers and against the customers this Commission is obligated to protect; in reducing the costs and expenses of operation; and in simplifying the Commission's task of assuring non-discriminatory service at the lowest justified rates.

The Commission finds:

(1) Transmission and Fuel are "natural-gas companies" within the meaning of the Natural Gas Act, subject to the jurisdiction of the Commission.

(2) Sufficient cause has been shown for permitting Transmission to amend its application in Docket No. CP63–12.

(3) Sufficient cause has been shown for permitting Fuel to withdraw its application in Docket No. CP63–13.

(4) The present and future convenience and necessity permit the acquisition and operation of the pipeline facilities and gas production of Fuel by Transmission as proposed by the application as amended in Docket No. CP63–12.

(5) A request having been made for omission of the intermediate decision procedure and all requirements of the provisions of Section 1.30(c)(1) [18 CFR 1.30(c)(1)] of the Commission's Rules of Practice and Procedure having been satisfied, sufficient cause exists for the Commission forthwith to render its final decision in these proceedings.

The Commission orders:

(A) The motion of Mississippi River Transmission Corporation for leave to amend its application in Docket No. CP63–12 is hereby granted.

(B) The motion of Mississippi River Fule Corporation for leave to withdraw its application in Docket No. CP63–13 is hereby granted.

(C) A certificate of public convenience and necessity is hereby issued authorizing Mississippi River Transmission Corporation to acquire and operate the pipeline facilities and interests in gas production of Mississippi River Fuel Corporation in the Sligo and Hico-Knowles fields, all as more fully set forth in the application, as amended, in Docket No. CP63–12.

Commissioner Black *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOUTHERN CALIFORNIA EDISON COMPANY, PROJECT NO. 2290

ORDER ISSUING LICENSE (MAJOR)

(Issued August 7, 1964)*

Application was filed on January 6, 1961 by Southern California Edison Company (Applicant) of Los Angeles, California, for a license under the Federal Power Act (Act) for its constructed Kern River No. 3 hydroelectric project, designated as Project No. 2290, located on Kern River, Salmon Creek and Corral Creek in Kern and Tulare Counties, California, in the vicinity of Bakersfield, Bodfish, Isabella, Kernville and Weldon, and affecting lands of the United States within the Sequoia National Forest.

Kern River No. 3 project was constructed between the years 1901 and 1921. By January, 1910, about 800 feet of tunnel work had been completed. During the period 1914–1918, work was retarded due to World War I conditions. The powerhouse was completed and the two generating units were placed in operation in 1921. Two diversion structures, in addition to the main dam on Kern River, one on Salmon Creek and the other on Corral Creek, were completed in 1921 and 1924, respectively. The diversion structure on Salmon Creek was replaced by a new dam completed in 1923 and the diversion structure on Corral Creek was replaced by a new dam completed in January, 1934. The energy generated by the project is included in Applicant's system and is used for public utility purposes.

*Rehearing denied, 32 FPC 910.

Applicant requests a "fair value" license under the provisions of Section 23(a) of the Act for a period of 50 years. According to the application, the project was constructed pursuant to a Final Power Permit granted by the Secretary of Agriculture on September 20, 1913 for a period of 50 years under the Act of February 15, 1901 (31 Stat. 790). Applicant has operated the project under this permit which authorized the occupancy and use for the development, transmission, and distribution of power of certain National Forest lands of the United States for a maximum period of 50 years from September 20, 1913. In addition, transmission lines extending from the Kern River No. 3 power plant to Vestal and to Applicants' licensed Borel Project No. 382, were authorized under Commission license as transmission line Project No. 174.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, offered no objection to the granting of the application for license.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project, conditions in the interests of fish and wildlife conservation.

The Department of Agriculture, in reporting on the application, by letters dated March 21, 1962, and September 27, 1963, recommended for inclusion in any license for the project, conditions in the interests of the Department.

(A) In its letter of March 21, 1962 the Department of Agriculture advised that the California Department of Fish and Game, the United States Bureau of Sport Fisheries and Wildlife, the U.S. Forest Service and Applicant had entered into an agreement setting up a cooperative study. By letter dated September 27, 1963, the Department of Agriculture advised that the study has been completed and that as a result an agreement was entered into on August 9, 1963 among the Applicant, the California Department of Fish and Game, the United States Forest Service, and the United States Bureau of Sport Fisheries and Wildlife, setting forth certain conditions to be recommended for inclusion in any license that might be issued to the Applicant for the continued operation of its Kern River No. 3 project.

The State of California Department of Fish and Game, which was permitted to intervene in this proceeding pursuant to petition filed March 17, 1961, advised that the petition may be deemed dismissed if the license for the project includes conditions substantially in accord with the terms of the abovesaid Agreement dated August 9, 1963. Conditions substantially in accord with the conditions set forth in the Agreement are hereinafter included in this order.

(B) Kern County, California filed a petition to intervene on March 16, 1961 and an order granting an intervention was issued April 3, 1961. By letter dated November 15, 1963 Kern County advised that its intervention in this proceeding may be considered withdrawn upon the same conditions as specified by the State of California Department of Fish and Game.

Numerous informal protests have been received regarding the need for the release of flows from the project reservoirs for the protection of fish. We believe such protection is assured by the special conditions hereinafter included.

It is clear that Applicant is not here seeking a fair value license in lieu of a permit; instead it is seeking a fair value license to succeed the permit. Applicant waited until its 1913 permit was about to expire[1] and then applied for a fair value license for a term of 50 years. The result, were we to grant the application, would be that Applicant would have had authority to operate the project for a period of between 47 and 50 years pursuant to the permit and for

[1] Because of objections by intervenors mentioned above the Commission could not have acted on the 1961 application before the permit expired.

a further period of between 47 and 50 years pursuant to a fair value license issued by this agency.[2]

We believe that any such result would obviously not be in keeping with the statutory scheme. The provisions of Section 23 of the Act (now Section 23(a)) authorizing the holders of outstanding government permits to convert their permits to fair value licenses (rather than the net investment licenses) were inserted into the Act as an inducement for bringing outstanding permits under the more comprehensive licensing provisions of the Federal Power Act, which *inter alia*, authorized the imposition of additional conditions aiding in bringing about the comprehensive development of the Nation's water resources. It clearly was not intended to permit a person who had engaged for almost fifty years in the operation of a project under a federal permit to receive a new long term license under conditions markedly superior to those which would apply either to a licensee of a new project or a licensee of an old project seeking a renewal thereof at the end of the original license term.

At any time after enactment of the Federal Power Act in 1920 applicant could have applied for a fair value license in lieu of its permit. Under established Commission policies if it had sought such a license during the earlier periods of its permit the Commission would have issued a fair value license either for the remainder of the permit term or as was the case in some early situations for a full 50-year period.

In any event the Commission has never issued a fair value license when the permit had a remaining term of less than 20 years; on the contrary on at least four previous occasions it has refused to issue such licenses to Applicant when it sought them at various periods of up to 7½ years prior to the expiration of a 50-year permit.[3] It is true that in the recent *Montana Power Company* v. *F.P.C.* case 330 F. 2d 781 (CA9 No. 18451, decided April 14, 1964) the Ninth Circuit reversed a determination of the Commission insofar as it had failed to give the Montana Power Company (a Montana corporation) a fair value license in substitution for the permit previously held by the Montana Power Company (a New Jersey corporation), when as the result of a Commission-approved merger, the New Jersey company no longer was in a position to retain its permit rights. In our opinion that decision, insofar as it suggests that the Commission may lack discretion to refuse a fair value license to a permittee filing near the end of the permit term, must be confined to its very special facts. In any event, since the Court expressly upheld the Commission's action in limiting the duration of the license which it issued to the unexpired term of the permit, the case does not stand as a precedent for issuance of a long term fair value license near the end of a permit's term, or after it has expired.

We come, finally, to the question of the term of the new license. We have concluded that an appropriate normal term in issuing a new license at the expiration of a federal permit would be twenty-five years. This will give the licensee a sufficient degree of certainty to permit integration of the project into its overall plans while at the same time bringing the project before the Commission for reconsideration within a reasonable period. The fifty-year maximum written into the statute was geared to the approximate period which might be necessary to insure that the applicant could finance construction and has no bearing upon

[2] The variations in the periods mentioned above would depend upon the date as of which the Commission action in granting the fair value license was made effective.

[3] *Southern California Edison Company, Ltd.*, Project No. 1933, 5 FPC 695 (August 9, 1946); *Southern California Edison Company, Ltd.*, Project No. 1934, 5 FPC 698 (August 9, 1946); *Southern California Edison Company*, Project No. 2175, 21 FPC 419 (March 27, 1959); *Southern California Edison Company*, Project No. 2198, 21 FPC 698 (May 20, 1959).

the question of how long a period should be allowed for new licenses for projects at the end of their original term. We believe, however, that generally the term for a new license to a holder of an expired permit should not be less than the term of licenses for constructed projects which have operated without authorization. In the case of projects which are filed under the Androscoggin decision, Opinion 357 (27 FPC 830), the Commission has fixed a termination date of December 31, 1993 for such licenses in those cases in which applications are timely filed regardless of when the project was originally constructed. Accordingly, licenses for projects formerly operated under federal permits should generally be issued for a period of 25 years or to extend to December 31, 1993 whichever is longer, except in cases where for good cause a different term is justified. In the circumstances, we are herein fixing the effective date of the license for Project No. 2290 as of September 20, 1963 (termination date of the Final Power Permit) and extending to December 31, 1993.

In view of our finding (8) herein, we are hereinafter requiring Applicant to file for amendment of its license for transmission line Project No. 174 to exclude therefrom the double circuit 66 kv transmission line extending from Project No. 2290 to the Vestal substation and the 66 kv transmission line extending from that project to Applicant's Borel Project No. 382, and appurtenant facilities.

The Commission finds:

(1) The project affects lands of the United States within the Sequoia National Forest.

(2) Applicant is a corporation organized under the laws of the State of California and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given as required by the Act. No conflicting application is before the Commission.

(4) The issuance of a license for the project as hereinafter provided will not affect a Government dam or the development of any water resources for public purposes which should be undertaken by the United States.

(5) The issuance of a license for the project as hereinafter provided will not interfere or be inconsistent with the purposes for which the Sequoia National Forest was created or acquired.

(6) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public uses, including recreational purposes.

(7) The installed horsepower capacity of the project for the purpose of computing the capacity component of the administrative annual charge is 43,000 horsepower, and the amount of annual charges, based on such capacity to be paid under the license for the project, for the purpose of reimbursing the United States for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(8) The following described transmission facilities, which are included in the application for license, are parts of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project: the double circuit 66 kv transmission line extending from the subject project to the Vestal substation and the 66 kv transmission line extending from the subject project to Applicant's Borel Project No. 382.

(9) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to Southern California Edison Company (Licensee) of Los Angeles, California, under Section 4(e) of the Federal Power Act (Act) for a period effective as of September 20, 1963, and terminating December 31, 1993 for the continued operation and maintenance of Project No. 2290 upon the Kern River, Corral Creek and Salmon Creek, and affecting lands of the United States within the Sequoia National Forest, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2290 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J	FPC No.	Title
Sheet 1	2290-1	General Map of Kern River No. 3 Project Powerhouse to Intake Area.
Sheet 2	2290-2	General Map of Kern River No. 3 Project, Kern River No. 3—Vestal Transmission Line.
Sheet 3	2290-3	General Map of Kern River No. 3 Project—Kern River No. 3—Borel Transmission Line.

(ii) All project works consisting principally of:

An overflow concrete gravity dam across Kern River, 26 feet high and 270 feet long, with a fish ladder; a main conduit extending 68,515 feet to a forebay above the powerhouse and consisting of a concrete sand box 449 feet long, 3,862 feet of covered and 1,705 feet of open concrete flume, 60,171 feet of concrete lined tunnel, a 45-foot long concrete spillway section at the siphon inlet, a 1,143 foot steel pipe siphon and 1,140 feet of reinforced concrete pipe; two steel penstocks each 2,511 feet long from the forebay to the powerhouse; a small concrete dam on Salmon Creek, 60 feet long and 5 feet high, a steel pipe 228 feet long from Salmon Creek Dam to the main conduit; a small concrete dam on Corral Creek, 36 feet long and 6 feet high, a steel pipe 904 feet long from Corral Creek Dam to the main conduit; a powerhouse on the Kern River containing two Pelton reaction turbines of 25,000 horsepower each, connected to generators of 16,000 kilowatts each; a 66 kv double circuit transmission line about 44.5 miles long from the powerhouse to the Vestal Substation; a 66 kv single circuit transmission line about 17.25 miles long from the powerhouse to the Borel Powerhouse; a telephone line between the powerhouse and intake works with superimposed alarm and telemark circuits; a multicircuit control and power line between the powerhouse and forebay; access roads; operators village; and appurtenant electrical and mechanical equipment; this location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited

and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L	FPC No.	Title: General Design Drawings Kern River No. 3 Project
Sheet No. 1	2290-30	Dam and Fish Ladder.
Sheet No. 2	2290-31	Plan and Sections of Intake.
Sheet No. 3	2290-32	Sections and Elevations of Intake.
Sheet No. 4	2290-33	Sand Box and Adjacent Flumes.
Sheet No. 5	2290-34	Salmon and Corral Creek Diversions.
Sheet No. 6	2290-35	Corral Creek Flume.
Sheet No. 7	2290-36	Brush Creek Siphon.
Sheet No. 8	2290-37	Brush Creek Siphon Spillway.
Sheet No. 9	2290-38	Forebay Plan, Elevations and Sections.
Sheet No. 10	2290-39	Penstocks—Plan and Profile.
Sheet No. 11	2290-40	Generator Floor Plan.
Sheet No. 12	2290-41	Turbine Floor Plan.
Sheet No. 13	2290-42	Powerhouse—Sectional Elevation—Longitudinal.
Sheet No. 14	2290-43	Powerhouse—Sectional Elevation—Lateral.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–1 (Revised April 1, 1964) entitled "Terms and Conditions of License for Constructed Major Project Affecting Lands of the United States" (32 FPC 71), which terms and conditions, designated as Articles 1 through 33, are attached hereto and made a part hereof; and subject to the following special conditions set forth herein as additional articles:

Article 34. The Licensee shall conduct the normal operations of its outlet works and power plants so as to avoid the sudden release of large flows into the channels normally carrying regulated flows and, except in the event of emergencies, shall insofar as possible, avoid changes in stream stages which would endanger human life, health, or property, or be detrimental to fish life or habitat.

Article 35. The Licensee shall release or spill at the Fairview Diversion Dam sufficient water to maintain flows in the Kern River at the times and in not less than the amounts shown in the following schedules as measured at the "Kern River near Kernville" gauging station:

Period of release	Dry year c.f.s.	Normal year c.f.s.	Period of release	Dry year c.f.s.	Normal year c.f.s.
January	25	40	July 16-31	75	90
February	25	40	August	75	90
March	60	70	September	65	70
April	80	100	October	25	50
May	90	100	November	25	40
June	90	100	December	25	40
July 1-15	85	100			

For purposes of applying the above schedules, a "Dry Year" is defined as a year in which the April 1 through July 31 total runoff at Fairview Diversion

Dam, as predicted by the California State Department of Water Resources in its April 1 forecast, is estimated to be 186,000 acre-feet or less. A "Normal Year" is defined as a year in which the April 1 through July 31 total runoff is so estimated to be over 186,000 acre-feet. The appropriate schedule of flows shall take effect on May 1 following the April 1 forecast and extend through April 30 of the following year.

It is further provided that should the natural flow of the Kern River at the Fairview Diversion Dam at any time be less than the applicable schedule for that time then only the natural flow need be released, subject to such reductions as may be necessary to meet the obligation to supply the water needs of the Kern River Fish Hatchery as set forth in Article 36.

Article 36. The Licensee shall deliver to the California Department of Fish and Game at the tailrace of the Kern River No. 3 powerhouse, not less than 20 c.f.s. from the Kern River No. 3 conduit for the operation of the California Department of Fish and Game's Kern River Fish Hatchery. The Licensee will exercise reasonable diligence to furnish a continuous supply consistent with proper operation of the project. The licensee will not be liable for interruption or shortage of supply, nor any loss or damage occasioned thereby, if such interruption or shortage results from any cause not within its control. The Licensee shall, except in emergencies, give the California Department of Fish and Game at least three (3) days prior notice of the time and estimated duration of any interruption or shortage of supply required for the purpose of making repairs or improvements to the project.

Article 37. The Licensee shall maintain, by releases at the point of diversion through calibrated orifices, or other means, flows immediately below the Licensee's points of diversion on Salmon Creek and Corral Creek at the time and in not less than the amounts shown in the following schedules:

	Flow in cubic feet per second
Salmon Creek:	
February 1–June 30	4
July 1–January 31	1
Corral Creek:	
February 1–June 30	1
July 1–January 31	0.5

It is further provided that should the natural flow of either stream at the point of diversion be less than the applicable schedule for that time, then only the natural flow of such stream need be released past the point of diversion. Nothing herein shall be construed as requiring the Licensee to install or maintain other facilities for the measurement of such releases.

Article 38. The Licensee shall assist the California Department of Fish and Game, the U.S. Forest Service, Department of Agriculture, and the U.S. Bureau of Sport Fisheries, Department of the Interior; and shall pay the cost, not to exceed $5,000, of such studies as may be necessary to determine the adequacy of the existing screen or the need for other or different fish protective devices at the Kern River No. 3 intake works.

If from such studies it is determined that:

(1) a fish screen or other fish protective devices are necessary to prevent fish from passing into the conduit, and

(2) the passage of fish into the conduit would materially impair the fish resource in or using the waters of the Kern River, and

(3) the cost of installation and maintenance of a fish screen or other fish protective devices is justifiable in relation to the fish resource imperiled, the Licensee shall be advised of such determinations and shall be furnished with

design criteria designating the type, size, mesh and location of the screen or other devices and the time within which installation shall be made. Such screen or other devices shall be so designed, installed and operated in a manner which will not unnecessarily impede the flow of water into the conduit or prevent the Licensee from diverting water at such times and in such amounts as the Licensee is legally entitled.

If the Licensee disagrees with any of such determinations, it may request that the matter or matters in dispute be submitted to the Federal Power Commission and the California Department of Fish and Game, U.S. Forest Service, Department of Agriculture, U.S. Bureau of Sport Fisheries, Department of the Interior and Licensee shall be given notice and the opportunity to be heard before the Federal Power Commission.

The California Department of Fish and Game; U.S. Forest Service, Department of Agriculture, and U.S. Bureau of Sport Fisheries, Department of the Interior shall inspect any fish screen or other fish protective devices so installed and, if installed in accordance with the order or agreement, acceptance and approval of the installation shall be provided in writing to the Licensee and to the Federal Power Commission by the California Department of Fish and Game; U.S. Forest Service, Department of Agriculture; U.S. Bureau of Sport Fisheries, Department of the Interior.

The Licensee shall, at its expense, install, operate, maintain, and replace in the event of loss or destruction, any fish screen or other fish protective devices required under this Article.

Article 39. The Licensee shall assist the California Department of Fish and Game, the U.S. Forest Service, Department of Agriculture, and the U.S. Bureau of Sport Fisheries, Department of the Interior, and shall pay the cost, not to exceed $3,000, of such studies as may be necessary to determine the adequacy and efficiency of the fishway at the Fairview Diversion Dam.

If from such studies it is determined that:

(1) the existing fishway is so inadequate or inefficient as to materially impair the fish resource in or using the waters of the Kern River, and

(2) the cost of modification or replacement and maintenance of the existing fishway is justifiable in relation to the fish resource imperiled, the Licensee shall be advised of such determinations and shall be furnished with design criteria designating the type, size and location of the fishway required and the time within which installation shall be made.

If the Licensee disagrees with any of such determinations it may request that the matter or matters in dispute be submitted to the Federal Power Commission and the California Department of Fish and Game, U.S. Forest Service, Department of Agriculture, U.S. Bureau of Sport Fisheries, Department of the Interior and Licensee shall be given notice and the opportunity to be heard before the Federal Power Commission.

The California Department of Fish and Game, U.S. Forest Service, Department of Agriculture, and U.S. Bureau of Sport Fisheries, Department of the Interior shall inspect any fishway so installed and, if installed in accordance with the order or agreement, acceptance and approval of the installation shall be provided in writing to the Licensee and to the Federal Power Commission by the California Department of Fish and Game, U.S. Forest Service, Department of Agriculture; U.S. Bureau of Sport Fisheries, Department of the Interior.

The Licensee shall, at its expense, install, operate, maintain, and replace in the event of loss or destruction, any fishway required under this Article.

The Licensee shall maintain such flows through the fishway as the California Department of Fish and Game, U.S. Forest Service, Department of Agriculture,

U.S. Bureau of Sport Fisheries, Department of the Interior, and Licensee shall determine from time to time to be necessary. Such flows shall be considered a part of the flows required under Article 35.

Article 40. The Licensee shall, prior to any operation of its desilting works for the removal of accumulated silt, fines or other debris entrapped by Fairview Diversion Dam or appurtenant facilities, advise, consult and cooperate with the U.S. Forest Service, Department of Agriculture, and the California Department of Fish and Game and perform such operation in a manner which will be consistent with the preservation of the fish, wildlife and recreation resources of the Kern River and with the proper operation of the project.

Article 41. This Article and Articles 35, 36, 37, and 40 shall be subject to review upon the written request to the Federal Power Commission made by any one of the following: California Department of Fish and Game, U.S. Forest Service, Department of Agriculture, U.S. Bureau of Sport Fisheries, Department of the Interior, or Licensee, ten years or more after the date of issuance of license. This Article and Articles 35, 36, 37, and 40 may be revised by agreement of the California Department of Fish and Game, U.S. Forest Service, Department of Agriculture, U.S. Bureau of Sport Fisheries, Department of the Interior, and Licensee with the approval of the Federal Power Commission. In the event that agreement on any revisions so requested has not been reached by the California Department of Fish and Game, U.S. Forest Service, Department of Agriculture, U.S. Bureau of Sport Fisheries, Department of the Interior, and Licensee within six (6) months from the date of such request, the California Department of Fish and Game; U.S. Forest Service, Department of Agriculture; U.S. Bureau of Sport Fisheries, Department of the Interior; and Licensee shall be given notice and opportunity for hearing before the Federal Power Commission.

Article 42. The Licensee shall provide reports to the Commission annually of any studies made or of changes in project design or operation under Articles 38 and 39.

Article 43. The Licensee shall within one year from the date of issuance of this license submit revised Exhibit K drawings to define the project boundary and area in accordance with the rules and regulations of the Commission.

Article 44. The Licensee shall pay to the United States the following annual charges, effective as of September 20, 1963:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with its regulations, in effect from time to time. The authorized installed capacity for such purposes is 43,000 horsepower.

(ii) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands exclusive of those used for transmission line right-of-way an amount to be hereafter determined by the Commission.

(iii) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands for transmission line right-of-way purposes only, an amount to be hereafter determined by the Commission.

Article 45. The Licensee shall, within one year from the date of issuance of this license, file with the Commission a recreational use plan for the project which shall include not only recreational improvements which may be provided by others, but the recreational improvements the Licensee plans to provide.

(D) The Licensee shall, within six months of the date of issuance of this license, file with the Commission an application for amendment of minor-part license for Project No. 174 to exclude therefrom the transmission lines from Kern River No. 3 to Vestal and Kern River No. 3 to Borel Project No. 382.

(E) The exhibits designated and described in paragraph (B) above are hereby approved as part of the license for the project.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED STATES DEPARTMENT OF THE INTERIOR SOUTHWESTERN POWER ADMINISTRATION, DOCKET NO. E-7172

ORDER TEMPORARILY EXTENDING CONFIRMATION AND APPROVAL OF RATES AND CHARGES

(Issued August 7, 1964)

The Secretary of the Interior, acting on behalf of the Southwestern Power Administration (SWPA) and pursuant to the Flood Control Act of 1944 (58 Stat. 887) on June 30, 1964, filed a request for the extension of the Commission's confirmation and approval, soon to expire, of rate schedules and contractual rates and charges applicable to the integrated system of SWPA as follows:

Rate schedules	Expiration date of Commission approval	Requested extension date
IC and EF	Aug. 9, 1964	July 1, 1969
P-1	Aug. 9, 1964	Mar. 1, 1965
P-2	July 1, 1967	July 1, 1969
Contractual rates and charges contained in the following contracts with SWPA:		
Texas Power and Light Company (Contract Ispa-177)	Sept. 11, 1964	July 1, 1969
Southwestern Electric Power Co. (Contract 14-02-001-782)	Nov. 18, 1964	July 1, 1969
Oklahoma Gas and Electric Co. and Public Service Co. of Oklahoma (Contract Ispa-356).	Aug. 9, 1964	July 1, 1969

In addition, the Secretary requested confirmation and approval for a five-year period expiring July 1, 1969, of the proposed new rate schedule F-2 to supersede existing rate schedule F-1, expiring August 9, 1964.

In support of the request for a five-year approval of the above rate schedules and contractual rates and charges SWPA filed an Average Rate and Repayment Study dated February 1964, which will require analysis by the staff and review by the Commission.

The Secretary requests that in the event action is not taken by the Commission before the expiration dates of the above rate schedules and contractual rates and charges that temporary extension of confirmation and approval be granted for the existing rates until Commission's final action is taken.

The Commission finds:

It is appropriate for the purposes of the Flood Control Act of 1944 that pending review and final action by the Commission of the filing made by the Secretary to temporarily extend the confirmation and approval of the existing rate schedules and the contractual rates and charges referred to above to December 31, 1964, or to such earlier date as the Commission's final action is taken.

The Commission orders:

The confirmation and approval of Rate Schedules F–1, P–1, IC and EE, and the Contractual Rates and Charges set forth in contracts between SWPA and Texas Power and Light Company (Contract Ispa 177), Southwestern Electric Power Company (Contract 14–02–001–782), and Oklahoma Gas and Electric Company and Public Service Company of Oklahoma (Contract Ispa 356) are hereby temporarily extended to December 31, 1964, or to such earlier date as the Commission's final action is taken.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

BROOKS PIPE LINE CO, DOCKET NO. CP64–121; BROOKS GAS CORPORATION, DOCKET NOS. CI62–247 AND CI63–708

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING RATE SCHEDULE FOR FILING

(Issued August 10, 1964)

On November 29, 1963, Brooks Pipe Line Co. (Brooks Pipe) filed in Docket No. CP64–121 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition from Brooks Gas Corporation (Brooks Gas) and the operation of 18 miles of 6-inch pipeline extending from a point in the Velrex Field, Schleicher County, Texas, to the Mertzon gasoline plant in Irion County, Texas, and to transport and deliver natural gas for the account of Brooks Gas, all as more fully set forth in the application.

Brooks Pipe proposes to finance the acquisition of the subject pipeline at a cost of $200,000, less accrued depreciation, by the issuance of common stock which will be exchanged with Brooks Gas in payment for said line.

Brooks Gas will pay Brooks Pipe two cents per Mcf for gas transported through said line. Brooks Gas, after processing at the Mertzon plant, will sell and deliver the gas at the tailgate of said plant to Northern Natural Gas Company (Northern Gas).

On September 1, 1961, as amended on December 18, 1963, in Docket No. CI62–247, and on December 3, 1962, in Docket No. CI63–708, Brooks Gas filed applications pursuant to Section 7(c) of the Natural Gas Act for certificates of public convenience and necessity authorizing the sale of natural gas to the Mertzon Corporation (Mertzon) and to Northern Gas, respectively, all as more fully set forth in the applications in said dockets.

In Docket No. CI62–247 Brooks Gas proposes to sell to Mertzon natural gas purchased from several producers in the Brooks Field, Irion County, Texas. Said gas will be transported and delivered by Northern Natural Gas Pipeline Company (Northern Pipeline) to the Mertzon gasoline plant where it will be processed by Brooks Gas with Mertzon's equipment as well as with additional equipment owned and installed by Brooks Gas. The residue gas will then be sold to Mertzon who in turn will resell and deliver said gas to Northern Pipeline. The proposed sale to Mertzon will be made pursuant to a contract, dated January 5, 1961, under which the rate is 12.25 cents per Mcf (14.65 psia) less a flat monthly fee of $1,500 due Mertzon for use of its gasoline facilities by Brooks Gas. Concurrently with the filing of its application, Brooks Gas tendered for

filing its FPC Gas Rate Schedule No. 1 covering the proposed sale in Docket No. CI62-247.

In Docket No. CI63-708 Brooks Gas proposes to sell to Northern Gas natural gas purchased from producers in the Velrex Field, Schleicher County, Texas. The subject gas will be transported from said field as proposed and described above in Docket No. CP64-121. The proposed sale will be made pursuant to a contract, dated September 14, 1962, and at a rate of 16.0 cents per Mcf (14.65 psia).

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on August 6, 1964, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications, amendment and exhibits, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Brooks Pipe Line Co., a Texas corporation having its principal place of business in Houston, Texas, upon the acquisition of the facilities and the commencement of operation thereof for which authorization is requested in Docket No. CP64-121, will be engaged in the transportation of natural gas in interstate commerce and will be, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) Applicant, Brooks Gas Corporation, an independent producer of natural gas, is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption subject to the jurisdiction of the Commission and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(3) The facilities to be acquired and operated by Brooks Pipe, as hereinbefore described and as more fully described in the application in Docket No. CP64-121, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the acquisition and operation thereof and the proposed transportation of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The sales of natural gas by Brooks Gas hereinbefore described, as more fully described in the application, as amended, in Docket No. CI62-247, and in the application in Docket No. CI63-708, will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sales by Brooks Gas, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The sales of natural gas by Brooks Gas, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(6) The acquisition and operation of the facilities and the proposed transportation of natural gas by Brooks Pipe are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(7) Brooks Pipe and Brooks Gas are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(8) Public convenience and necessity require that the certificate issued hereinafter to Brooks Pipe and the rights granted thereunder be conditioned upon Brooks Pipe's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (d)(2), (d)(3) and (e) of Section 157.20 of such Regulations.

(9) Brooks Gas' proposed FPC Gas Rate Schedule No. 1 should be accepted for filing to become effective on the date of initial delivery.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Brooks Pipe Line Co., to acquire and operate the subject facilities and to transport natural gas as hereinbefore described, all as more fully described in the application in Docket No. CP64-121, upon the terms and conditions of this order.

(B) Certificates of public convenience and necessity be and the same are hereby issued, upon the terms and conditions of this order, authorizing the sales by Brooks Gas Corporation of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary for such sales, all as hereinbefore described and as more fully described in the applications in Docket Nos. CI62-247 and CI63-708.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (d)(2), (d)(3) and (e) of Section 157.20 of such Regulations.

(D) The facilities hereby authorized to be acquired and operated by Brooks Pipe shall be acquired and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 3 months from the date on which this order issues.

(E) The certificates issued to Brooks Gas in paragraph (B) above are not transferable and shall be effective only so long as Brooks Gas continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(F) The grant of the certificates issued in paragraph (B) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Brooks Gas. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. Nor shall the grant of the certificates aforesaid for service to the particular customers involved imply approval of all of the terms of the contracts, particularly as to the cessation of service upon termination of said contracts, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificates aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sale of natural gas subject to said certificates.

(G) Brooks Gas' FPC Gas Rate Schedule No. 1 be and the same is hereby accepted for filing to become effective on the date of initial delivery.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP64-285

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 10, 1964)

On May 28, 1964, Cities Service Gas Company (Applicant) filed in Docket No. CP64-285 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a tap, meter and regulator equipment on its Pampa 20-inch transmission line at a point located in Harper County, Kansas. The purpose of the proposed facilities is to enable Applicant to make during a two-month period estimated sales of 27,600 Mcf of natural gas to Mid-Kansas Construction Company for use as fuel in heating asphalt for state highway construction, all as more fully described in the application.

The estimated cost of the proposed facilities is $2,200, which will be financed from funds on hand.

A temporary certificate of public convenience and necessity was issued on June 26, 1964. Service to this customer will not impair Applicant's ability to serve its existing customers.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 6, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Bartlesville, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G-298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sale and delivery of natural gas as hereinbefore described are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued upon the terms and conditions of this order, authorizing Applicant to construct and operate the proposed facilities hereinbefore described, and to deliver natural gas to Mid-Kansas Construction Company for the purposes stated in the application.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of said Regulations.

(C) The certificate issued by paragraph (A) above is subject to the express condition that the proposed facilities be removed upon completion of the instant road construction project, and that Applicant notify the Commission of the date of such removal.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP64-234

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, PERMITTING AND APPROVING ABANDONMENT OF FACILITIES AND PERMITTING WITHDRAWAL OF INTERVENTION PETITION

(Issued August 10, 1964)

On April 13, 1964, Colorado Interstate Gas Company (Applicant) filed in Docket No. CP64-234 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the abandonment of certain other natural gas facilities, to enable Applicant to increase its Rocky Mountain transmission capacity to 810,000 Mcf per day to meet the 1964-65 requirements of existing customers and to offset the decline in delivery pressures from certain producers in the Mocane area.

The new facilities which Applicant requests authorization to construct consist of a 32.0-mile 10¾-inch pipeline Trinidad Lateral extension and a 2,640 horsepower Mocane Compressor Station. The existing facilities proposed to be retired to modernize and provide greater capacity and more dependable and safer service on Applicant's system are: the 18.4-mile 8⅝-inch LaJunta Lateral, a 27.0-mile section of the 22-inch Amarillo-Denver Main Line and the 10.0-mile 16-inch CF&I-South Pueblo Lateral.

The total estimated cost of new facilities under this application is $2,151,181, with certain related facilities to cost $80,022, which costs will be financed from current working funds or interim bank loans.

The proposed Trinidad Lateral extension will replace the LaJunta Lateral and the 27.0-mile section of the Amarillo-Denver Main Line (which are being retired) and will make possible increased deliveries to Raton Natural Gas Company (Raton), an existing customer, which is expected to apply for authorization to expand its system to serve a new area between Raton and Las Vegas, New Mexico. In the instant application, Applicant asks removal of the present volume restriction of 2,100 Mcf per day on its deliveries to Raton contained in the Commission's order issued July 19, 1963, 30 FPC 356, in Docket

No. CP63-344 (Phase One) to permit deliveries of up to 7,022 Mcf per day to Raton.

Due notice of the subject application has been given by publication in the Federal Register on June 27, 1964 (29 F.R. 8189). On July 15, 1964, Transwestern Pipeline Company filed a petition for permission to intervene in this proceeding but on July 28, 1964, upon consideration of Applicant's answer filed July 24, 1964, to said petition, Transwestern filed a withdrawal of its petition. No other petition to intervene, notice of intervention or protest to the granting of the application has been filed herein.

At a hearing held on August 6, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of June 5, 1945, in Docket No. G-294 (4 FPC 936).

(2) The facilities proposed to be constructed and operated as hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Said construction and operation of the facilities proposed by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

(6) The facilities proposed to be abandoned by Applicant as hereinbefore set forth, as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission, and the abandonment of said facilities by Applicant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(7) The abandonment of facilities by Applicant as hereinbefore described is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

(8) It is in the public interest and appropriate in carrying out the provisions of the Natural Gas Act to amend, as hereinafter ordered, the Commission's order issued July 19, 1963 (30 FPC 356), in Docket No. CP63-344 (Phase One), *et al.* by removing therefrom the volume restriction of 2100 Mcf per day on Applicant's deliveries to Raton Natural Gas Company to enable Raton to meet its estimated third year requirements of 7022 Mcf per day.

(9) Good cause has been shown for permitting the withdrawal of the petition to intervene filed by Transwestern Pipeline Company on July 15, 1964.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Colorado Interstate Gas Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months of the date on which this order issues.

(D) Permission for an approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application in this proceeding, be and the same are hereby granted.

(E) The Commission's order issued July 19, 1963, in Docket No. CP63-344 (Phase One), *et al.* is hereby amended by removing therefrom the volume restriction of 2100 Mcf per day on Applicant's deliveries to Raton Natural Gas Company to enable Raton to meet its estimated third year requirements of 7022 Mcf per day.

(F) The petition for permission to intervene filed in this proceeding on July 15, 1964, by Transwestern Pipeline Company is hereby permitted to be withdrawn effective on the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

LONE STAR GAS COMPANY, DOCKET NO. CP64-268

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 10, 1964)

On April 30, 1964, Lone Star Gas Company (Applicant) filed in Docket No. CP64-268 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 10.7 miles of 8-inch pipeline extending from the terminus of existing Line 0-38-1 near its junction with Line E-22 in a northeasterly direction to Line E-26 near its junction with Line E in Red River County, Texas.

The facilities above described will be used to deliver additional volumes of natural gas from Applicant's transmission system to Dierks Forests, Inc., (Dierks), for use in the latter's insulation board manufacturing plant located near Broken Bow, Oklahoma. On July 5, 1960, the Commission issued an order authorizing Applicant to deliver to Dierks volumes of gas up to a maximum of 3,360 Mcf per day. The requirements of Dierks are now 4,740 Mcf per day.

All gas to be delivered to Dierks by Applicant is on an interruptible basis.

The estimated cost of the facilities proposed is $183,620, which will be financed from working capital of Applicant.

The proposed pipeline, above described, will not only provide for increased deliveries of gas to Dierks, but will also strengthen the service to other customers of Applicant on the eastern segment of its Line E System.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 6, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Lone Star Gas Company, a Texas corporation having its principal place of business in Dallas, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 11, 1944, in Docket No. G–442 (4 FPC 565).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission; and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity and the same is issued authorizing Applicant, Lone Star Gas Company, to construct and operate facilities and to deliver up to 4740 Mcf of natural gas per day to Dierks Forest Inc. all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The certificate issued hereby is granted on the express condition that the additional interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Lone Star Gas Company for firm resale service to its customers.

(D The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP64-32; THE OHIO FUEL GAS COMPANY, DOCKET NO. CP64-152

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 10, 1964)

On July 31, 1963, as amended on February 20 and April 30, 1964, Texas Gas Transmission Corporation (Texas Gas) filed in Docket No. CP64-32 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities for the sale and delivery of natural gas to three existing customers for resale, all as more fully set forth in the application and amendments.

The facilities for which authorization is sought herein consist of: (1) a sales meter station and two side valves located on Texas Gas' 26-inch main pipeline near its northern terminus at Middletown, Butler County, Ohio, to make delivery of natural gas to The Ohio Fuel Gas Company (Ohio Fuel) for resale to Cincinnati Gas & Electric Company (Cincinnati) for use in the latter's new gas-fired jet engine driven turbine generator station for electric peaking operations, and (2) two new side valves and appurtenances as additional delivery points to existing customers, one in Livingston County, Kentucky, to deliver an estimated additional 66,338 Mcf of natural gas annually to Western Kentucky Natural Gas Company (Western Kentucky) for resale in the community of Grand Rivers, Kentucky, and one in Orange County, Indiana, to deliver an estimated additional 3,500 Mcf of natural gas annually to Indiana Natural Gas Corporation (Indiana Natural) for resale to three rural house-heating customers and one industrial customer for grain drying operations.

The total estimated cost of the proposed facilities in (1) above is $43,175, of which $34,060 for the sales meter station will be reimbursed by Ohio Fuel to Texas Gas, and the total estimated cost of the proposed facilities in (2) above is $5,150.

All gas involved under the application in Docket No. CP64-32, as amended, will be sold under existing rate schedules and there will be no increase in existing contract demands.

On January 2, 1964, as amended on March 18, 1964, The Ohio Fuel Gas Company (Ohio Fuel) filed in Docket No. CP64-152 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the utilization of the delivery point in Butler County, Ohio, which Texas Gas requests authority to construct and operate in Docket No. CP64-32, and authorizing the delivery of additional quantities of natural gas to Cincinnati Gas & Electric Company at that point for the purpose, hereinbefore stated. Actual deliveries of gas will be made by Texas Gas to Cincinnati for the account of Ohio Fuel. No increase in Cincinnati's present contract demand of 80,000 Mcf per day from Ohio Fuel is requested.

Due notice of the subject applications has been given by publication in the Federal Register on July 15, 1964 (29 F.R. 9578). No petition to intervene, notice of intervention or protest to the granting of the applications has been received.

At a hearing held on August 6, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence including

the applications, amendments and exhibits, submitted in support of the authorizations sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued March 30, 1949, in Docket No. G–859, *et al.* (8 FPC 228).

(2) Applicant, The Ohio Fuel Gas Company, an Ohio corporation having its principal place of business in Columbus, Ohio, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of August 21, 1945, in Docket No. G–371 (4 FPC 1033).

(3) The proposed construction and operation of facilities and sale and delivery of natural gas by Texas Gas, as hereinbefore described and as more fully described in the application and amendments in Docket No. CP64–32, and the proposed utilization of Texas Gas' delivery point for the delivery of additional natural gas for the account of Ohio Fuel as hereinbefore described and as more fully described in the application and amendment in Docket No. CP64–152, respectively, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid proposed construction and operation of facilities and sale and delivery of natural gas by Texas Gas, and the proposed delivery of additional natural gas for the account of Ohio Fuel are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) Applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificates hereinafter issued to Texas Gas and Ohio Fuel and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued to Texas Gas Transmission Company authorizing the construction and operation of facilities and the sale and delivery of natural gas as hereinbefore described and as more fully described in the application and amendments in Docket No. CP64–32, and to The Ohio Fuel Gas Company for the utilization of the Butler County delivery point of Texas Gas and the delivery of natural gas as hereinbefore described and as more fully described in the application and amendment in Docket No. CP64–152, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and the deliveries of natural gas commenced by Applicants, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months of the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED FUEL GAS COMPANY, DOCKET NO. CP63-305

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 10, 1964)

On May 13, 1963, United Fuel Gas Company (Applicant) filed in Docket No. CP63-305 an application, first and second supplements thereto on August 19 and October 24, 1963, respectively, and a first amendment thereto on February 27, 1964, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, for permission and approval to abandon certain natural gas compressor facilities, and requesting the issuance of a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas transmission and measuring facilities and the sale and delivery of natural gas to an existing wholesale customer, all as more fully set forth in the application, supplements and amendment on file with the Commission.

Applicant proposed initially to abandon segments of 14 and 16-inch pipeline between the Town of Hurricane, Putnam County, West Virginia, and the Kanawha River, a segment of a 14-inch line between its Lanham Compressor Station in Kanawha County, its Lewis Compressor Station in Roane County, and a segment of 8-inch pipeline between its Storage Field X-4 and Hurricane, all in West Virginia, as well as its Lake Compressor Station in Putnam County, West Virginia. Due to Applicant's inability to obtain permission and approval of the West Virginia Public Service Commission to either transfer to Consumers Gas Utility Company its natural gas distribution facilities serving in part retail customers who would be affected by the proposed abandonment of segments of 14-inch and 16-inch lines east of Hurricane, West Virginia, or to abandon 19 retail services attached to Applicant's 14-inch pipeline between its Lanham and Lewis Compressor Stations. Applicant has withdrawn its request for approval of the abandonment of the foregoing facilities and now seeks abandonment only of its Lake Compressor Station, comprised of one 880 Hp compressor unit located in Putnam County, West Virginia.

Applicant further proposes to withdraw its request for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas to Consumers Gas Utility Company, and for the construction and operation of two measuring and regulating stations in Putnam County, West Virginia, for the sale and delivery of gas to Consumers.

At the present time Applicant proposes (a) to abandon its Lake Compressor Station, (b) to construct and operate 2.1 miles of 8-inch transmission line extending in a northerly direction from a point of interconnection of its existing facilities with those of Tennessee Gas Transmission Company, Putnam County, West Virginia, to its high pressure transmission system near the Town of Hurricane, Putnam County, West Virginia, and (c) to construct and operate a measuring station providing a substitute point of delivery to Union Oil & Gas, Inc., an existing wholesale customer situated in Putnam County, West Virginia, requesting a contract demand volume of 500 Mcf daily.

The sole purpose of the Applicant's Lake Station is to compress gas for injection into its Storage Pool X-4 during the latter part of its injection season. Applicant proposes to abandon the station and utilize pressure available from its high pressure system rather than continue operating the compressor station on a limited basis. Applicant states that Union Oil has requested the sub-

stitute point in view of low delivery pressures presently available at its existing delivery point on Applicant's gathering system.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, as supplemented and amended, has been filed.

At a hearing held on August 6, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application, supplements and amendment submitted in support of the authorizations sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, United Fuel Gas Company, a West Virginia corporation having its principal place of business in Charleston, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 1, 1944, in Docket No. G–341 (4 FPC 534).

(2) The facilities proposed to be abandoned by Applicant, as hereinbefore described and as more fully described in the application, supplements and amendment filed in the proceeding are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and permission and approval therefor should be granted as hereinafter ordered.

(4) The proposed construction and operation of facilities, and the transportation and sale of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application, supplements and amendment filed in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The aforesaid proposed construction and operation of facilities, and the transportation and sale of natural gas in interstate commerce are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(8) It is appropriate in the administration of the Natural Gas Act and in the public interest that Applicant file a service agreement executed with Union Oil & Gas, Inc., reflecting the designation and location of the substitute point of delivery and the fixing of a contract demand of 500 Mcf per day.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, as more fully described in the application, supplements and amendment in this proceeding, are hereby granted.

(B) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the construction and operation of facilities, and the transportation and sale of natural gas to Union Oil & Gas, Inc. of a volume not to exceed 500 Mcf daily, as hereinbefore

described, all as more fully described in the application, supplements and amendment thereto, upon the terms and conditions of this order.

(C) The certificate issued by paragraph (B) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(D) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

(E) The facilities hereby authorized shall be constructed and placed in actual operation, and the transportation of gas authorized in paragraph (B) above shall commence as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations within six months of the date on which this order issues.

(F) Applicant shall file a service agreement executed with Union Oil & Gas, Inc. reflecting the designation and location of the substitute point of delivery and the fixing of a contract demand of 500 Mcf per day.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

WISCONSIN POWER & LIGHT COMPANY, PROJECT NO. 2346

ORDER ISSUING LICENSE (MINOR)*

(Issued August 10, 1964)

Application was filed on March 1, 1963 by Wisconsin Power & Light Company (Applicant) of Madison, Wisconsin, for a license under Section 4(e) of the Federal Power Act (Act) for constructed minor Project No. 2346, known as the Monterey Plant, located on Rock River, in the City of Janesville, Rock County, Wisconsin.

The project has been in operation for over 100 years. The present powerhouse, with an installed capacity of 430 horsepower, was constructed in 1926. For the reasons set forth in Opinion No. 357 (27 FPC 830), the license herein granted shall have a termination date of December 31, 1993, and an effective date of April 1, 1962.

The earliest commercial navigation on Rock River, following the exploration and furtrading periods, was associated with the development of the lead mines in Northwestern Illinois and Southwestern Wisconsin, during the period from about 1830 to 1850. Both the keel-boats and small steamboats of the time operated on Rock River to Janesville, Wisconsin, and in at least one instance, as far upstream therefrom as Jefferson, Wisconsin. The Rock River has been considered navigable from its mouth to Janesville.

The Secretary of the Army and the Corps of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project, certain conditions in the interests of fish and wildlife resources and recreation.

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*Rehearing denied, 32 FPC 959.

The Department of Health, Education, and Welfare has advised that there have been no apparent water supply, water quality, or vector control problems created or intensified by the project, and none is anticipated.

The Commission finds:

(1) The Rock River from its mouth to at least Janesville is a navigable waterway of the United States.

(2) Applicant is a corporation organized under the laws of the State of Wisconsin, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The amount of annual charges to be paid under the license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(7) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

Section 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(a); 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 18, except insofar as it relates to fishways 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to Wisconsin Power & Light Company (Licensee) of Madison, Wisconsin, under Sections 4(e) and 10(i) of the Act, for a period effective as of April 1, 1962, and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2346, located on Rock River, a navigable water of the United States, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is hereby incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2346 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined.

(ii) A concrete overflow dam 375 feet long; a canal controlled by gates conveying water to a 51 x 34½ foot powerhouse containing two 160 kw units operating under a normal head of 9 feet; and all other structures, fixtures,

equipment or facilities used or useful in the operation and maintenance of the project and located on the project area; and all rights and interests therein, the possession of which is necessary in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-9 (July 1, 1964) entitled "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States", which terms and conditions, designated as Articles 1 through 11, are attached hereto and made a part hereof; and subject to the following special condition set forth herein as an additional article:

Article 12. The Licensee shall pay to the United States the following annual charge:

(1) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, $22.00.

(D) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

FORM L-9

(JULY 1, 1964)

TERMS AND CONDITIONS OF LICENSE FOR CONSTRUCTED MINOR PROJECT AFFECTING NAVIGABLE WATERS OF THE UNITED STATES*

Article 1. The entire project, as described in the order of the Commission, shall be subject to all the provisions, terms, and conditions of the license.

Article 2. Except when emergency shall require for the protection of life, health, or property, no substantial alteration or addition shall be made to any dam or other project works under the license without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct.

Article 3. The project, including its operation and maintenance and any work incident to additions or alterations authorized by the Commission shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and of any such alteration thereof, and shall notify him of the date upon which work with respect to any alteration will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Con-

*This Form L-9 may be used when the Commission waives certain provisions of the Federal Power Act pursuant to Section 10(i) of the Act.

struction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 4. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: Provided that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 5. Insofar as any material is dredged or excavated in the prosecution of any work authorized under the license, or in the maintenance of the project, such material shall be removed and deposited so it will not interfere with navigation, and will be to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 6. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 7. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing the Licensee shall modify the project operation as may be prescribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provision of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve

fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 8. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without replacement, or shall abandon or discontinue good faith operation of the project for a period of three years, or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address to the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license, and not less than 90 days after public notice may in its discretion terminate the license.

Article 9. Upon abandonment of the project the Licensee shall remove all buildings, equipment and power lines to a condition satisfactory to the Commission's authorized representative and shall fulfill such other obligations under the license as the Commission may prescribe.

Article 10. The right of the Licensee and of its transferees and successors to use or occupy navigable waters of the United States under the license for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless a new license is issued pursuant to the then existing laws and regulations.

Article 11. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly waived in the license.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward* and David S. Black.

DIXON MANAGEMENT CORP., ET AL., DOCKET NOS. RI64-768 AND RI64-769

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, AND TERMINATING PROCEEDINGS

(Issued August 11, 1964)

On June 25, 1964, Dixon Management Corp., *et al.* (Dixon) submitted an offer of settlement in these proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves proposed increased rates for sales of natural gas made to Tennessee Gas Transmission Company (TGT) by Dixon. The offer relates to sales made under Supplement Nos. 4, 6 and 3 to Dixon's FPC Gas Rate Schedule Nos. 4, 5 and 13, respectively, in various fields in Texas R.R. Com. District No. 3. Each of the proposed increased rates were suspended by order of the Commission until November 21, 1964.

Under the terms of the offer, Dixon proposes to eliminate the favored-nation price redetermination and the periodic escalation provisions from the rate schedule and to establish a 15¢ per Mcf rate for the subject sales.[1] No protests or objections have been filed to the offer.

The proposed settlement is consistent with the provisions of the Second Amendment to the Commission's *Statement of General Policy No. 61-1*, issued December

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*This matter was decided prior to the death of Commissioner Woodward who participated in the decision.

[1] Dixon's FPC Gas Rate Schedule Nos. 5 and 13 are subject to a dehydration charge by TGT of 0.21931¢ per Mcf.

20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Dixon's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservations of the right to file increases to cover future tax increases. Nor, may our action herein be construed as constituting approval of any future rate increase that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Dixon's rates and rate schedules.

The Commission finds:

The proposed settlement of each of the above-designated proceedings, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Dixon on June 25, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Dixon on June 25, 1964, is hereby approved in accordance with the provisions of this order.

(B) Dixon shall file, within 30 days from the date of issuance of this order, notices of change in rates providing for the 15¢ per Mcf rate specified in its offer of settlement, and executed contractual amendments to its FPC Gas Rate Schedule Nos. 4, 5 and 13 eliminating the favored-nation, price redetermination, and the periodic escalation provisions therefrom. The notices of change and the contractual amendments shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Upon notification by the Secretary of the Commission that Dixon has complied with the terms and conditions of the order, the rates and charges of 15¢ per Mcf at 14.65 psia, specified in its offer of settlement, subject to any applicable contract deductions, shall be effective as of the date of issuance of this order and the above designated proceedings shall be deemed terminated.

(D) The acceptance by the Commission of Dixon's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Dixon, including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward* and David S. Black.

KENNEBEC RIVER PULP & PAPER COMPANY, INC., PROJECT NO. 2365

ORDER ISSUING LICENSE (MAJOR)

(Issued August 11, 1964)

Application was filed on May 10, 1963 by Kennebec River Pulp & Paper Company, Inc. (Applicant) of New York, New York, for a license under Section 4(e) of the Federal Power Act (Act) for the constructed Anson Development, designated as Project No. 2365, located on the Kennebec River, in Somerset County, Maine, in the Towns of Anson and Madison.

*This matter was decided prior to the death of Commissioner Woodward who participated in the decision.

According to the application, the project site was acquired in 1885 for the purpose of developing power to be used in making ground-wood, pulp and paper. From 1921 to 1923 the dam was rebuilt and the present powerhouse was constructed. In 1929 a fallen portion of the original masonry dam built in 1923 was, along with the rest of the dam extensively rebuilt with reinforced concrete extending the length of the whole dam's base and top. The three foot high flashboards were replaced by five foot boards. The only alterations thereafter were made after the 1936 flood when a dike and sluice for pulpwood floating were installed. Applicant acquired the project properties on July 13, 1959.

The Anson Development has a total installed capacity of 6,000 kilowatts. The energy generated by the project is used entirely in Applicant's pulp and paper mill.

In its order issued May 21, 1954 in Docket No. E-6456,[1] the Commission found the Kennebec River from its mouth at least up to Moosehead Lake constitutes navigable water of the United States. The Kennebec River has its source in Moosehead Lake.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, advised that the project structures affecting navigation were considered satisfactory, and the plans of the project structures affecting navigation had been approved pursuant to Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project, certain conditions in the interests of fish and wildlife resources.

The Department of Health, Education, and Welfare, in reporting on the application, advised that neither the water supply nor water quality control is significantly affected by the project, and the granting of a license therefor is not expected to create or intensify vector problems.

Inasmuch as Applicant failed to file as a part of its application Exhibit K, a detailed map of the entire project area, we are hereinafter requiring such to be filed.

For the reasons set forth in our Opinion No. 357,[2] the license herein granted shall have a termination date of December 31, 1993. Since there was no project construction after 1935, we will make the effective date of the license May 1, 1954, the first day of the month in which we determined the Kennebec River to be a navigable water, as set forth above.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of New York and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purpose of a license for the project.

(2) No conflicting application is before the Commission. Public notice of the filing of the application has been given as required by the Act. No protests or petitions to intervene have been received.

(3) The issuance of a license as hereinafter provided will not affect a Government dam or the development of any water resources for public purposes which should be undertaken by the United States.

(4) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

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[1] 13 FPC 1076.

[2] New Hampshire Water Resources Board, Docket No. E-6807, 20 FPC 99-101.

(5) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 8,000 horsepower, and the amount of annual charges, based upon such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(6) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to Kennebec River Pulp & Paper Company, Inc. (Licensee) of New York, New York, under Section 4(e) of the Federal Power Act (Act), for a period effective May 1, 1954 and terminating December 31, 1993, for the continued operation and maintenance of the Anson Development constituting Project No. 2365, located on the Kennebec River, a navigable water of the United States, in Somerset County, Maine, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of the license, and subject to such rules and regulations as the Commission has issued or prescribed thereunder.

(B) Constructed Project No. 2365 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purpose of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by the following exhibit which formed part of the application for license and which is designated and described as follows:

Exhibit J: Sheet 1 (FPC No. 2365-2) General Map Showing the Entire Project Area.

(ii) Project works consisting of:

A concrete gravity type dam approximately 38 feet high and with an overall length of about 630 feet topped with 5-foot flashboards (except for a 50-foot section) and having a crest elevation of 241.67 feet (U.S.C. & G.S.); a 14-foot long sluice; a 50-foot waste gate section near the powerhouse; a powerhouse integral with the dam equipped with five turbines rated 1,500 hp each, connected to five generators with a total installed capacity of 6,000 kw; and appurtenant facilities; the location, nature and character of which are more specifically shown and described by the exhibit hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L: Sheet 1 (FPC No. 2365-3) entitled, "Detail Map Showing the Project Dam and Powerhouse"

Sheet 2 (FPC No. 2365-4) entitled, "Power Plant, Pain-Section-Elevation"

Exhibit M entitled, "Exhibit M, Equipment", consisting of one typewritten page, filed in the Commission May 10, 1963.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–3 (Revised November 1, 1963), entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States (30 FPC 1658), which terms and conditions, designated as Articles 1 through 27, are attached hereto and made a part hereof except for Article 4 thereof; and subject to the following special conditions set forth herein as additional articles:

Article 28. The project, including its operation and maintenance and any work incident to additions or alterations authorized by the Commission whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and of any such alteration thereof, and shall notify him of the date upon which work with respect to any alteration will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 29. The Licensee shall pay to the United States the following annual charge:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purposes is 8,000 horsepower.

Article 30. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the costs of making the determinations pursuant to the then current Commission Regulations under the Federal Power Act within 60 days from the date of rendition of a bill therefor and, upon failure to do so, shall thereafter be subject to the payment of the penalties specified in the then current Regulations. The Licensee shall have the right to pay such amounts under protest within the 60-day period and to reconsideration of the amounts billed or a hearing as provided by the then current Regulations under the Act.

Article 31. The Licensee shall within one year from the date of issuance of this license, file with the Commission a detail map, Exhibit K.

Article 32. The Licensee shall, within one year from the date of issuance of this license, file with the Commission for approval a recreational use plan for the project which shall include not only recreational improvements which may be provided by others, but the recreational improvements the Licensee plans to provide.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of the license for the project.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward* and David S. Black.

POTOMAC LIGHT & POWER COMPANY, PROJECT NO. 2343

ORDER ISSUING LICENSE (MAJOR)

(Issued August 11, 1964)

Application was filed on February 27, 1963, by Potomac Light & Power Company (Applicant) of Martinsburg, West Virginia, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2343, known as the Millville Hydro Station, located on the Shenandoah River, in Jefferson County, West Virginia, near the Town of Millville.

According to the application, the original dam, headgate, headrace, powerhouse and various generating equipment, were constructed in 1905. Several changes in the generating equipment were made thereafter until 1937 in which year a fire caused considerable damage to the project. In 1938 the powerhouse was rebuilt, utilizing only an 840 kilowatt vertically driven generator and its 1,126 horsepower turbine of the then existing equipment. A new 1,000 kilowatt vertically driven generator with a 1,500 horsepower water wheel was installed in 1938. In 1939 an additional 1,000 kilowatt vertically driven generator with a 1,495 horsepower water wheel was installed. These changes in the generating equipment were made with minor modifications to the powerhouse.

The Millville Project has 3 turbines with a total installed rated capacity of 4,121 horsepower connected to 3 generators having a total rated capacity of 2,840 kilowatts. The energy generated by the project is delivered to Applicant's distribution system for public utility purposes.

Millville Hydro Station is located on the Shenandoah River 5.6 miles above its mouth and just below Little's Falls located about 6.5 miles above its mouth. The Potomac Co., organized under the leadership of George Washington, attempted the improvement of the Shenandoah River by the removal of obstructions to a point 60 miles above its mouth and the construction of locks and canals at the principal falls and rapids in that section. The works were put in operation in 1807 and boats, described as being 8 by 60 feet, having a draft of 18 inches, navigated this section of the river.[1] The value of the freight brought down the river was large, considerable tolls were collected, and the artificial works were kept in a fair condition. The upstream commerce on the

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*This matter was decided prior to the death of Commissioner Woodward who participated in the decision.

[1] House Document No. 101, 73rd Cong. 1st Sess., 1934, p. 40.

river, as far up as Little's Falls, was small, navigation being difficult because of its steepness.[3]

A U.S. Army report on the Potomac River and its tributaries,[3] recommends the construction of a dam on the Shenandoah River downstream from the Millville Project site. The dam would be about 193 feet high to elevation 495 feet (U.S.G.S.) creating a reservoir with 600,000 acre feet of usable storage which would inundate the Millville Project. The Corps' proposed project would have an installed capacity of 60,000 kilowatts and would generate an estimated 247,000,000 kwh annually. The latest report on the Potomac River Basin[4] shows the proposed project near the Millville Project as a future power and storage development. The report recommends the construction of the Brocks Gap and Staunton projects on the North and Middle Forks of the Shenandoah River, respectively. Development of these sites would provide about 230,000 acre feet of storage to regulate river flows for municipal purposes. Construction of either or both of these storage projects would enhance power development of the Millville site by providing a better regulated flow. Provision is hereinafter made in the interest of a more comprehensive development of the Shenandoah River.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, advised that the project structures affecting navigation were considered satisfactory; that special terms and conditions in the interest of navigation were not considered necessary; and that the plans of the project structures affecting navigation had been approved pursuant to Section 4(e) of the Act.

The Department of the Interior in reporting on the application, recommended for inclusion in any license for the project certain conditions in the interests of fish and wildlife.

The Department of Health, Education and Welfare, in reporting on the application, advised that the project does not significantly affect water supply or water quality control, nor is it expected that the granting of a license for the project will create or intensify vector problems.

In accordance with the criteria set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of January 1, 1938 and a termination date of December 31, 1987, since neither a declaration of intention nor a timely application for license was filed with respect to the aforesaid construction in 1938 and 1939.

The Commission finds:

(1) The Shenandoah River from its confluence with the Potomac River to at least Little's Falls located upstream from the Millville Project is a navigable waterway of the United States.

(2) The Shenandoah River is a stream over which Congress has jurisdiction under its authority to regulate interstate and foreign commerce.

(3) The project does not affect lands of the United States.

(4) Applicant is a corporation organized under the laws of the State of West Virginia, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(5) No conflicting application is before the Commission. Public notice of the filing of the application has been given as required by the Act. No protests or petitions to intervene have been received.

[3] "Examination of Shenandoah River, Va. and West Va.", Annual Report of the Chief of Engineers, 1880, Part I, P. 665.

[3] House Document No. 622, 79th Cong. 2d Sess., 1946.

[4] U.S. Army Engineer District, Baltimore (February 1963).

(6) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(7) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(8) The non-automatic oil circuit breaker, the 2,400 volt bus, and the 2.4/34.5 kv power transformer, which were included in the application for license and which are in general terms referred to in paragraph (B) below, are parts of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project.

(9) The 2.4 kv and 34.5 kv transmission lines from the Millville Project to Applicant's old Millville steam station, together with the 2.4/34.5 kv step-up substation, the generator leads, and all appurtenant facilities which were not included in the application for license, are parts of the project within the meaning of Section 3(11) of the Act and should be included in the license as hereinafter provided.

(10) The installed horsepower capacity of the project for the purpose of computing the capacity component of the administrative annual charge is 3,800 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(11) The exhibits designated and described in paragraph (B) below, which were included in the application for license, conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to Potomac Light & Power Company (Licensee) of Martinsburg, West Virginia, under Section 4(e) of the Federal Power Act for a period effective January 1, 1938 and terminating December 31, 1987, for the continued operation and maintenance of Project No. 2343, located on the Shenandoah River, a navigable water of the United States, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Constructed Project No. 2343 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J, 2 sheets (FPC Nos. 2343-1 and -2). Sheet 1—General Highway Map of Jefferson County, West Virginia. Sheet 2—Map of Electric Properties.

Exhibit K, 1 sheet (FPC No. 2343-3) Map of Project Area.

(ii) The project, which is constructed and known as the Millville Hydro Station, consists of an 800 foot gravity dam 15 feet in height; a 30 foot wide by 12 foot deep head race—1,600 feet in length—located along the west bank of the river; a 37 foot by 78 foot concrete and brick powerhouse containing 3 vertically driven generators rated at a total capacity of 2,840 kw; a substation and switch-

yard for distribution of power generated at the plant; and appurtenant electrical and mechanical facilities which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed a part of the application for license and which are designated and described as follows:

Exhibit L: General Design Drawings Sheet 1 (FPC No. 2343–4) entitled, "Potomac Light & Power Company, Millville Hydro Station, Millville, West Virginia, Floor Plan"

Sheet 2 (FPC No. 2343–5) entitled, "Potomac Light & Power Company, Millville Hydro Station, Millville, West Virginia, Elevations and Sections".

Exhibit M: Two typewritten pages, entitled, "Exhibit M, Millville Hydro Station", filed with the Commission February 27, 1963.

(iii) All other structures, fixtures, equipment or facilities useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–3 (Revised November 1, 1963), entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (30 FPC 1658), which terms and conditions, designated as Articles 1 through 27, are attached hereto and made a part hereof except for Article 4 thereof; and subject to the following special condition set forth herein as additional articles:

Article 28. The project, including its operation and maintenance and any work incident to additions or alterations authorized by the Commission whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and of any such alteration thereof and shall notify him of the date upon which work with respect to any alteration will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 29. The Licensee shall pay to the United States the following annual charge:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Com-

mission, in accordance with its regulations, in effect from time to time. The authorized installed capacity for such purposes is 3,800 horsepower.

Article 30. The Licensee shall within one year from the date of issuance of this license, file with the Commission an application for amendment of this license to include the following transmission facilities:

(i) The 2.4 kv transmission line from the Millville Hydro Plant to the old Millville Steam Plant.

(ii) The 34.5 kv transmission line from the Millville Hydro Plant to the old Millville Steam Plant.

(iii) At the Millville Hydro Plant the generator leads and appurtenant facilities.

Article 31. The Licensee shall within one year from the date of issuance of the license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 32. The right, power, and authority is reserved to the United States to construct or to the Commission to issue a license authorizing the construction, operation and maintenance of hydroelectric project which will more completely utilize the water resources of the reach of the Shenandoah River in which the project is located.

Article 33. The acceptance of this license by the Licensee shall constitute its stipulation, consent and agreement made upon its own behalf and upon the behalf of its successors and assigns for the benefit of the United States, or the person or persons hereinafter constructing, operating and maintaining such more complete water resource project or his or their successors and assigns that said Licensee, its successors or assigns, shall surrender its license at such time as the project becomes inoperative by reason of inundation by such more complete hydroelectric project; provided, that Licensee shall be paid the net investment in Project No. 2343 upon surrender of its license; and provided further that Licensee shall not be entitled to any compensation for severance damages sustained by reason of inundation or destruction of the project or project works of Project No. 2343.

Article 34. The Licensee shall commence construction to raise the headworks section within one year of the date of acknowledgment of acceptance of this license, shall thereafter in good faith and with due diligence prosecute such construction and shall complete construction of such project works within two years from the effective date of this license.

Article 35. Licensee shall design, and maintain the flashboard system on the dam in such manner that it shall fail when subjected to a load equivalent to 2 feet of surcharge or less.

Article 36. Whenever the licensee is directly benefited by the construction work of another licensee, a permittee, or of the United States or a storage reservoir or other headwater improvements, the licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the costs of making the determinations pursuant to the then current Commission Regulations under the Federal Power Act within 60

days from the date of rendition of a bill therefor and, upon failure to do so, shall thereafter be subject to the payment of the penalties specified in the then current Regulations. The Licensee shall have the right to pay such amounts under protest within the 60-day period and to reconsideration of the amounts billed or a hearing as provided by the then current Regulations under the Act.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward* and David S. Black.

PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, WASHINGTON AND CITY OF EVERETT, WASHINGTON, PROJECT NO. 2157

ORDER APPROVING REVISED EXHIBIT L DRAWINGS

(Issued August 11, 1964)

On April 24, 1964, Public Utility District No. 1 of Snohomish County, Washington, and City of Everett, Washington, licensees for Project No. 2157, filed a joint application for Commission approval of revised Exhibit L drawings for the first stage of construction of Dam No. 1.

The drawings reflect proposed changes in the design of the first stage of Dam No. 1, now under construction. The revisions consists of: (1) an increase in the elevation of the crest from elevation 1402 feet to 1408 feet; and (2) redesign of the spillway outlet portal structure. In addition, the downstream slope of first stage construction has been changed from 1.5:1 to 1.8:1.

Only that part of the full section of the dam required for structural safety and stability of the first stage dam will be constructed now. Construction of the incremental fill to the full section of the dam will be accomplished during second stage construction. The increase in height is being provided in order that the design flood may be passed safely with adequate freeboard. Hydraulic model studies of the morning glory spillway had disclosed a lower discharge capacity than calculated in earlier analysis. Foundation conditions necessitated and subsequent model studies resulted in a change in the design of the spillway outlet portal to that shown on revised Exhibit L.

The Commission finds:

The following described revised Exhibit L drawings conform to the Commission's rules and regulations and should be approved as part of the license for Project No. 2157, and the exhibits described herein as being superseded should be eliminated from the license:

Exhibit L Sheet 17A (FPC No. 2157–51) Entitled "Dam No. 1 First Stage Plan" superseding Sheet 17 (FPC No. 2157–44);

Sheet 19A (FPC No. 2157 –52) Entitled "Dam No. 1 First & Second Stages Sections", superseding Sheet 19 (FPC No. 2157–46).

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*This matter was decided prior to the death of Commissioner Woodward who participated in the decision.

The Commission orders:

The revised Exhibit L drawings described in the above finding are hereby approved as part of the license for Project No. 2157 and the Exhibit L drawings described in the same finding as being superseded are eliminated from the license for the project.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward* and David S. Black.

SOUTH GEORGIA NATURAL GAS COMPANY, DOCKET NO. RP64-34

ORDER AMENDING ORDER PERMITTING REVISED TARIFF SHEETS TO BECOME EFFECTIVE AND APPROVING PROPOSAL TO FURTHER REDUCE RATES

(Issued August 11, 1964)

The Commission, by order issued May 19, 1964, 31 FPC 1273, permitted certain revised tariff sheets to become effective, which had been filed by South Georgia Natural Gas Company (South Georgia) on April 13, 1964. The Commission also approved South Georgia's accompanying proposal to make certain further reductions in its rates. By letter filed June 17, 1964, South Georgia called attention to the fact that its agreement to further reduce its rates was, in part, incorrectly expressed in our order.

South Georgia states that paragraphs (4) and (7) of the summary of South Georgia's agreement incorrectly describe the $11,749 reduction in rates to be made on January 1, 1965, as relating only to the reduction in South Georgia's Federal income taxes which will take effect on that date. In fact, however, the $11,749 also includes the reduction in South Georgia's purchase gas cost on January 1, 1965, resulting from a similar reduction in its supplier's (Southern Natural Gas Company) income taxes. South Georgia has submitted its computations in support of the $11,749 rate reduction and they have been found to be correct. South Georgia, accordingly, requests that our order be modified to properly reflect the amount and nature of the reduction to be made on January 1, 1965.

The Commission orders:

The Commission's order issued herein on May 19, 1964, is hereby amended so as to correctly describe South Georgia's rate reduction agreement to state that the $11,749 rate reduction to be made on January 1, 1965, encompasses both the reduction in South Georgia's Federal income taxes as of that date as well as the reduction in cost of gas purchased from Southern Natural Gas Company resulting from the reduction in Federal income taxes paid by the latter company.

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*This matter was decided prior to the death of Commissioner Woodward who participated in the decision.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

APPALACHIAN POWER COMPANY, PROJECT NO. 2376

ORDER ISSUING LICENSE (MAJOR)

(Issued August 12, 1964)

Application was filed on May 31, 1963 by Appalachian Power Company (Applicant), of Roanoke, Virginia, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2376, known as the Reusens Project, located on the James River in Amherst, Bedford and Campbell Counties, Virginia.

According to the application, the project was reconstructed in its present form in 1930 and 1931. There has been no project construction since.

The installed generating capacity of the project is 12,500 kilowatts.

The Reusens Project is located on the James River at mile 255.5 near Lynchville, Virginia. According to available records, navigation improvements of the James River, which began under a charter issued in 1785, were accomplished for the most part by opening and enlarging sluices from Richmond to Crow's Ferry, at mile 302, a distance of 197 miles. There are recorded instances of navigation in this stretch as far back as 1726. By 1808 planters were transporting their products downstream and returning with supplies to points upstream beyond the Reusens Project. The James River has been used for transportation by water from its mouth to points at least as far upstream as the mouth of Jackson's River at about mile 340 on the James River.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, advised that the plans of the project structures affecting navigation were satisfactory.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project, certain conditions in the interest of fish and wildlife resources in the area involved.

The Department of Health, Education, and Welfare, in reporting on the application, advised that the licensing of the project is not expected to affect vector control in the area involved. No special recommendations were made.

For the reasons set forth in our Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of April 1, 1962 and a termination date of December 31, 1993.

The Commission finds:

(1) The James River from its mouth at Newport News at least to its confluence with Jackson's River at about mile 340 is a navigable waterway of the United States.

(2) The project does not affect lands of the United States.

(3) Applicant is a corporation organized under the laws of West Virginia, is qualified to do business in West Virginia and Tennessee, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(4) Public notice of the filing of the application has been given as required by the Act. No protest or petitions to intervene have been received. No conflicting application is before the Commission.

(5) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(6) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public uses, including recreational purposes.

(7) The installed horsepower capacity of the project for the purpose of computing the capacity component of the administrative annual charge is 16,700 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(8) The generator leads, the three 4/34.5 kv step-up transformers, the short 34.5 kv line from the transformers to the main bus structure in the powerhouse, and appurtenant facilities, mentioned or referred to in paragraph (B) below, and which were included in the application, are parts of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project.

(9) The exhibits designated and described in paragraph (B) below, which were included in the application for license, conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to Appalachian Power Company (Licensee) of Roanoke, Virginia, under Section 4(e) of the Federal Power Act (Act) for a period effective as of April 1, 1962 and terminating December 31, 1993, for the continued operation and maintenance of Reusens Project No. 2376, located on the James River, a navigable water of the United States, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed thereunder.

(B) Constructed Project No. 2376 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by the following exhibits which formed a part of the application for license.

Exhibit J and K: (FPC No. 2376–1) Project Area and Boundary Map.

(ii) Project works consisting of: (1) a concrete and masonry gravity dam composed of an eight-bay gated spillway section about 416 feet long; (2) two integral intake and powerhouse sections, one about 105 feet long and 86 feet high containing three hydroelectric units of 2,500 kw each, another about 55 feet long and 84 feet high containing two hydroelectric units of 2,500 kw each, separated by a curved spillway section about 126 feet in arc length, topped by flashboards 7.3 feet high; (3) a pond about 7 miles long; (4) three 4/34.5 kv transformers and related switching equipment; and (5) appurtenant electrical and mechanical facilities; the location, nature, and character of which are more specifically shown and described by the exhibit hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L: (FPC No. 2376–2) General Design Drawing

Exhibit L (Amended): General Design Drawings

Sheet 1 of 4 (FPC No. 2376–3)

Sheet 2 of 4 (FPC No. 2376–4)

Sheet 3 of 4 (FPC No. 2376–5)
Sheet 4 of 4 (FPC No. 2376–6)

Exhibit M: (Revised July 1, 1963) Three typewritten pages entitled, "General Description of Equipment".

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–3 (Revised November 1, 1963), entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (30 FPC 1658) which terms and conditions, designated as Articles 1 through 27, are attached hereto and made a part hereof except for Article 4 thereof; and subject to the following special conditions set forth herein as additional articles:

Article 28. The Licensee shall pay to the United States the following annual charge:

For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purposes is 16,700 horsepower.

Article 29. The project, including its operation and maintenance and any work incident to additions or alterations authorized by the Commission whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and of any such alteration thereof, and shall notify him of the date upon which work with respect to any alteration will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 30. The Licensee shall within one year from the date of issuance of this license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 31. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the costs of making the determinations pursuant to the then current Commission Regulations under the Federal Power Act within 60 days from the date of rendition of a bill therefor and, upon failure to do so, shall thereafter be subject to the payment of the penalties specified in the then current Regulations. The Licensee shall have the right to pay such amounts under protest within the 60-day period and to reconsideration of the amounts billed or a hearing as provided by the then current Regulations under the Act.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

DUKE POWER COMPANY, DOCKET NO. E-7122

ORDER ACCEPTING RATE SCHEDULES FOR FILING AND TERMINATING CERTAIN ISSUES OF ORDER TO SHOW CAUSE

(Issued August 12, 1964)

On August 21, 1963, 30 FPC 524, the Commission issued an order in this docket directing Duke Power Company (Duke) to show cause why certain provisions in its wholesale contracts are not unduly restritive and therefore unlawful. These provisions include: kilowatt limitations on the loads to which power may be resold by a customer and possible restrictions on uses to which power could ultimately be put by municipal and some privately-owned customers; territorial restrictions in its contracts with rural electric cooperative customers; and a resale limitation of 5 horsepower in its contract with the City of High Point, North Carolina. Following discussions with the Commission staff and other interested persons, Duke has submitted rate schedule supplements which have the effect of eliminating restrictions on its municipal and privately-owned customers. Duke advises that it is actively seeking to eliminate possible restrictions in its contracts with rural electric cooperatives and the City of High Point.

On May 22, 1964, Duke, of Charlotte, North Carolina, submitted for filing with the Commission, pursuant to Section 205 of the Federal Power Act, supplements to its rate schedules for service to 38 wholesale for resale customers. The submittals amend Article Fourth of Duke's Standard Schedule No. 10, Class

1, Municipal Resale Service, to delete therefrom the words "for lighting, heating and motive power". In addition, the proposed supplements are submitted for filing as a "practice", setting forth Duke's undertaking to delete from any contract at the request of the customer concerned a clause in Article Fourth which states: ". . . none of said power to be resold to any one customer in excess of ——— kilowatts." The Company also agrees to adjust upward or downward the kilowatt limitation at the customer's request. The customers and the designations of the proposed supplements are listed in Appendix A attached hereto.

These provisions of Standard Schedule No. 10, Class 1, are among those included in the Commission's Order to Show Cause why certain provisions in Duke's wholesale for resale rate schedules are not unduly restrictive, issued August 21, 1963, in this docket. The rate schedule designations of customers whose rate schedules contain the provisions amended by the proposed supplements are listed in Appendix A to the August 21, 1963 order.

The submittals were made following discussions with Commission staff and other interested participants concerning this docket. Duke agreed to delete the clause "for lighting, heating, and motive power" to make clear that these words were not intended as a limitation on the use to which power purchased from Duke could ultimately be put. Duke has stated that the kilowatt limitation was requested by several of its customers, and filed its statement of "practice" to show that it will delete or adjust this limitation in any contract at the customer's request.

The deletion of the clause "for lighting, heating, and motive power" from these rate schedules eliminates any question that these words may be interpreted as a restriction on uses to which the power may be put. The "practice" filed by Duke indicates that Duke will not enforce the kilowatt limitation to the detriment of any customer, by its agreement to delete or adjust that limitation at the customer's request.

The Commission finds:

(1) It is necessary and appropriate for purposes of the Federal Power Act that the rate schedule supplements listed in Appendix A attached hereto be accepted for filing effective June 22, 1964.

(2) It is necessary and appropriate for purposes of the Federal Power Act that the issues raised in the Commission's Order to Show Cause issued August 21, 1963 in this docket, with respect to restrictions in Duke's Standard Schedule No. 10, Class 1, Municipal Resale Service, for customers listed in Appendix A to that Order, be severed from this docket and terminated.

The Commission orders:

(A) The proffered rate schedule supplements referred to in finding (1) above are accepted for filing effective June 22, 1964.

(B) The issues raised in the Commission's Order to Show Cause issued August 21, 1963 in this docket, with respect to restrictions in Duke's Standard Schedule No. 10, Class 1, Municipal Resale Service, for customers listed in Appendix A to that order, are hereby severed from this docket and terminated.

(C) Nothing contained in this order shall be construed as constituting approval by this Commission of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such service or rate provided for in the rate schedules as above designated, nor shall this order be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate.

(D) This order is without prejudice to any findings or orders which have been or may hereafter be made by this Commission in any proceeding now pending, or hereafter instituted, by or against the aforementioned company.

APPENDIX A

DUKE POWER COMPANY

Rate schedule designation	*Customer (delivery point)*
Supplement No. 1 to Rate Schedule FPC No. 13	City of Albemarle, North Carolina
Supplement No. 2 to Rate Schedule FPC No. 14	Town of Bostic, North Carolina
Supplement No. 1 to Rate Schedule FPC No. 15	Town of Cherryville, North Carolina
Supplement No. 1 to Rate Schedule FPC No. 16	Board of Light and Water Commissioners of the City of Concord, North Carolina
Supplement No. 1 to Rate Schedule FPC No. 17	Town of Cornelius, North Carolina
Supplement No. 1 to Rate Schedule FPC No. 18	Town of Dallas, North Carolina
Supplement No. 2 to Rate Schedule FPC No. 19	Town of Drexel, North Carolina
Supplement No. 1 to Rate Schedule FPC No. 20	Town of Davidson, North Carolina
Supplement No. 1 to Rate Schedule FPC No. 21	Town of Forest City, North Carolina
Supplement No. 1 to Rate Schedule FPC No. 22	City of Gastonia, North Carolina (Delivery Point #1)
Supplement No. 1 to Rate Schedule FPC No. 23	City of Gastonia, North Carolina (Delivery Point #2)
Supplement No. 1 to Rate Schedule FPC No. 24	City of Gastonia, North Carolina (Delivery Point #3)
Supplement No. 1 to Rate Schedule FPC No. 25.	City of Gastonia, North Carolina (Delivery Point #4)
Supplement No. 1 to Rate Schedule FPC No. 26	Town of Granite Falls, North Carolina
Supplement No. 1 to Rate Schedule FPC No. 27	Town of Huntersville, North Carolina
Supplement No. 1 to Rate Schedule FPC No. 30	City of Kings Mountain, North Carolina
Supplement No. 1 to Rate Schedule FPC No. 31	Town of Landis, North Carolina
Supplement No. 1 to Rate Schedule FPC No. 32	City of Lexington, North Carolina (Delivery Point #1)
Supplement No. 1 to Rate Schedule FPC No. 33	City of Lexington, North Carolina (Delivery Point #2)
Supplement No. 1 to Rate Schedule FPC No. 34	Town of Lincolnton, North Carolina
Supplement No. 1 to Rate Schedule FPC No. 35	Town of Maiden, North Carolina
Supplement No. 1 to Rate Schedule FPC No. 36	City of Monroe, North Carolina
Supplement No. 2 to Rate Schedule FPC No. 37	Town of Morganton, North Carolina
Supplement No. 1 to Rate Schedule FPC No. 38	Town of Newton, North Carolina

APPENDIX A—continued

DUKE POWER COMPANY—Continued

Rate schedule designation	*Customer (delivery point)*
Supplement No. 1 to Rate Schedule FPC No. 39	Town of Pineville, North Carolina
Supplement No. 1 to Rate Schedule FPC No. 40	City of Shelby, North Carolina (Delivery Point #1)
Supplement No. 1 to Rate Schedule FPC No. 41	City of Shelby, North Carolina (Delivery Point #2)
Supplement No. 1 to Rate Schedule FPC No. 42	City of Shelby, North Carolina (Delivery Point #3)
Supplement No. 1 to Rate Schedule FPC No. 43	City of Shelby, North Carolina (Delivery Point #4)
Supplement No. 1 to Rate Schedule FPC No. 44	City of Statesville, North Carolina
Supplement No. 1 to Rate Schedule FPC No. 45	Town of Clinton, South Carolina
Supplement No. 1 to Rate Schedule FPC No. 46	Town of Due West, South Carolina
Supplement No. 2 to Rate Schedule FPC No. 47	Commissioners of Public Works of the City of Easley and the City of Easley, South Carolina
Supplement No. 2 to Rate Schedule FPC No. 48	Board of Commissioners of Public Works of the City of Gaffney and the City of Gaffney, South Carolina
Supplement No. 2 to Rate Schedule FPC No. 49	Commissioners of Public Works of the City of Greer and the City of Greer, South Carolina
Supplement No. 1 to Rate Schedule FPC No. 50	City of Newberry, South Carolina
Supplement No. 2 to Rate Schedule FPC No. 51	Town of Prosperity, South Carolina
Supplement No. 2 to Rate Schedule FPC No. 52	City of Rock Hill, South Carolina (Delivery Point #1)
Supplement No. 2 to Rate Schedule FPC No. 53	City of Rock Hill, South Carolina (Delivery Point #2)
Supplement No. 1 to Rate Schedule FPC No. 54	Commissioners of Public Works of the Town of Seneca and the Town of Seneca, South Carolina
Supplement No. 1 to Rate Schedule FPC No. 55	Commissioners of Public Works of the Town of Westminster, South Carolina
Supplement No. 1 to Rate Schedule FPC No. 56	University of North Carolina
Supplement No. 1 to Rate Schedule FPC No. 57	The Clemson Agricultural College of South Carolina
Supplement No. 1 to Rate Schedule FPC No. 126	Ruth Meacham and Mrs. Esther Meacham McAlhaney, Partners, doing business under the firm name and style of The Electric Company.
Supplement No. 1 to Rate Schedule FPC No. 127	Heath Springs Light and Power Company (South Carolina)
Supplement No. 1 to Rate Schedule FPC No. 128	Kershaw Oil Mill

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward* and David S. Black.

ECONOMIC DEVELOPMENT CORPORATION OF AUGUSTA, MAINE, AND BATES MANUFACTURING COMPANY, PROJECT NO. 2389

ORDER ISSUING LICENSE (MAJOR) AND APPROVING LEASE OF PROJECT PROPERTY

(Issued August 12, 1964)

Application was filed on July 16, 1963 by Bates Manufacturing Company of Lewiston, Maine, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2389, known as the Edwards Project, located on the Kennebec River, in Kennebec County, in and near the City of Augusta, Maine.

According to the application, the project was constructed by the Kennebec Dam Company in 1836 and 1837 and was acquired by Bates on December 17, 1945. The dam was reconstructed in 1870 after a portion of the dam was washed out. There has been no new project construction since 1935.

The Edwards Project has nine generating units with a total rated capacity of 3,500 kilowatts. The energy generated by the project is used in operating Bates' textile machinery in the immediate vicinity and surplus power is sometimes absorbed by Central Maine Power Company.

On July 1, 1964, Bates Manufacturing Company (Bates) and Economic Development Corporation of Augusta (Economic) filed a joint application for amendment of the aforementioned July 16, 1963 application and application for approval of a lease. The July 1, 1964 filing seeks: (1) to substitute Economic as applicant for license for the Edwards Project; (2) Commission approval of a lease of the Edwards Project from Economic to Bates; and (3) requests the Commission to set forth in any license for the project the circumstances surrounding a sale and leaseback and the financing thereof.

According to the July 1, 1964 filing, by deed dated June 1, 1964, Economic acquired from Bates all real estate and rights and interests therein, together with buildings thereon, including all generating and hydroelectric equipment and associated facilities owned by Bates within Kennebec County, Maine, and all lands and rights to the Edwards Project. Subsequent to its acquisition of said property, but also on June 1, 1964, Economic mortgaged the Edwards Project and certain other of said real estate acquired from Bates to Central Maine Power Company to secure a loan of $225,000 to Economic by the mortgagee. Also on June 1, 1964, Economic gave a first mortgage on the remaining real estate to First National Granite Bank of Augusta to secure a loan of $140,000 and a second mortgage of $40,000 to Depositors Trust Company, Augusta, Maine, to secure a loan of $40,000. The latter two mortgages are not on property encompassing any part of the Edwards Project.

The aforementioned lease of the Edwards Project from Economic to Bates is for a period of three years with options for its renewal for periods not to extend beyond May 31, 1977. Again, according to the July 1, 1964 filing, during the term of the lease, Bates expects to use and operate the Edwards Project in connection with its textile mill in manner substantially as in the past.

In the above circumstances, we are hereinafter referring to Economic Development Corporation of Augusta as Applicant or Licensee and Bates Manufacturing Company as Lessee.

* This matter was decided prior to the death of Commissioner Woodward who participated in the decision.

In its order issued May 21, 1954,[1] the Commission found that the Kennebec River from its mouth at least up to Moosehead Lake[2] constitutes navigable waters of the United States within the meaning of Section 3(8) of the Federal Power Act. The basis for this finding was that the Kennebec River has been used extensively for the transportation of substantial quantities of sawlogs for a long period of time, beginning in the early 1800's and has been navigated by canoes, bateaux and steamboats.

For the reasons set forth in our Opinion No. 357 (27 FPC 830), the license herein granted shall have a termination date of December 31, 1993. Since there was no project construction after 1935, we will make the effective date of the license May 1, 1954, the first day of the month in which we determined the Kennebec River to be a navigable water, as set forth above.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, advised that the project structures affecting navigation are satisfactory, and that the plans of the project structures affecting navigation have been approved pursuant to Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project certain conditions in the interests of fish and wildlife.

The Department of Health, Education, and Welfare, in reporting on the application, advised that the project does not constitute a source of pollution, and that removal of the dam or flow regulation is not warranted at this time. The Department does not foresee that the granting of a license for the project will increase or intensify vector problems.

The Commission finds:

(1) Applicant and Lessee are corporations organized under the laws of the State of Maine and have submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purpose of a license for the project.

(2) No conflicting application is before the Commission. Public notice of the filing of the application has been given as required by the Act. No protests or petitions to intervene have been received.

(3) The issuance of a license for the project as hereinafter provided will not affect a Government dam or the development of any water resources for public purposes which should be undertaken by the United States.

(4) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(5) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 4,700 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(6) The generator leads from the nine generators to the main switchboard in the No. 2 Mill Annex, mentioned in paragraph (B) below are parts of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project.

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[1] Central Maine Power Company, Docket No. E-6456 (13 FPC 1076).

[2] Moosehead Lake is the source of Kennebec River.

(7) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

(8) In the circumstances, approval of the lease of the project properties from Economic Development Corporation of Augusta to Bates Manufacturing Company, as hereinafter provided, is in the public interest.

The Commission orders:

(A) This license is hereby issued to Economic Development Corporation of Augusta (Licensee), Augusta, Maine, under Section 4(e) of the Federal Power Act (Act) for a period effective as of May 1, 1954, and terminating December 31, 1993, for the continued operation and maintenance of the Edwards Project No. 2389, located on the Kennebec River, a navigable water of the United States, in Kennebec County, Maine, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Constructed Project No. 2389 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purpose of the project, whether such lands or interests therein are owned or held by the licensee or by the United States; such project area and project boundary being more generally shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2389–1) General Map of Project Area.

Exhibit K: (FPC No. 2389–2) Detail Map of Project Area.

(ii) All principal project works constituting what is known as the Edwards Project which is constructed and includes a rock-filled timber crib dam located at the head of tide on Kennebec River; a reservoir with normal full pond at approximately 24.0 feet MSL extending 17 miles to the mouth of the Sebasticook River; a canal 450 feet long; a 13-foot diameter penstock 240 feet long leading to a forebay and a 9-foot diameter penstock 200 feet long leading to No. 8 Generator; three buildings housing a total of nine vertical units which have an aggregate capacity of 3,500 kw; the generator leads from the nine generators to the main switchboard in the No. 2 Mill Annex; and appurtenant facilities; the location, nature and character of which are more specifically shown and described by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L: Sheet 1 of 6 (FPC No. 2389–3) Plan and Sections of Canal System—Plan and Elevations of Gate House.

Sheet 2 of 6 (FPC No. 2389–4) Plan and Cross Sections of Dam.

Sheet 3 of 6 (FPC No. 2389–5) Floor Plan of Wheelhouse No. 4.

Sheet 4 of 6 (FPC No. 2389–6) Floor Plan of Units 7 and 8.

Sheet 5 of 6 (FPC No. 2389–7) Cross Sections thru Hydro Units.

Sheet 6 of 6 (FPC No. 2389–8) Schematic Layout of Electrical Ties.

Exhibit M: Six sheets entitled "General Description and Specifications of Equipment and Appurtenances" filed in the Commission July 16, 1963.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if

and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–3 (Revised November 1, 1963) entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (30 FPC 1658), which terms and conditions, designated as Articles 1 through 27, are attached hereto and made a part hereof except for Article 4 thereof; and subject to the following special conditions set forth herein as additional articles:

Article 28. The project, including its operation and maintenance and any work incident to additions or alterations authorized by the Commission whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and of any such alteration thereof, and shall notify him of the date upon which work with respect to any alteration will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 29. The Licensee shall pay to the United States the following annual charge:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission, in accordance with its regulations, in effect from time to time. The authorized installed capacity for such purposes is 4,700 horsepower.

Article 30. The Licensee shall within one year from the date of issuance of the license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 31. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage

reservoir or other headwater improvement of the United States the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the costs of making the determination pursuant to the then current Commission regulations under the Federal Power Act within 60 days from the date of rendition of a bill therefor and, upon failure to do so, shall thereafter be subject to the payment of the penalties specified in the then current Regulations. The Licensee shall have the right to pay such amounts under protest within the 60-day period and to reconsideration of the amounts billed or a hearing as provided by the then current Regulations under the Act.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) The lease of the project properties comprising Project No. 2389 from Economic Development Corporation of Augusta to Bates Manufacturing Company is hereby approved, effective as of June 1, 1964, subject in general to the provisions of Part 9 of the Commission's Regulations under the Federal Power Act.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward* and David S. Black.

IDAHO POWER COMPANY, PROJECT NO. 1971

ORDER DETERMINING ACTUAL LEGITIMATE ORIGINAL COST OF PROJECT; AND PRESCRIBING ACCOUNTING THEREFOR

(Issued August 12, 1964)

Idaho Power Company, Licensee for the Brownlee development of Project No. 1971[1] on December 27, 1960, filed its initial statement pursuant to Section 4.1 of the Commission's Regulations under the Federal Power Act, claiming for the Brownlee development, as of May 31, 1960, an actual legitimate original cost of $89,313,416.90,[2] as more specifically shown in the attached schedule.

The Commission's staff made a field examination of the books, records and other data of Licensee for the purpose of ascertaining the correctness of the claimed cost of Brownlee development as of May 31, 1960.

Following that examination, an agreement, subject to Commission approval, was reached between the staff and Licensee's representatives with respect to certain proposed adjustments involving (1) the reclassification of a total of $188,826.60 within the development's plant accounts; (2) the elimination of a net amount of $18,209.81 from the claimed cost of Brownlee development as of May 31, 1960; and (3) the accounting disposition of all amounts involved in the proposed adjustments.

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*This matter was decided prior to the death of Commissioner Woodward who participated in the decision.

[1] Brownlee development is one of three developments (Oxbow, Hells Canyon, Brownlee) licensed as Project No. 1971, which is located on the Snake River, a navigable water of the United States, in Adams and Washington Counties, Idaho, and in Wallowa, Baker, and Malheur Counties, Oregon. The license (issued pursuant to Section 4(e) of the Federal Power Act) authorizing the construction, operation, and maintenance of the project is by its terms effective for a period of 50 years, commencing August 1, 1955.

[2] Article 23 of the license provides for Commission determination of the actual legitimate original cost of the project, and of any addition thereto or betterment thereof.

The accounting for the proposed reclassifications within the development's plant accounts, which do not affect the total claimed net development cost, is shown by the following composite journal entry:

Account No. [1]		Debit	Credit
61	Temporary Construction Facilities, Hydraulic Production Plant	$60,000.00	
321	Structures and Improvements, Hydraulic Production Plant	8,723.07	
322	Reservoirs, Dams and Waterways, Common Plant	114,491.27	
320	Land and Land Rights, Hydraulic Production Plant	5,612.26	
320	Land and Land Rights, Common Plant		$188,826.60

[1] Account references in this order and the attached schedule are to account numbers and titles prescribed in the Commission's Uniform System of Accounts for Public Utilities and Licensees, effective prior to January 1, 1961, except in the adjusting journal entry, which employs account numbers and titles prescribed in the Commission's Uniform System of Accounts effective January 1, 1961. This reflects the fact that items of project cost were entered upon Licensee's books of account prior to January 1, 1961.

The proposed elimination of the net amount of $18,209.81 from the claimed cost of the development as of May 31, 1960, consists of the following items:

Recorded cost not claimed	$549.20
Interest and taxes during construction	(18,759.01)
	($18,209.81)

The proposed accounting to establish in Licensee's records the recommended cost of Brownlee development of Project No. 1971 as of May 31, 1960, classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees, as tentatively agreed to between the staff and Licensee's representatives is shown by the following composite journal entry:

Account No.	Title	Debit	Credit
101	Electric Plant in Service, Project No. 1971 (Brownlee)		$18,759.01
216	Unappropriated Earned Surplus	$18,759.01	

After giving effect to the above adjustments, the staff recommends and Licensee, by letter dated February 22, 1963, concurs that the Commission determine the actual legitimate original cost of the Brownlee development of Project No. 1971, as of May 31, 1960, to be $89,295,207.00, as more specifically set forth in the attached schedule.

The Idaho Public Utilities Commission and the Public Utility Commissioner of Oregon where separately advised by letter of the Commission's Regional Accountant dated February 28, 1963, of the claimed cost of Brownlee Development of Project No. 1971 as of May 31, 1960, and the staff's proposed adjustments relative thereto, all as described above. The Idaho Public Utilities Commission, by letter dated March 15, 1963, and the Public Utility Commissioner of Oregon, by letter dated March 27, 1963, indicated no objection to the foregoing.

The Commission finds:

(1) Licensee, by its tentative agreement to the proposed adjustments, including the accounting dispositions and resulting project costs, and its letter dated February 22, 1963, the Idaho Public Utilities Commission, by its letter dated March 15, 1963, and the Public Utility Commissioner of Oregon, by his letter

dated March 27, 1963, have obviated the necessity for notice and opportunity to protest provided by Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

(2) The foregoing adjustments, including the accounting dispositions, as proposed by the staff and agreed to by the Licensee, are reasonable and appropriate for the purposes of the Federal Power Act, and, therefore, should be approved and directed as hereinafter provided.

(3) The actual legitimate original cost of the Brownlee development of Project No. 1971 as of May 31, 1960, is $89,295,207.09, classified by primary plant accounts as shown in the attached schedule.

The Commission orders:

(A) The provisions of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments, including the accounting dispositions, as proposed by the staff and agreed to by the Licensee, are hereby approved and directed to be made by Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed plant accounts for Brownlee development of Project No. 1971, showing the debit balance of $89,295,207.09 as the actual legitimate original cost of that development as of May 31, 1960 as more specifically shown in the attached schedule classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(D) Licensee shall file with the Commission, within 90 days from the issuance of this order, FPC Form No. 7 showing compliance therewith. Two conformed copies of FPC Form No. 7 are to be sent to the Regional Accountant, Federal Power Commission, San Francisco, California.

SCHEDULE

PROJECT NO. 1971 (BROWNLEE DEVELOPMENT)

IDAHO POWER COMPANY

Summary by Detailed Plant Accounts of Claimed Initial Cost With Staff Proposed Adjustments Thereto and Balances Allowed as of May 31, 1960

Account		As claimed	Adjustments	Allowed	
No.	Title			Before distribution	After distribution
	Intangible Plant				
302	Franchises and Consents	$220,856.28		$228,856.28	$241,397.90
	Hydraulic Production Plant				
320	Land and Land Rights	8,179,283.61	$5,612.26	8,184,895.87	11,470,396.94
321	Structures and Improvements	3,559,939.18	8,723.07	3,568,662.25	6,008,850.46
322	Reservoirs, Dams and Waterways	20,550,178.77		20,550,178.77	39,115,259.50
323	Water Wheels, Turbines and Generators	9,162,615.49		9,162,615.49	10,417,093.03
324	Accessory Electric Equipment	772,470.70		772,470.70	981,750.64
325	Miscellaneous Power Plant Equipment	443,525.60		443,525.60	532,331.21
	Total Hydraulic Production Plant	42,668,013.35	14,335.33	42,682,348.68	68,525,691.78
	Transmission Plant				
340	Land and Land Rights	188,050.56		188,050.56	197,262.57
341	Clearing Land and Rights-of-Way	9,651.66		9,651.66	11,588.37
342	Structures and Improvements	552,743.22		552,743.22	860,683.64
343	Station Equipment	1,916,032.69		1,916,032.69	2,172,462.23
344	Towers and Fixtures	2,166,984.51		2,166,984.51	2,506,477.09
345	Poles and Fixtures	446,689.28		446,689.28	496,923.45
346	Overhead Conductors and Devices	2,435,517.62		2,435,517.62	2,841,024.86
	Total Transmission Plant	7,715,669.54		7,715,669.54	9,086,422.21
	General Plant				
378	Communication Equipment	27,896.89	549.20	28,446.09	31,028.75
	Common Plant				
320	Land and Land Rights	4,148,029.38	(188,826.60)	3,959,202.78	7,906,680.09
322	Reservoirs, Dams and Waterways	2,159,898.60	114,491.27	2,274,389.87	3,503,996.36
	Total Common Plant	6,307,927.98	(74,335.33)	6,233,592.65	11,410,666.45
	Total Direct Costs	56,948,364.04	(59,450.80)	56,888,913.24	89,295,207.09
	Indirect Construction Costs				
61	Temporary Construction Facilities	2,857,395.46	60,000.00	2,917,395.46	
62	Construction Equipment	15,272,107.61		15,272,107.61	
63	Camp and Commissary	408,778.74		408,778.74	
64	Labor Expense	282,159.55		282,159.55	
65	Superintendence, Timekeepers, Clerks, etc.	1,121,128.72		1,121,128.72	
66	Insurance, Injuries and Damages	499,257.32		499,257.32	
69	Contractors' Fees	1,860,772.87		1,860,772.87	
	Total Indirect Construction Costs	22,301,600.27	60,000.00	22,361,600.27	
	Overhead Construction Costs				
71	Engineering	3,830,744.97		3,830,744.97	
72	Legal Expense	85,493.72		85,493.72	
75	Taxes During Construction	236,042.36	16,667.78	252,710.14	
76	Administrative and General Expense	1,548,046.20		1,548,046.20	
77	Interest During Construction	4,517,906.73	(35,426.79)	4,482,479.94	
80	Earnings and Expenses During Construction	(154,781.39)		(154,781.39)	
	Total Overhead Construction Costs	10,063,452.59	(18,759.01)	10,044,693.58	
	Total Indirect and Overhead Construction Costs	32,365,052.86	41,240.99	32,406,293.85	
	Total Cost of Brownlee Development	89,313,416.90	(18,209.81)	89,295,207.09	89,295,207.09

( ) Denotes credit.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NATURAL GAS PIPELINE COMPANIES—BUDGET-TYPE CERTIFICATE APPLICATIONS FOR GAS-SALES TRANSPORTATION AND UNDERGROUND GAS STORAGE FACILITIES, DOCKET NO. R-254

ORDER NO. 285

AMENDING SECTION 157.7 OF REGULATIONS UNDER THE NATURAL GAS ACT

(Issued August 12, 1964)*

The Federal Power Commission, by notice issued December 24, 1963 (29 F.R. 22, January 1, 1964), proposed to amend its Regulations Under the Natural Gas Act to permit the use by natural gas pipeline companies of budget-type applications for certificates of public convenience and necessity authorizing the construction of gas-sales facilities pursuant to section 7 of the Natural Gas Act.

In response to the invitation in our notice, comments were received from seventeen pipeline companies, five distributors, two state commissions and an association representing the coal interests. Most of the comments were generally favorable and suggested various modifications, many of which we are adopting.

Two suggestions of some significance, however, are not being adopted. There were several suggestions to increase the allowable total investment from the $300,000 proposed to as much as $500,000. We are of the opinion, however, that the lower limit is appropriate for the minor type of facilities intended to be covered in budget-type applications, and that if higher amounts are contemplated a request for waiver of the limit detailing the reasons therefor shall be submitted. As we secure greater experience with this new type of budget proceeding we shall, of course, reevaluate the dollar limit.

We do not adopt the suggestions that the rule be made applicable to applications proposing to serve existing distributor customers for initial service in communities not having gas service. The possibility of controversy between distributors proposing new service to such a community makes such a suggestion unwise.

We are adopting several suggestions—some to broaden and others to clarify the rule. We are broadening the rule to permit budget applications to cover direct sales to schools and hospitals in rural areas and to provide for the construction and operation of all facilities necessary to make the sales permitted herein. (157.7(c)(1)(ii)). To avoid any ambiguity as to service to existing customers of distributors, a budget-type application may not be utilized to make an industrial sale to a customer of a distributor without the written consent of the distributor. (157.7(c)(7)(ii)).

Finally, we are adding another paragraph to permit the use of budget-type applications for certificates authorizing facilities for the testing and development of underground reservoirs for the possible storage of gas (§ 157.7(d)). This amendment was not included in the notice of proposed rulemaking issued in this proceeding but we believe that underground storage projects should be encouraged and the new paragraph should have such a desirable effect. The amendment, similar in purpose to the one which was proposed, is, in reality, a relaxation of the rules relating in general to applications for certificates of public convenience and necessity and will in our opinion be welcomed by the industry, the distributors and state commissions alike.

*Published in the Federal Register on August 18, 1964 (29 F.R. 11749).

Upon consideration of the record in this proceeding, the *Commission further finds:*

(1) Adoption of these amendments to the Regulations Under the Natural Gas Act are necessary and appropriate to the administration of the Natural Gas Act.

(2) For the reasons heretofore expressed, good cause exists for the adoption herein of the amendment to § 157.7 embodied in the new paragraph (d) thereof without giving the prior notice provided for by section 4 of the Administrative Procedure Act.

The Commission, acting pursuant to the authority granted by the Natural Gas Act, as amended, particularly sections 7, 15, and 16 thereof (52 Stat. 824, 829, 830; 56 Stat. 83, 84; 15 U.S.C. 717f, 717n, 717o), *orders:*

(A) Section 157.7, Subchapter E, Chapter I, Title 18 of the Code of Federal Regulations, as amended by Order No. 280, is amended by adding new paragraphs (c) and (d) to read as follows:

"§ 157.7 Abbreviated applications.

* * * * * * *

(c) *Gas-sales or transportation facilities—budget-type application.* An abbreviated application requesting a budget-type certificate authorizing the construction during a given twelve-month period, and operation of gas-sales or transportation facilities may be filed when:

(1) The facilities proposed in the application are to be used for any of the following purposes:

(i) the transportation and sale of volumes of natural gas previously authorized under certificates for transportation or sale to existing distributors at rates on file with this Commission, for resale in existing market areas, if such distributors have obtained all requisite local and state authorization. An abbreviated application may not be filed pursuant to this section if the distributor is to be required to make a contribution to the applicant for the cost of construction of the facilities or if the distributor is served or is proposed to be served by more than one natural gas company;

(ii) direct sales of natural gas to consumers who will use the gas solely for one or more of the following purposes: road building, irrigation, agriculture, general use in schools and hospitals located in areas outside of local distributors' franchise areas, and seasonal industrial purposes (*e.g.* alfalfa dehydration, canning);

(iii) miscellaneous rearrangements not resulting in any change of service rendered by means of the facilities involved, *e.g.*, changes in existing field operations or relocation of existing sales or transportation facilities when required by highway construction, dam construction or other similar reasons.

(2) The deliveries to any one distributor or consumer through the facilities to be installed will not exceed 100,000 Mcf annually and will not be used by the distributor or consumer for boiler fuel purposes.

(3) (i) The total estimated cost of the gas-sales or transportation facilities proposed in the application does not exceed $300,000 except where the applicant's gas plant (Account No. 101, Uniform System of Accounts Prescribed for Natural Gas Companies) is $10,000,000 or less, in which case the total estimated cost of the gas-sales facilities proposed in the application shall not exceed $100,000.

(ii) Any application proposing the construction of facilities having an estimated cost in excess of the amounts specified in subdivision (i) hereof shall be accompanied by a request for waiver of the provisions of such subdivision and will be granted only for good cause shown.

(4) The Application contains a statement showing the minimum rate, *i.e.*, price per Mcf, at which the applicant proposes to make direct industrial sales.

(5) The application contains a statement indicating the maximum facilities to be installed during the authorized construction period subdivided by type of project, *e.g.*, new delivery points for distributors, direct sales to ultimate consumers and miscellaneous rearrangements, and describing the maximum number of lateral or loop lines to be installed and their maximum length and diameter, the maximum number of taps and meters to be installed, and the estimated cost of facilities for each such type or project.

(6) The application also contains a statement describing and estimating the cost of the gas-sales facilities which, at the time of application, are contemplated to be built.

(7) The applicant agrees that any certificate issued pursuant to an application filed under this paragraph (c) shall be subject to the following conditions:

(i) Direct industrial deliveries to interruptible customers shall be subject to curtailment and interruption if the gas is required to meet the existing or future contract demands of applicant's customers for firm resale service.

(ii) No gas shall be delivered directly to a direct industrial customer to replace or supplement gas purchased by such customer from a distributor or other natural gas company without the written consent of such distributor or natural gas company, or to serve a new direct industrial customer in the franchise or service area of the distributor without the express consent of the distributor.

(8) The applicant agrees to file with the Commission, within sixty days after expiration of the authorized construction period, a statement showing for each individual project:

(i) Description of the gas-sales or transportation facilities installed, *e.g.*, miles and size of pipeline (including wall thickness and minimum yield point), taps, laterals, lateral loop lines, metering and regulating facilities.

(ii) Location of gas-sales or transportation facilities installed and new delivery points established.

(iii) Actual installed cost of gas-sales or transportation facilities subdivided by size of pipeline, taps, laterals, lateral loop lines, metering and regulating facilities, and appurtenant facilities.

(iv) Name of distributor or direct industrial consumer served.

(v) Estimated annual and peak-day deliveries and estimated annual revenues for each of the first 3 years of natural gas service, designating which service is under FPC rate schedules.

(vi) Ultimate use of the gas.

(9) "Boiler fuel purposes," as used herein, means the use of natural gas in boilers for the generation of steam for electric power generation. "Distributors" means persons, municipalities, and other public agencies engaged in the local distribution of natural gas to the public.

(d) *Underground gas storage facilities—budget-type application.* An abbreviated application requesting a budget-type certificate authorizing the construction and operation of natural gas pipeline and compression facilities for the testing and development of underground reservoirs for the possible storage of gas for a three-year period may be filed when:

(1) The volume of natural gas to be injected into the prospective storage fields does not exceed a total of 10,000,000 Mcf, with no more than 2,000,000 Mcf being injected into any single field.

(2) Gas will be injected for testing purposes only during off-peak periods.

(3) No storage field developed pursuant to this section will be utilized to render service without further authorization by the Commission; except that gas may be withdrawn on occasion for testing purposes.

(4) The total expenditures for the three-year period does not exceed $3,000,000 or $1,000,000 for any one-year period. These costs shall include expenditures for leases, wells, pipeline, compressor and related facilities, but shall not include the cost of the gas to be used for testing purposes.

(5) The cost of any project ultimately determined to be infeasible for storage shall be charged to Account No. 822 of Part 201, Underground Storage Exploration and Development Expenses.

(6) Applicant agrees to submit within 60 days after the end of each year of the three-year budget period a statement, under oath, showing for each project:

(i) A description of the facilities constructed and the type of storage reservoir; *i.e.*, gas expansion or dry gas, water-drive or acquifer.

(ii) The location of the facilities.

(iii) The cost of such facilities.

(iv) The monthly volumes of gas injected into and withdrawn from each reservoir.

(v) An estimate of the storage capacity and daily deliverability of each project.

(7) If the reservoir to be tested and developed is an aquifer-type reservoir, applicant agrees to submit for each such project quarterly reports, under oath, containing the following information in addition to the data required by subparagraph (6) hereof:

(i) The daily volumes of natural gas injected into and withdrawn from the aquifer during the quarter and the volume of gas in the aquifer at the end of each month.

(ii) The maximum daily injection or withdrawal rate experienced during the quarter and the average working pressure on such maximum days taken at a central measuring point where the total volume injected or withdrawn is measured.

(iii) Results of any tracer program by which leakage of gas may be determined.

(iv) Any pressure surveys of gas wells and water levels in observation wells conducted during the quarter by individual well. Copies of any core analyses, gamma ray, neutron or other electric log surveys and back-pressure tests taken during the quarter.

(v) A map of the storage project showing the location of the wells, the latest revised structure contours, the location and extent of the gas bubble. This map need not be filed if there is no material change from the map previously filed.

(vi) Such other data or reports which may aid the Commission in the evaluation of the project.

(vii) Reports shall continue to be filed quarterly through the three-year period and thereafter until the project is either certificated for regular service or abandoned, unless otherwise ordered by the Commission.

[Secs. 7, 15, 16, 52 Stat. 824, 829, 830 as amended 56 Stat. 83, 84; 15 U.S.C. 717f, 717n, 717o.]

(B) The caption of this proceeding is amended to read as set forth above.

(C) The amendments herein adopted shall be effective August 12, 1964.

(D) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward* and David S. Black.

PACIFIC POWER & LIGHT COMPANY, PROJECT NO. 421

ORDER AMENDING LICENSE (TRANSMISSION LINE)

(Issued August 12, 1964)

Application was filed on January 30, 1964, and supplemented on April 24, 1964, by Pacific Power & Light Company, licensee for transmission line Project No. 421, for amendment of its license for the project affecting lands of the United States and lands formerly within the Klamath Indian Reservation.

The application was filed in response to the Commission's letter of June 6, 1963 requesting the licensee to apply for amendment of Article 10 of its license (the annual charge article) to reflect the fact that Federal trusteeship over the property of the Klamath Indians was terminated on August 13, 1961 by Proclamation issued by the Secretary of the Interior on August 10, 1961 (26 F.R. 7362), pursuant to the Act of August 13, 1954, as amended (68 Stat. 718; 25 U.S.C. 564(g)). The termination of trusteeship removed the basis for the imposition of annual charges for the occupancy by the project transmission line on the former Indian lands.

Annual charges under the license for the occupancy by the transmission line of Indian lands totalling $205.56 ($68.52 per annum) for the calendar years 1961 through 1963 have been paid by the licensee, and are being held on special deposit. This sum will be refunded to the licensee.

In view of the elimination of the lands formerly designated as Indian lands, we are fixing the amount of annual charges for the occupancy by the line of other lands of the United States at the minimum sum of $5.00, as specified in Section 11.21 of the Commission's Regulations.

The Commission finds:

It will not be inconsistent with the public interest to amend Article 10 of the license to adjust the annual charges specified therein.

The Commission orders:

(A) Article 10 of the license for Project No. 421 is hereby amended to read as follows:

Article 10. The Licensee shall pay to the United States the following annual charges:

(i) For reimbursing the United States for the costs of administration of Part I of the Act, $5.00;

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, $5.00.

(B) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

*This matter was decided prior to the death of Commissioner Woodward who participated in the decision.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward* and David S. Black.

SOUTHERN CALIFORNIA EDISON COMPANY, PROJECT NO. 2085

ORDER APPROVING REVISED PROJECT EXHIBITS AND ADJUSTING AUTHORIZED INSTALLED CAPACITY AND ANNUAL CHARGES

(Issued August 12, 1964)

On October 30, 1961, Southern California Edison Company, Licensee for Project No. 2085, filed for Commission approval revised exhibits comprising Exhibit J (one sheet), Exhibit K (8 sheets), Exhibit L (8 sheets), and Exhibit M (6 pages). Also filed were revised Exhibits F, H, and I. However, Commission approval of the latter exhibits is not required.

The revised Exhibits J and K show minor changes in tunnel alignment and length, and the final location of project access roads. Commission approval of these exhibits would: (1) necessitate the elimination from the license of Exhibit K drawing (FPC No. 2085-29), showing lands of the United States then used as borrow areas, tunnel dump sites, construction yards, and construction roads; (2) reduce the lands of the United States occupied by the project, exclusive of those used for transmission line right-of-way only, by 1,479.66 acres, with a resultant decrease in the amount of annual charges for such occupancy; and (3) increase the lands of the United States used for transmission line right-of-way only from 4.82 miles to 5.54 miles of 200-foot wide right-of-way, with a resultant increase in the amount of annual charges for such occupancy.

The changes reflected on the revised Exhibit L drawings and Exhibit M involve project design refinements, such as: a decrease in the height of both Rock Creek and Ross Creek diversion dams (19 to 9 feet and 15 to 7 feet, respectively); a decrease in the diameter of the steel pipelines from the diversion dams; an increase in the diameter of the penstock; and the relocation of the powerhouse to a greater depth, *i.e.*, by placing the turbine centerline 15 feet lower at elevation 2,225 feet due to a change in the turbine from an impulse type to a reaction type. The turbines have been changed from an impulse type rated at 88,000 horsepower each at a head of 940 feet to a reaction type rated at 88,000 horsepower each at a head of 950 feet. The generator ratings were changed from 63,000 kilowatts to 64,680 kilowatts. The normal and maximum tailwater elevations have been decreased 2 feet to elevation 2,230 and 2,255 feet respectively.

The Chief of Engineers and the Secretary of the Army have approved the project plans insofar as the interests of navigation are concerned, pursuant to Section 4(e) of the Federal Power Act.

The Forest Service, Department of Agriculture, has advised that the project changes are not inconsistent with the purposes for which the Sierra National Forest was created or acquired.

Certain errors respecting land ownership on the revised Exhibit K tracings have been corrected pursuant to authorization by the licensee in letter dated March 18, 1964.

The Commission finds:

(1) The following described revised exhibits conform to the Commission's rules and regulations and should be approved as part of the license for the

*This matter was decided prior to the death of Commissioner Woodward who participated in the decision.

project and the exhibits described in this finding as being superseded and which are now part of the license should be eliminated therefrom:

Revised Exhibit	FPC No.	Entitled	Superseding FPC No.
J	2085-46	General Map Showing Mammoth Pool Project	2085-15
K, (8 sheets)	2085-47 through 2085-54	Detail Map of Mammoth Pool Project	2085-16 through 2085-23
L, (8 sheets)	2085-55	Mammoth Pool Dam	2085-24
	2085-56	Intake, Shakeflat Crossing and Tunnel Sections	2085-25
L	2085-57	Penstock and Surge Chamber Spillway—Mammoth Pool Reservoir.	2085-12
	2085-58		2085-28
	2085-59	Ross and Rock Creeks Diversions	2085-30
	2085-60	Generator Deck Plan of Powerhouse	2085-43
	2085-61	Sectional Plans—Powerhouse	2085-44
	2085-62	Sectional Elevations of Powerhouse	2085-45

(2) Exhibit K drawing (FPC No. 2085-29) entitled "Access Roads and Barrow Area Sites", now part of the license for the project should be eliminated from the license.

(3) Revised Exhibited M, filed October 30, 1961, consisting of six typewritten pages, entitled "General Description Mechanical, Electrical and Transmission Equipment", conforms to the Commission's rules and regulations and should be approved as part of the license for the project, and superseded Exhibit M, filed September 30, 1957, and which is now part of the license for the project, should be eliminated therefrom.

(4) The presently authorized installed capacity of the project for the purpose of computing the capacity component of the administrative annual charge is by this order increased from 168,000 horsepower to 172,500 horsepower, and the amount of annual charges, based on such increased capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(5) The decreased amount of annual charges for recompensing the United States for the occupancy of its lands by the project, exclusive of transmission line right-of-way, is reasonable as hereinafter fixed and specified.

(6) The increased amount of annual charges for recompensing the United States for the occupancy of its lands by the project for transmission line right-of-way only, is reasonable as hereinafter fixed and specified.

The Commission orders:

(A) The revised project exhibits described in finding (1) above are hereby approved as part of the license for Project No. 2085, and the exhibits described in the same finding as being superseded are hereby eliminated from the license for the project.

(B) The exhibit described in finding (2) above is hereby eliminated from the license for the project.

(C) The revised Exhibit M described in finding (3) above is hereby approved as part of the license for the project, and the exhibit described in the same finding as being superseded should be eliminated from the license for the project.

(D) To reflect the project changes mentioned above, subparagraph (b) of finding 2 of the license for Project No. 2085 is hereby amended in part to read as follows:

* * * * * * *

Rock Creek Diversion Dam, across Rock Creek, approximately 9 feet high above stream bed;

Ross Creek Diversion Dam, across Ross Creek, approximately 7 feet high above stream bed;

Mammoth Pool Tunnel, about 39,560 feet long, to extend from Mammoth Pool Reservoir to the Mammoth Pool Powerhouse penstocks;

An intake structure at the reservoir, a surge chamber and a rock trap in the tunnel section, and a penstock 1988 feet long;

* * * * * * *

Mammoth Pool Powerhouse, of outdoor type, approximately nine miles upstream from the Licensee's Big Creek Powerhouse No. 3 (Project No. 120), to contain two 64,680 kw vertical generators (total 129,360 kw), each direct-connected to a hydraulic turbine rated as 88,000 hp at 950 feet effective head (total 176,000 hp);

* * * * * * *

220-kv transmission line about 7 miles long from Mammoth Pool Powerhouse to the Licensee's existing Big Creek Powerhouse No. 3;

(E) Article 38 of the license is hereby amended by substituting (172,500 horsepower) for (168,000 horsepower) in subparagraph (i); ($3,851.46) for ($6,810.78) in subpargaraph (ii); and ($88.64) for ($77.12) in subparagraph (iii).

(F) This order is effective as of January 1, 1964.

(G) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgement of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward* and David S. Black.

SOUTHERN CALIFORNIA EDISON COMPANY, PROJECT NO. 2198

ORDER APPROVING REVISED PROJECT EXHIBIT

(Issued August 12, 1964)

On April 27, 1964, Southern California Edison Company, licensee for Project No. 2198 filed a request that Exhibit K (FPC No. 2198–2), on file with the Commission, be revised by the staff to show thereon the project boundaries on private lands over which the licensee had obtained easements for project use. The request was made pursuant to a staff letter dated March 23, 1964, to assist in making a determination of original cost of the project.

In accordance with the licensee's request the staff has made appropriate changes and notations on the Exhibit K.

The Commission finds:

Exhibit K (FPC No. 2198–2), designated as "Detail Map of Santa Ana No. 3 Project," now on file with the Commission, and revised on April 27, 1964, by our staff as requested by the licensee, conforms to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

The revised Exhibit K designated and described in the above finding is hereby approved as part of the license for Project No. 2198.

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*This matter was decided prior to the death of Commissioner Woodward who participated in the decision.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

L. P. STARKEY, PROJECT NO. 1093

ORDER DISMISSING INCOMPLETE APPLICATION FOR NEW LICENSE (MINOR)

(Issued August 12, 1964)

Application was filed on April 14, 1961 by L. P. Starkey, (Applicant) of Fort Collins, Colorado, for a new license under the Federal Power Act (Act) for minor Project No. 1093, located on Falls Creek in Larimer County, Colorado, and affecting lands of the United States within the Roosevelt National Forest.

By letter dated July 14, 1961, the Forest Service advised that a sawmill, covered under the expired license and included in the application for new license, is no longer in operation, and that project land ownership had changed from that shown on Exhibit F of the application. The Service offered no objection to the issuance of a new license provided that Applicant prior to the issuance of a new license: (1) clean up the debris on Forest lands; (2) delete reference to the sawmill in the application; and (3) correct the land ownership status shown on Exhibit F.

By Commission letter dated September 7, 1961, Applicant was requested to clarify and supplement his application for new license with respect to the matters raised by the Forest Service. The requested supplemental data has not been filed by the Applicant.

By letter dated December 19, 1962, the Forest Service advised that the conditions set forth in its afore-mentioned July 14, 1961 letter had not been complied with, and recommended dismissal of the application for new license. By undated letter received by the Commission June 22, 1964, the Forest Service advised that its conditions had still not been complied with and again recommended dismissal of the application.

The Commission finds:

(1) Applicant has failed to complete his application for new license and has failed to give any assurance that he intends to do so.

(2) No good reason is apparent for continuing the incomplete application on the active docket of the Commission and, therefore, the application should be dismissed.

The Commission orders:

The incomplete application for license for minor Project No. 1093 is hereby dismissed.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRANSWESTERN PIPELINE COMPANY, ET AL., DOCKET NO. CP63-204, ET AL.

ORDER DENYING APPEAL FROM RULING OF PRESIDING EXAMINER GRANTING RECESS

(Issued August 12, 1964)

On July 29, 1964, the presiding examiner granted a recess in the above-entitled proceeding from August 24 to September 9, 1964, pursuant to a motion made by counsel for Fuel Research Council, *et al.* Subsequently on July 29, 1964, Gulf

Pacific Pipeline Company, (Gulf Pacific), Humble Oil & Refining Company (Humble), The Department of Water and Power of the City of Los Angeles (Department), and Southern California Edison Company (Edison) filed, as joint appellants, an appeal from that ruling by the presiding examiner. Answers to the appeal were filed by Fuels Research Council, *et al.*, and Transwestern Pipeline Company on July 31, 1964, and August 6, 1964, respectively. Appellants, both on the record and in their appeal, stated that they would not oppose a recess of one week in the proceeding, but would be opposed to a recess for a longer period. Counsel for other parties to the proceeding indicated on the record that they would not object to a recess for a two week period, as ordered by the examiner.

While the Commission functions continuously during the month of August it has been the policy in recent years to avoid, as far as reasonably possible, setting or holding hearings during the month of August. This policy was undertaken because it was recognized that, without knowledge of a definite period during which hearings would not be held, practitioners before the Commission and witnesses in specific cases could not otherwise plan vacation schedules. While we recognize the urgency of disposition of the administrative matters before us, we also recognize that many matters can best be accelerated if the parties concerned have an opportunity to freshen their outlook after a period of relaxation. The Commission is not in a position to judge the posture of a particular case at any specific time, and therefore the Commission generally has left this determination as to whether or not a condition exists which would require hearings during August up to the presiding examiner in each case.

In this specific case, we stated in our "Order on Motions to Expedite Hearings," that this proceeding "must be conducted according to a firm schedule, subject to deviation only in extraordinary circumstances, and that such schedule should be geared to bringing the proceeding to a conclusion at the earliest possible moment."[1] We still adhere to that statement, but we do not find that statement inconsistent with a recess in this case for a brief period, particularly in view of the aforementioned Commission policy with regard to the month of August.

We note that the presiding examiner has thus far conducted this proceeding expeditiously and in full conformity with the above-quoted statement. We are confident the presiding examiner will continue to employ all means at his disposition to so conduct this proceeding. If the presiding examiner, with his complete knowledge of the posture of this specific case, has decided that a recess from August 24 to September 9, 1964, is not unreasonable and will not interfere with the expeditious disposition of this proceeding, then the Commission will defer to the presiding examiner's judgment in this matter.

The Commission orders:

The appeal from the ruling of the presiding examiner granting a recess is denied.

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[1] Order on Motions to Expedite Hearings (issued August 22, 1963) p. 2 [unreported].

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, Harold C. Woodward* and David S. Black.

WISCONSIN PUBLIC SERVICE CORPORATION, PROJECT NO. 1966

ORDER APPROVING REVISED EXHIBIT L DRAWING

(Issued August 12, 1964)

On April 13, 1964, Wisconsin Public Service Corporation, licensee for Project No. 1966, known as the Grandfather Falls development, filed application for Commission approval of a revised Exhibit L–7 drawing (FPC No. 1966–10).

The revised Exhibit L drawing shows the following described minor changes in the project works:

(1) Removal of the tie with the former 69 kv line from Wausau to Rhinelander;

(2) Addition of three 66.9/44 kv transformers to permit entire plant output to be fed into the licensee's 46 kv system;

(3) Removal of two 6.9/44 kv transformers and disconnection of one 6.9/44 kv transformer which remains as a spare;

(4) Installation of a step regulator in the 46 kv switching station; and

(5) Installation of an oil circuit breaker on each side of the step regulator.

The licensee filed a print of the aforementioned revised Exhibit L drawing showing the changes described above, and requested our staff to reflect the changes on the Exhibit L–7 tracing on file with the Commission, and this the staff has done.

The Commission finds:

The Exhibit L–7 tracing (FPC No. 1966–10) entitled "General Design Drawing of Lower Substation—Grandfather Falls Hydroelectric Development", revised by the staff on April 13, 1964 as requested by the licensee, and superseding Exhibit L–7 (FPC No. 1966–10) as revised April 1, 1960, conforms to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

Exhibit L–7 (FPC No. 1966–10) as revised April 13, 1964, is hereby approved as part of the license for Project No. 1966, and the aforementioned superseded Exhibit L–7 is hereby eliminated from the license for the project.

*This matter was decided prior to the death of Commissioner Woodward who participated in the decision.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

AREA RATE PROCEEDING, ET AL. (HUGOTON-ANADARKO AREA), DOCKET NO. AR64–1, ET AL.

ORDER PERMITTING ADDITIONAL INTERVENTIONS

(Issued August 14, 1964)

Pursuant to the Commission's "Order Enlarging Issues," 31 FPC 1595, issued herein on June 29, 1964, notices of intervention were filed by The Public Service Commission of the State of New York,[1] the Pennsylvania Public Utility Com-

[1] The notice or petition to intervene was not filed within the prescribed time.

mission, and Suburban Rate Authority, Minnesota.[1] In addition, timely petitions to intervene were filed by the following named persons:

The Brooklyn Union Gas Company
Consolidated Edison Company of New York, Inc.
Consolidated Natural Gas Company System
Hope Natural Gas Company
Lake Shore Pipe Line Co.
New York State Natural Gas Corporation
Independent Natural Gas Association of America
Lone Star Gathering Company
Long Island Lighting Company [1]
Memphis Light, Gas and Water Division (Memphis)
Oklahoma Illinois Gas Pipeline Company
Philadelphia Electric Company
The Preston Oil Company
Public Service Electric and Gas Company
Southern Natural Gas Company
Tennessee Gas Transmission Company
Texas Gas Transmission Corporation
Texas Eastern Transmission Corporation
Trunkline Gas Company
Union Producing Company
United Gas Pipe Line Company
Willmut Gas and Oil Company

Supplemental Petitions to Intervene: [2]
Colorado Interstate Gas Company
Kansas-Nebraska Natural Gas Company, Inc.

On August 3, 1964, the Hunt Oil Company filed an answer and objection to Southern Natural Gas Company's petition to intervene contending that Southern failed to assert an interest, under Section 1.8(b) of the Commission's Rules of Practice and Procedure, which would warrant a grant of intervention. Our June 29 order stated that the Commission intends to consider proposals "to change the present policy" for fixing the rates or cost allowances for pipeline gas production. If Southern believes, as it says it does, that the adoption of such proposals might affect the rates it is permitted to charge, an interest adequate to support its intervention has been advanced. Moreover, we believe that Southern and other gas producing pipelines are entitled to participate in the development of new regulatory concepts and principles even though they do not produce gas in the pricing areas presently under consideration. *Cf. Area Rate Proceedings, et al.* (Hugoton-Anadarko Area), "Order Permitting Intervention", 31 FPC 888, issued April 8, 1964.

The Commission orders:

Subject to the rules and regulations of the Commission, all the petitioners and The Public Service Commission of the State of New York, the Pennsylvania Public Utility Commission, and the Suburban Rate Authority, Minnesota, named hereinabove are permitted to intervene in these consolidated proceedings and to participate on a joint or individual basis. *Provided, however,* that the par-

[2] The supplemental petitions were unnecessary inasmuch as these two natural gas companies were previously permitted to intervene by order issued in these proceedings on April 8, 1964. Our June 29, 1964, order indicated we would "accept new petitions to intervene" for filing.

ticipation of such interveners shall be limited to matters affecting asserted rights and interests specifically set forth by said petitioners in their petitions and *Provided, further* that the admission of said petitioners as interveners shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITIES SERVICE GAS COMPANY AND NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP64-89

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING TARIFF SHEETS FOR FILING

(Issued August 14, 1964)

On May 18, 1964, Cities Service Gas Company (Cities Service) and Natural Gas Pipeline Company of America (Natural) filed in Docket No. CP64-89 a joint motion to extend to May 1, 1965, the period during which natural gas may be exchanged, and to change to Carter County, Oklahoma, the point of delivery of natural gas now delivered by Natural to Cities Service in Garvin County, Oklahoma, as authorized by order issued January 2, 1964, 31 FPC 3, in said docket, all as more fully set forth in the motion to amend.

The order of the Commission issued in the subject docket on January 2, 1964, authorized Cities Service and Natural to construct certain facilities and to exchange up to 40,000 Mcf of natural gas daily for a period terminating May 1, 1964. Exchange deliveries for reasons of pressure differential made through Lone Star Gas Company by Natural to Cities Service are now proposed to be made directly to Cities Service at a delivery point in Carter County, Oklahoma. The change in delivery point will utilize existing facilities and will simplify the exchange by elminating the participaton of Lone Star Gas Company.

On June 16, 1964, Natural Gas Pipeline Company of America tendered for filing its First Revised Sheet No. 49, Original Sheet No. 49-A and Original Sheet No. 49-B to its FPC Gas Tariff, Second Revised Volume No. 2, covering the subject extension of the period during which natural gas may be exchanged and the change of delivery point.

On June 22, 1964, Cities Service Gas Company tendered for filing its First Revised Sheet No. 62, Original Sheet No. 62-A and Original Sheet No. 62-B to its FPC Gas Tariff, Original Volume No. 2, covering the extension of time during which natural gas may be exchanged and the change of delivery point.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on July 17, 1964 (29 F.R. 9686). No protest or petition to intervene has been filed in the proceeding concerning this amendment.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued January 2, 1964, in Docket No. CP64-89 be amended as hereinafter ordered.

(2) The public convenience and necessity require that both the revised and the original tariff filings of Natural Gas Pipeline Company of America and

Cities Service Gas Company, hereinabove described, be accepted for filing to become effective on the date this order issues.

The Commission orders:

(A) The Commission's order issued January 2, 1964, in Docket No. CP64–89 be and the same is hereby amended so as to extend to May 1, 1965, the period during which natural gas may be exchanged, and to change the point of delivery of natural gas so exchanged to Carter County, Oklahoma, for natural gas now delivered by Natural to Cities Service in Garvin County, Oklahoma.

(B) Natural Gas Pipeline Company of America's First Revised Sheet No. 49, Original Sheet No. 49–A and Original Sheet No. 49–B to its FPC Gas Tariff, Second Revised Volume No. 2, are hereby accepted for filing to become effective on the date this order issues.

(C) Cities Service Gas Company's First Revised Sheet No. 62, Original Sheet No. 62–A and Original Sheet No. 62–B to its FPC Gas Tariff, Original Volume No. 2, are hereby accepted for filing to become effective on the date this order issues.

(D) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP64–250

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 14, 1964)

On April 22, 1964, Cities Service Gas Company (Applicant) filed in Docket No. CP64–250 an application, as amended on June 11, 1964, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain minor tap and measuring facilities, and the short-term sale and delivery of natural gas to Kansas-Nebraska Natural Gas Company, Inc. (Kansas-Nebraska) in interstate commerce for resale, all as more fully set forth in the application.

Under the proposed sale agreement the Applicant will be able to reduce the amount of accumulated excess allowables of wells located in the Kansas-Hugoton Field from which Applicant is purchasing natural gas. The sale agreement provides for the delivery of a total of twenty (20) million Mcf of natural gas to Kansas-Nebraska over a three-year period on an interruptible basis at volumes up to 40,000 Mcf per day. The volumes will be delivered at four points in Kearney, Finney and Grant Counties, Kansas; of which two are existing and two are proposed. The proposed points of delivery and interconnection will cost approximately $16,730, which will be defrayed from treasury funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 13, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and amendment submitted in support of the authorization, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) The proposed construction and operation of facilities and sale and delivery of natural gas, as hereinbefore described and as more fully described in the application and amendment thereto, in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and sale and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the sale and delivery of natural gas to Kansas-Nebraska Natural Gas Company, Inc. be limited in time to a three-year period commencing with the date of issuance of this order, and in volume to a total not to exceed 20,000,000 Mcf during the said three-year period on an interruptible basis with daily deliveries not to exceed 40,000 Mcf.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Cities Service Gas Company, authorizing the construction and operation of facilities and the sale and delivery of natural gas as more fully described in the application and amendment thereto in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 3 months from the date on which this order issues.

(D) The certificate issued by paragraph (A) above be limited in time to a three-year period commencing with the date of issuance hereof and in volume to a total not to exceed 20,000,000 Mcf during the said three-year period on an interruptible basis with daily deliveries not to exceed 40,000 Mcf.

(E) Applicant shall file with the Commission within 15 days from the date of issuance hereof its agreement with Kansas-Nebraska dated February 3, 1964, and the amendment thereto dated June 3, 1964, as a special rate schedule to Applicant's FPC Gas Tariff, Original Volume No. 2.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64-298

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 14, 1964)

On June 11, 1964, El Paso Natural Gas Company (Applicant) filed in Docket No. CP64-298 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas transmission facilities, and the sale and delivery of natural gas for resale. The facilities proposed to be constructed and operated consist of metering facilities to be located at a point adjacent to Applicant's Permian-San Juan Crossover Line in Torrance County, New Mexico. The sale and delivery of natural gas through the said facilities is to be made to EMW Gas Association (EMW), a municipal corporation formed under the Laws of New Mexico of 1963, Chapter 309, all as more fully described in the application on file with the Commission and open to public inspection.

The estimated total cost of the proposed facilities is $6,050, which will be financed from current working funds.

EMW Gas Association proposes to construct 64 miles of 4.5-inch and 2⅜-inch pipelines for the transmission of natural gas to its customers in the Villages of Willard and Moriarty, the Town of Estancia and the respective environs of each, also the intervening and adjacent areas, all of which are located in Torrance County, New Mexico.

The estimated peak day and annual volumes of gas to be delivered to EMW by Applicant for the third year of service are 1,324 Mcf and 148,206 Mcf, respectively.

The service to be engaged in by EMW is to residential, commercial and irrigation consumers, with firm gas service purchased under Applicant's Rate Schedule A-2 and B-3. Non-firm gas service is to be purchased under Applicant's Rate Schedule D-3.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 13, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G-242 and G-257 (3 FPC 851).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and the related transportation and sale of natural gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Sections 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year of the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

KENTUCKY UTILITIES COMPANY, DOCKET NO. E-7171

ORDER AUTHORIZING ACQUISITION OF PROMISSORY NOTES

(Issued August 14, 1964)

Kentucky Utilities Company (Applicant), a corporation organized under the laws of the State of Kentucky and operating in that state and the State of Tennessee with its principal place of business in Lexington, Kentucky, filed an application on June 25, 1964, for authorization pursuant to Section 203 of the Federal Power Act, to acquire promissory notes in a total amount not to exceed $1,000,000 from the Old Dominion Power Company (Old Dominion) organized and operating in the State of Virginia with its principal business office at Norton, Virginia, a wholly owned subsidiary.

According to the application, Applicant proposes to acquire from Old Dominion, promissory notes proposed to be issued by Old Dominion to the Applicant to evidence borrowings not to exceed a total of $1,000,000 to be made by Old Dominion from the Applicant from time to time during the years 1964 and 1965; each such note to be dated on the date on which the borrowing to be evidenced thereby shall be made, to bear interest at a rate not to exceed 4½% per annum from such date, to be unsecured, and to be payable on or before ten years from the date thereof. Each note will be subject to repayment at any time (in whole or in part) without premium or penalty according to the application.

The Applicant states that the funds proposed to be borrowed by Old Dominion from the Company will be used for one or more of the following purposes, namely: the construction, completion, extension or improvement of its electric utility facilities; for the improvement or maintenance of its service; and for the reimbursement of moneys actually expended from income, or from other moneys in the treasury of Old Dominion not secured by or obtained from the issuance of its stocks or stock certificates or other evidences of indebtedness payable at periods of 12 months or more after the date thereof.

According to the application, Applicant believes that the interest rate of not to exceed 4½% to be borne by the proposed notes is as low or a lower cost of money to Old Dominion than it could otherwise obtain, and is amply justified by existing conditions in the capital markets.

By order issued June 30, 1964, the State Corporation Commission of Virginia approved the issuance of $1,000,000 of 4½% promissory notes by Old Dominion to Applicant in the manner described above.

Written notice of the application has been given to the Kentucky Public Service Commission, the State Corporation Commission of Virginia and the Governors of those States. Notice of the application was also published in the Federal Register on July 23, 1964 (29 F.R. 9917), stating that any person desiring to be heard or to make any protest with reference to said application should file a petition or protest with the Federal Power Commission, Washington D.C., 20426, on or before August 3, 1964. No protest or petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued July 18, 1957, *Kentucky Utilities Company*, Docket No. E-6756 (18 FPC 44).

(2) Old Dominion, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued July 18, 1957, *Kentucky Utilities Company*, Docket No. E-6756 (18 FPC 44).

(3) By the proposed transaction, all as described above, Applicant will acquire the securities of Old Dominion, another public utility within the purview and subject to the requirements of Section 203 of the Federal Power Act.

(4) Old Dominion is organized and operating in the State of Virginia under the laws of which its security issues are regulated by a State Commission within the meaning of Section 204(f) of the Act; and the proposed issuance of securities is therefore exempt by virtue of that Section from the requirements of Section 204 of the Act.

(5) Applicant's acquisition of the Promissory Notes of Old Dominion, upon the terms and conditions specified in the application and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act for the reasons set forth in the recital above.

(6) It has not been shown with respect to the proposed transaction, all as described above, that Applicant is subject to any requirements of the Public Utility Holding Company Act of 1935 or a rule, regulation, or order thereunder which would exempt it from the requirements of Section 203 of the Federal Power Act by reason of Section 318 thereof.

The Commission orders:

(A) The acquisition by Applicant of not to exceed $1,000,000 in Promissory Notes of Old Dominion, all as described above, upon the terms and conditions

and for the purposes as set forth in the application, is hereby authorized and approved subject to the provisions of this order.

(B) This authorization shall expire unless the transaction herein authorized and approved is consummated on or before December 31, 1965.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. RP64-39

ORDER GRANTING REQUEST FOR MODIFICATION OF ORDER AND ACCEPTING REVISED TARIFF SHEETS FOR FILING

(Issued August 14, 1964)

On July 23, 1964, Midwestern Gas Transmission Company (Midwestern), pursuant to Section 19(a) of the Natural Gas Act, and Section 1.34 of the Commission's Rules of Practice and Procedure, filed an Application for Rehearing and Request for Modification of the Commission's order issued on June 24, 1964, 31 FPC 1585, herein, insofar as that order relates to the filing of revised tariff sheets applicable to sales on its Southern System, in lieu of continuing the practice of crediting monthly bills of the Southern System customers. The Commission by order issued October 30, 1963, 30 FPC 1149, in Docket No. G-16841, approved the Stipulation and Agreement between Midwestern and its Southern System customers which provides, among other things, that Midwestern shall make certain reductions in rates with respect to sales made during the period from October 1, 1962 through September 30, 1963, which should be accomplished by making appropriate refunds, and for sales made following that period by crediting the monthly bills of the customers. It provided that the crediting procedure should be continued until such time as a change in Midwestern's rate level is to become effective.

Subsequently, by order issued June 24, 1964, in Docket No. RP64-39, the Commission accepted Midwestern's proposal to further reduce its rates to reflect the decrease in Federal Income Tax from 52 to 50 percent. The Commission therein noted that the instant rate reduction was a change in rate level as contemplated by the aforementioned October 30, 1963 order, and required that Midwestern file revised tariff sheets in order that Midwestern's tariff would thereafter reflect the charges actually being made. On July 23, 1964, Midwestern made the requisite filings.

However, concurrently with its filing of the revised tariff sheets, Midwestern filed the aforementioned Application requesting that the order of June 24, 1964, be modified so as to make the revised sheets applicable to the Southern System effective as of August 1, 1964, rather than March 1, 1964. Midwestern stated that it had no objection to an effective date of March 1, 1964 for the revised tariff sheets applicable to the Northern System.

In support of its Application, Midwestern states that (1) an additional reduction in Tennessee's rates effective as of April 1, 1964, has been made and any Midwestern filing effective as of March 1, 1964, could not reflect the reduction in its purchase gas cost and this would be disadvantageous to its customers, (2) the

filing of a rate level to be effective as of March 1, 1964, also would not provide for the balancing of the monthly credits during that portion of the year when gas purchases are made at below the customers' annual load factors and this would be disadvantageous to Midwestern, and (3) the monthly refund procedure of crediting customers' bills through June 1964 has already been completed.

The Commission finds:

Good cause exists for modifying the order of June 24, 1964 to provide that the revised tariff sheets applicable to the Southern System (Second Revised Sheet No. 5 and First Revised Sheet Nos. 6, 7, 8A, 8B, 8C, 20A and 26) be effective as of August 1, 1964, rather than March 1, 1964.

The Commission orders:

(A) Midwestern's Request for Modification of the Order issued herein on June 24, 1964, is hereby granted and the revised tariff sheets filed by Midwestern applicable to its Southern System (First Revised Sheet No. 5 and Second Revised Sheet Nos. 6, 7, 8A, 8B, 8C, 20A and 26) are accepted for filing to be effective as of August 1, 1964.

(B) The revised tariff sheets filed by Midwestern applicable to its Northern System (Second Revised Sheet No. 10 and First Revised Sheet Nos. 11, 14, 18, 21 and 24) are hereby accepted for filing to be effective as of March 1, 1964.

(C) In all other respects, the Commission's order issued June 24, 1964, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP64-289

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 14, 1964)

On June 4, 1964, United Gas Pipe Line Company (Applicant) filed in Docket No. CP64-289 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities in Polk County, Texas, and the transportation of approximately 5,000 Mcf of natural gas in interstate commerce for sale and delivery to Gulf Bitulithic Company during a limited period of six (6) months, all as more fully set forth in the application.

Applicant proposes to construct and operate a tap valve, measuring and regulating station, and appurtenant facilities at Milepost 0.8 on its 2-inch Corrigan tap line, all being in the A. B. Watts Survey of Polk County, Texas. The proposed facilities will enable Applicant to sell and deliver approximately 5,000 Mcf of natural gas to Gulf Bitulithic Company during a period of six months or less, to meet the requirements of the purchaser for asphalt heating purposes in the paving of some six miles of U.S. Highway No. 59 in Polk County, Texas.

In connection with the application Applicant requested waiver of the requirements of Part 157 of the Commission's Regulations as provided in Section 157.7 thereof relating to the omission of data and information not required or necessary in the subject filing. Waiver to the extent requested appears justified under the circumstances of the subject filing.

A temporary certificate was issued to the Applicant on June 18, 1964.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 13, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G–232 (3 FPC 863).

(2) The proposed construction and operation of facilities and transportation and delivery of natural gas to Gulf Bitulithic Company, as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and transportation and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the requirements of Part 157 of the Commission's Regulations be waived to the extent requested.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and transportation and delivery of natural gas to Gulf Bitulithic Company, as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) The certificate issued by paragraph (A) above shall be effective for a period of six months from the date of issuance of this order, at the end of which time Applicant may remove its facilities without further order from the Commission.

(D) Waiver of the requirements of Part 157 of the Commission's Regulations is granted to the extent requested pursuant to the provisions of Section 157.7 thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

LAKE SHORE PIPE LINE CO., DOCKET NO. CP63-243

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 17, 1964)

On April 28, 1964, Lake Shore Pipe Line Co. (Applicant), filed in Docket No. CP63-243 an application to amend an order of the Commission issued July 22, 1963, 30 FPC 373, granting a budget type authorization which permitted Applicant to construct and operate lateral and field facilities to take into its pipeline system natural gas purchased from independent producers in the general area of its system. Said order provided that the total cost of such facilities constructed by Applicant in the twelve months following July 22, 1963, was not to exceed a maximum of $100,000, with no single project exceeding $25,000 in cost. The application to amend seeks authorization to increase the limit on aggregate expenditures to $110,000 during the 12-month effective period of the certificate, and requests authorization to permit construction of facilities to connect to Worldwide Petroleum Corporation's Jacob No. 1 Well, all as more fully set forth in the application to amend.

The application to amend states that on April 23, 1964, Worldwide Petroleum Corporation was authorized in Docket No. CI64-952 to sell natural gas to Applicant, and that lateral facilities required to connect such supply will cost $22,000, which when added to expenditures already made under the budget-type authorization issued July 22, 1963, would exceed the limits in said authorization by approximately $8,000.00.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on July 7, 1964 (29 F.R. 8503). No protest or petition to intervene has been filed in the proceeding concerning this amendment.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued July 22, 1963, in Docket No. CP63-243 be amended as hereinafter ordered.

(2) Good cause has been shown for waiver of the cost limitations imposed by Section 2.58 of the Commission's Rules of Practice and Procedure, as amended.

The Commission orders:

(A) The Commission's order issued July 22, 1963, in Docket No. CP63-243 be and the same is hereby amended by increasing the authorized limitation imposed in said certificate order from $100,000.00 to $110,000.00, as requested in the application to amend filed herein.

(B) In all other respects said order shall remain in full force and effect.

(C) The cost limitations imposed by Section 2.58 of the Commission's Rules of Practice and Procedure are hereby waived in this proceeding.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

LONE STAR GAS COMPANY, DOCKET NO. RP64-42

ORDER PERMITTING REDUCED RATES TO BECOME EFFECTIVE

(Issued August 17, 1964)

On June 1, 1964, Lone Star Gas Company (Lone Star) tendered for filing proposed changes in its FPC Gas Tariff, Original Volume No. 1, to be effective as of January 1, 1964, constituting a reduction in rates and charges to reflect the reduction in Federal Income tax from 52 percent to 50 percent, which became effective January 1, 1964. The rate reduction thus proposed in Lone Star's Rate Schedule PL-1, as contained in tendered Substitute Third Revised Sheet No. 4 to Original Volume No. 1, would reduce the rate to Natural Gas Pipeline Company of America, its sole jurisdictional customer, by 0.05 per Mcf, *i.e.*, from 18.70 cents to 18.65 cents for an annual reduction of $15,665. Notice of the foregoing was issued June 8. The tender contained a mis-calculation which was corrected by Lone Star's tender of the above-identified substitute tariff sheet on July 15, 1964, increasing the reduction in rate and charge from 0.03 cent to 0.05 cent per Mcf and the annual amount from $9,399 to $15,665. The proposed rate filing does not change or otherwise affect Lone Star's existing obligations under any settlement agreements or Commission orders issued in any proceedings involving the rates and charges of Lone Star.

Lone Star requests that the Commission waive the notice requirements of Section 154.22 of the Commission's Regulations so as to permit the above-identified rate schedule to become effective as of January 1, 1964. No comment or protest has been received.

The Commission finds:

(1) Good cause exists for waiving the requirements of Section 154 of the Commission's Regulations under the Natural Gas Act in order that the above-identified revised tariff sheet may become effective on January 1, 1964, as hereinafter ordered.

(2) The rates and charges provided in the above-referenced revised tariff sheet are proper and in the public interest in carrying out the provisions of the Natural Gas Act and should be made effective as hereinafter provided and ordered.

The Commission orders:

(A) The thirty-day period of notice required by Section 154 of the Commission's Regulations under the Natural Gas Act is hereby waived with respect to the effective date of the above-identified revised tariff sheet, and such revised tariff sheet hereby is accepted for filing to be effective as of January 1, 1964.

(B) This order shall not be construed as relieving Lone Star from its existing obligations under the settlement agreement and Commission order in Docket No. RP60-4, issued December 1, 1961, 26 FPC 790, nor from any other outstanding obligation under settlement agreements or Commission orders involving the rates and charges of Lone Star.

(C) This order is without prejudice to any findings or orders which have been made or may hereafter be made by the Commission and is without prejudice to any claims or contentions which may be made by the Commission, Lone Star, the Commission staff, or any other party affected by this order, in any proceedings now pending or hereafter instituted by or against Lone Star or any other persons or parties affected by this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NEW ENGLAND POWER COMPANY, PROJECT NO. 2323

ORDER DENYING REQUEST FOR LICENSE AMENDMENTS

(Issued August 17, 1964)

By letter dated April 3, 1964, New England Power Company, licensee for Project No. 2323, has requested amendment of several articles of its license issued October 29, 1963, 30 FPC 1120.

(1) The licensee proposes amendment of Article 30 to include therein the following italicized language:

Article 30. The Licensee shall be responsible for and shall minimize soil erosion and siltation on lands adjacent to the stream *and within the boundaries of the project* resulting from construction and operation of the project, *unless Licensee owns said lands or has acquired appropriate flowage or other rights with respect thereto.* The Commission upon request, or upon its own motion, may order the Licensee to construct and maintain such preventive works to accomplish this purpose and to revegetate exposed soil surface as the Commission may find to be necessary after notice and opportunity for hearing.

Special Article 30 is now standard Article 19 of revised Form L–3 (applicable to constructed projects affecting navigable waters of the United States), which accompanied our opinion in *South Carolina Electric & Gas Co.*, 30 FPC 1338 and 1658 Op. No. 411, Project No. 2315, November 21, 1963. In the language of the erosion and siltation article we made no distinction based on ownership of lands or water rights. The condition was prescribed to serve the public interest in river development, which clearly involves the control of erosion and siltation, a problem concerning construction, operation and maintenance of a project rather than ownership.

(2) The licensee proposes amendment of paragraph (C) of the license order to include the proviso that the application of all "Articles is to be consistent with the primary purpose of the project and with the provisions of the Act". In the alternative the Company requests amendment of six articles where one or both of these propositions do not appear. Each of these special conditions has since become standard and was specifically commented upon in Opinion 411.[1] In that opinion we noted that open-end conditions in Form L–3 had for many years insured that constructed projects would be best adapted to a comprehensive plan under foreseeable circumstances and we pointed to special conditions in common use which should be included within the standard form. The breadth of the duties of the Commission in this regard was indicated by the Supreme Court in *F.P.C.* v. *Tuscarora Indian Nation*, 362 U.S. 99, 118. As Section 10(a) of the Federal Power Act illustrates, a license condition which conforms to the Act may not necessarily be consistent with the primary purpose for which a project was constructed.

The Company recognizes that some open-end conditions might be consistent with the Federal Power Act but insists that it would be "better to determine all of the specific requirements prior to the issuance of the license". A similar

[1] In addition to special Article 30 (standard Article 19, Form L–3), the Company objects to the following special articles as now worded: Article 21 (standard Article 16: fish facilities); Article 22 (standard Article 13: additional generating capacity); Article 23 (standard Article 14: coordination with other power systems); Article 24 (standard Article 18: public access).

Special Article 25 is a combination of standard Article 17 (recreational facilities) and special Article 29 in Opinion No. 411 (recreational plan).

issue was disposed of adversely to New England's contention in *Portland General Electric Co.* v. *F.P.C.*, 328 F. 2d 165, CA9 Nos. 18427, 18432, February 7, 1964, where there was question, among other things, of an open-end condition under which there might be demanded a conveyance of lands outside project boundaries for navigation purposes. The Court held that in such event the licensee "would have its day before the Commission and in the courts" as to whether such action was authorized by the article and the Federal Power Act. Upon remand we held that inherent in the navigation article (standard Article 7, Form L–3 as here concerned) although not expressed was the assurance sought by the licensees that they would be entitled to a hearing and that the Commission would be required to find navigation improvement to be reasonably necessary and that the cost to the joint licensees would be reasonably consistent with their investment in the project. Portland General Electric Co., 32 FPC 356, Project No. 2233, July 24, 1964 (order modifying license order). Inherent in all license conditions in which the issues have not already been determined is the opportunity for a hearing which affords adequate protection to the licensee and other interested parties.

The Commission finds:

It is appropriate and in the public interest, in administering the Federal Power Act, that the aforesaid request for amendments be denied.

The Commission orders:

The Licensee's aforementioned April 3, 1964 request for license amendments is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

IRVING PASTERNAK, DOCKET NO. RI64–751; FPC GAS RATE SCHEDULE NOS. 3 AND 5

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued August 17, 1964)

On July 24, 1964, Irving Pasternak (Pasternak) submitted for filing a document styled "Petition for Exercise by Commission of Supervisory Power Pursuant to Section 4(d) of Natural Gas Act to Grant Relief and Waive 30 Day Notice Requirement", which has been construed as a motion for reconsideration. Pasternak requests reconsideration of the order issued June 2, 1964, which suspended for one day a proposed increased rate, and reconsideration of the Commission's action in accepting for filing without suspension notices of change in Pasternak's FPC Gas Rate Schedule Nos. 3 and 5. Pasternak asks that its rate filings be made retroactively effective as of January 1, 1964.

On May 4, 1964, Pasternak tendered for filing a notice of change in its presently effective FPC Gas Rate Schedule No. 4, involving the jurisdictional sale of natural gas to El Paso Natural Gas Company (El Paso) in the Basin Dakota Field, Rio Arriba County, New Mexico (San Juan Basin). The proposed increased rate, designated as Supplement No. 1 to Pasternak's FPC Gas Rate Schedule No. 4, was suspended by order issued June 2, 1964, in Docket No. RI64–751, until June 5, 1964, when it became effective subject to refund. The proposed increased rate of 14.0¢ per Mcf which includes a 1.0¢ per Mcf minimum guarantee for liquids was suspended because it exceeded the applicable area price level of 13.0¢ per Mcf for increased rates as set forth in the *Commission's Statement*

of General Policy No. 61–1, as amended [18 CFR, Chapter I, Part 2, Section 2.56], by the amount of the minimum guarantee for liquids.

On May 4, 1964, Pasternak tendered for filing notices of change to its presently effective FPC Gas Rate Schedule Nos. 3 and 5, involving the jurisdictional sales of natural gas to El Paso in the South Blanco Field, Pictured Cliffs Formation, Rio Arriba and Sandoval Counties, New Mexico (San Juan Basin). The proposed increased rates were accepted for filing, effective on June 4, 1964.

In the motion for reconsideration, Pasternak urges that the increased rates be made retroactively effective as of January 1, 1964, the date Pasternak was contractually entitled to the increases on the ground that the illness of Pasternak's attorney caused Pasternak to overlook filing at an earlier date. In our view, good cause has not been shown for waiving the 30-day notice requirement provided in Section 4(d) of the Natural Gas Act to permit an earlier effective date for Pasternak's rate filings.

The Commission finds:

The motion for reconsideration filed by Pasternak on July 24, 1964, should be denied.

The Commission orders:

The motion for reconsideration filed by Pasternak on July 24, 1964, is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ALASKA HERRING PRODUCTS CO., INC., PROJECT NO. 1426

ORDER ACCEPTING SURRENDER OF LICENSE

(Issued August 19, 1964)

Application was filed on April 10, 1964, by Alaska Herring Products Co., Inc. (Licensee) under Section 6 of the Federal Power Act (Act) for surrender of its license for major Project No. 1426, located on Sheckley Upper Lake, Sheckley Lower Lake, and Sheckley Creek flowing from the outlet of Sheckley Lower Lake into Port Armstrong on the southern end of Baranof Island, Alaska, and affecting lands of the United States within the Tongass National Forest.

The application for surrender was requested by the Commission in its letter dated March 30, 1964, inasmuch as the project had not been in operation since 1961. Annual charges under the license for the project have been paid through December 31, 1961. By letter dated June 25, 1964, the United States Forest Service advised that the National Forest lands occupied by the project have been restored to a condition satisfactory to the Service.

The Commission finds:

(1) Public notice of the application has been given as required by the Act. No protests or petitions to intervene have been received.

(2) Acceptance of surrender of the license for the project is appropriate as hereinafter provided.

The Commission orders:

Surrender of the license for Project No. 1426 is hereby accepted, effective as of December 31, 1961.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MISSISSIPPI RIVER FUEL CORPORATION, DOCKET NO. G-19495

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 19, 1964)

On April 27, 1964, Mississippi River Fuel Corporation (Applicant) filed in Docket No. G-19495 an application to amend an order of the Commission issued January 4, 1960, 23 FPC 8, in Docket No. G-19495, which order as presently amended authorizes among other things the installation and operation of 19 compressor units consisting of a total of 5459 Hp on Applicant's gathering system in the Woodlawn Field in Harrison County, Texas. Applicant now seeks authorization to install and operate an additional 675 Hp compressor capacity on its gathering system in 1964, all as more fully set forth in the application.

The application to amend states that the additional 675 Hp compressor capacity is required due to the continued decline in pressure in the Woodlawn Field necessitating additional compression to enable Applicant to receive natural gas from its dedicated reserves. The estimated cost of the additional compressor capacity is $120,000, which will be defrayed from cash on hand.

Due notice of the subject application to amend and opportunity for hearing has been given by publication in the Federal Register on June 19, 1964 (29 F.R. 7832). No protest or petition to intervene has been filed concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued January 4, 1960, in Docket No. G-19495, be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued January 4, 1960, in Docket No. G-19495, be and it is hereby further amended by authorizing Mississippi River Fuel Corporation to install and operate an additional 675 Hp of compressor capacity on its system in the Woodlawn Field in Harrison County, Texas, all as hereinbefore described and as set forth in the subject application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SACRAMENTO MUNICIPAL UTILITY DISTRICT AND PACIFIC GAS & ELECTRIC COMPANY, PROJECT NO. 2155

ORDER APPROVING REVISED PROJECT EXHIBITS

(Issued August 19, 1964)

On May 12, 1964, Sacramento Municipal Utility District, joint licensee for Chili Bar Project No. 2155, filed application for Commission approval of certain revised project exhibits as part of the license for the project. The project affects lands of the United States.

The revised exhibits are designated and described as Exhibits K–27–1 and K–27–2 (FPC Nos. 2155–14 and –15) together with a 19-page typewritten supplemental metes and bounds description entitled "Exhibit K–27–1 & 2 (Supplement) Project No. 2155 Chili Bar Reservoir Proposal Project Boundary". These exhibits would supersede Exhibit K–2 (FPC No. 2155–11) now part of the project license.

The application divides the project area into two parts, Parcel A which is the main reservoir, and Parcel B which is a parcel of land of the United States which was required for part of an access road. The effect of our approval of the revised exhibits is to define and generally to reduce the project area for reservoir purposes.

Inasmuch as Article 26 of the license does not require the joint licensee to file Exhibit F, showing the ownership and acreage of the project lands, earlier than one year after the completion of the project works, namely, October, 1964, annual charges for occupancy of lands of the United States within the boundary of Project No. 2155 are reserved by Article 34 of the license for future Commission determination.

The Commission finds:

Revised Exhibits K–27–1 and K–27–2 (FPC Nos. 2155–14 and –15) and the 19-page supplement conform to the Commission's rules and regulations and should be approved except for Parcel B thereof, as part of the license for the project, and superseded Exhibit K–2 (FPC No. 2155–11) should be eliminated from the license for the project.

The Commission orders:

The revised exhibits and supplement mentioned in the above finding are hereby approved as part of the license for Project No. 2155 to the extent indicated therein, and the superseded exhibit mentioned in the same finding is hereby eliminated from the license for the project.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE FALL RIVER EXPLORATION AND MINING COMPANY, PROJECT NO. 2053

REFERENCE TO ATTORNEY GENERAL FOR SUIT TO REVOKE LICENSE

(Issued August 20, 1964)

On September 23, 1954, 13 FPC 1405, the Commission issued a new license to The Fall River Power Company[1] for major Project No. 2053 for a period of 20 years, effective as of November 24, 1949.

The project is located in Fall River, a tributary of Clear Creek, in Clear Creek County, Colorado, and affects unsurveyed lands of the United States within the Arapaho National Forest.

According to the Commission's records, the project has not been in operation since February 1944. The project works are in a state of disrepair and a considerable amount of rehabilitation would be required before the project could be put into operation.

[1] The Fall River Power Company changed its name to The Fall River Exploration and Mining Company on January 8, 1958, whose address is P.O. Box 32, Idaho Springs, Colorado.

Article 26 of the license for the project fixes annual charges for the purpose of reimbursing the United States for the costs of administration of Part I of the Federal Power Act of one cent per horsepower on the installed capacity of the project (800 horsepower), plus two and one-half cents per 1,000 kilowatt-hours of gross energy generated by the project during the calendar year for which the charge is made. The article also fixes an annual charge in the amount of $64.80 for the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands by the project.

Although requested to make payment, annual charges in the amount of $72.80 are owing for the calendar year 1963. Section 11.31(e) of the Commission's Regulations provides for the imposition of a penalty, in case of delinquency in payment, of 5 percent of the total amount so delinquent, assessed and added to the total charges which shall apply for the first month or part of month so delinquent with an additional penalty of 3 percent for each full month thereafter until the charges and penalties are satisfied in accordance with law.

The Commission finds:

The above-mentioned failure to pay the annual charges owing under the license for Project No. 2053 constitutes a violation of the terms of the license and the Regulations of the Commission under the Federal Power Act.

The Commission orders:

The afore-mentioned violation of the terms of the license for Project No. 2053 and of the Regulations of the Commission under the Federal Power Act is hereby referred to the Attorney General for the institution of proceedings under Section 26 of the Federal Power Act for revocation of the license for Project No. 2053, for collection of annual charges and penalties thereon, and for restoration of the lands of the United States involved to a condition satisfactory to the Forest Service, Department of Agriculture.

OPINION NO. 269-B

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. G-1116

MEMORANDUM OPINION AND ORDER DENYING PETITION TO REOPEN, MODIFYING AND ADOPTING PRIOR OPINION, AND DIRECTING REFUNDS OF EXCESS CHARGES

(Issued August 20, 1964)*

1. Proper treatment of extraction operations is to include all costs thereof in pipeline's cost of service and to credit thereto all revenues resulting from such operations. P. 635.
2. Since pipeline's purchased gas cost during February 20, 1952, through December 31, 1954, was subject to "spiral escalation" with respect to gas purchased from three producers, it is appropriate that such escalation be reduced and pipeline recompute and apply the percentage escalation to its gas costs during applicable period utilizing purchased gas volumes contained in prior report to Commission. PP. 635, 636.
3. Upon court remand, Commission *modifies* and *adopts* prior opinion; *denies* petition to reopen; and *directs* refunds.

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*Order issued October 15, 1964, denying rehearing and granting stay, 32 FPC 1123. Affirmed, *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 348 F. 2d 340 (CADC-1965) Cert. denied, 382 U.S. 944 (1965).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

There remains before the Commission in this proceeding, upon the 1963 court remand of our Opinion No. 269–A,[1] the same issue which we have fully considered in Opinion No. 344–A, issued this date in *Panhandle Eastern Pipe Line Company*, Docket No. G–2506. That issue involves the revenues received by Panhandle from the extraction of gasoline and other liquids from natural gas at the Sneed, Texas, and Liberal, Kansas extraction plants, during the rate period from February 20, 1952 through December 31, 1954.

In this proceeding, Panhandle recommended, and the Commission in Opinion No. 269[2] adopted, an allocation of costs between Panhandle's pipeline business and its alleged "separate" gasoline extraction business. That method of allocation would reduce the pipeline's total cost of gas by a credit based upon the percentage of reduction of Btu of the gas stream as a result of the extraction operations. However, the court in City of Detroit[3] in 1955 disagreed with the Commission's utilization of the Btu allocation of costs and its ". . . failure to credit the revenues of the gasoline extraction operation . . ." (230 F. 2d at 823), and remanded Opinion No. 269 to the Commission for further proceedings not inconsistent with the court's opinion.

Following such remand, we issued Opinion No. 269–A and also Opinion No. 344, the latter relating to Panhandle's extraction operations in Docket No. G–2506 for the period January 1, 1955, through August 31, 1958. By those opinions we determined that the proper treatment of these extraction operations in Panhandle's cost of service is the inclusion of all costs and the crediting of all revenues resulting from such operations.

In our Opinion No. 344–A issued this date, *infra* p. 636 we have set out supplemental findings required by the court's 1963 remand and have readopted our conclusion reached in Opinion No. 344. That conclusion and the findings upon which it is based are equally applicable to this proceeding, relating to the earlier period, and are incorporated herein.

Panhandle's petition to reopen proceedings filed April 19, 1963, to the extent applicable to this proceeding, should be denied for the reasons fully set forth in Opinion No. 344–A.

Purchased Gas Cost Escalation

Panhandle's purchased gas cost during this period was subject to "spiral escalation" with respect to gas purchased from Phillips Petroleum Company,[4] Shamrock Oil and Gas Corporation, and Magnolia Petroleum Company. The actual amount to be included in Panhandle's cost of service for this escalation is dependent upon the final determination of all issues in this proceeding. On a contingent basis Opinion No. 269 reflected an increase in Panhandle's purchased gas costs in the amount of $919,295, representing a 23.31336 percent "spiral escalation". (13 FPC 104, Appendix I, Table 10).

All issues in this proceeding have now been determined. It is appropriate, therefore, that the "spiral escalation" be reduced and Panhandle recompute and apply the percentage escalation (approximately 14.5 percent) to its cost of gas purchased from the three producers during the respective rate periods from February 20, 1952, through December 31, 1954, utilizing the purchased gas vol-

[1] Panhandle Eastern Pipe Line Company, Opinion No. 269–A, 25 FPC 784 (1961) and order denying rehearing, 25 FPC 1214, remanded in *Panhandle Eastern Pipe Line Company* v. *F.P.C.*, 305 F. 2d 763 (CADC, 1962), certiorari denied 372 U.S. 916 (1963).

[2] Opinion No. 269, 13 FPC 53 (1954) and order denying rehearing, 13 FPC 1116.

[3] *City of Detroit, Michigan* v. *F.P.C.*, 230 F. 2d 810 (1955), certiorari denied, 352 U.S. 829, petition for rehearing denied 352 U.S. 919 (1956).

[4] See Phillips Petroleum Company, Opinion No. 338, 24 FPC 537, 576–578, and order paragraph (C) at p. 579.

umes contained in its report to the Commission filed July 25, 1961. (See Opinion No. 344–A).

The Commission finds:

(1) Upon reconsideration in accordance with the court's remand, Opinion No. 269–A, issued on April 27, 1961, as modified by the order denying rehearing, issued June 26, 1961, should be further supplemented by the additional findings and conclusions set forth above, and as so amended, should be adopted.

(2) Panhandle's petition to reopen this proceeding, filed April 19, 1963, is not in the public interest in carrying out the provisions of the Natural Gas Act and should be denied.

The Commission orders:

(A) The Commission's Opinion No. 269–A as heretofore modified and amended is hereby further amended to include the additional findings and conclusions set forth above, and as so amended is adopted.

(B) Panhandle shall within 45 days after the issuance of this order file with the Commission (and serve copies upon its customers, parties and interested State commissions) a report of its recomputations of its cost of purchased gas, cost allocations, jurisdictional cost of service, rates and recomputed revenues and refunds, including interest, as submitted on June 6, 1963, in accordance with Opinion No. 269–A as amended herein, subject to the Commission's approval.

(C) Any customer, party, or interested State commission may file objection to Panhandle's report within 10 days after Panhandle has filed its report pursuant to paragraph (B) above.

(D) Unless notified by the Secretary of the Commission prior thereto that its report is unacceptable, Panhandle, within 60 days from date of issuance of this order, shall make the additional refunds and interest payments to its jurisdictional customers in accordance with the report required by paragraph (B) above.

(E) Within 20 days after making refunds as required by paragraph (D) above, Panhandle shall file with the Commission and serve upon all parties a verified statement setting out that it has made the refunds of principal amount and interest to each customer as shown in the report filed pursuant to paragraph (B) above, together with proof of payment to each customer of amounts due.

(F) Panhandle's petition to reopen this proceeding filed on April 19, 1963, is hereby denied.

OPINION NO. 344–A

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. G–2506

MEMORANDUM OPINION AND ORDER DENYING PETITION TO REOPEN, MODIFYING AND ADOPTING PRIOR OPINION, AND DIRECTING REFUND OF EXCESS CHARGES

(Issued August 20, 1964)*

1. Commission *rejects* contention that only that portion of profit [revenues less cost] of extraction plant attributable to operations "beneficial" to pipeline should be credited to pipeline operations. P. 641.
2. Since instant case does not involve prospective ratemaking, there is no reason to reopen proceeding to give pipeline further opportunity of meeting burden of deviating from court-approved "normal" method of treating extraction operations, *i.e.* Commission treatment in *Opinion No. 344*. P. 641.

*Order issued October 15, 1964, denying rehearing and granting stay, 32 FPC 1123. Affirmed, *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 348 F. 2d 340 (CADC–1965) Cert. denied, 382 U.S. 944 (1965).

3. There is no basis for assuming that any of fixed costs of extraction operations were *not* attributable to facilities necessary or beneficial for pipeline's jurisdictional operations. P. 642.
4. In pipeline rate case, Commission must consider cost to jurisdictional rate payers of loss of cheap expansibility of downstream pipeline facilities resulting from use in transporting gas for "non-jurisdictional" extraction and the loss in Btu or heating value of gas stream resulting therefrom. P. 642.
5. Pipeline has not demonstrated any basis for Commission to deviate from normal practice of assigning all costs of extraction operations to pipeline cost of service and crediting all annual profits above a 5¾ percent return on investment in such facilities [the same afforded all other pipeline transmission] to cost of service. P. 642.
6. Since pipeline has failed to show that its method is based upon a proper relationship between criteria used (necessary extraction volumes) and costs which may fairly be attributed to pipeline cost of service, it has not justified a departure from Commission's "normal" method used in similar circumstances with judicial approval. P. 643.
7. Finding no "clear indication that the evidence offered . . . would likely lead to a different result", Commission *denies* petition to reopen proceedings. P. 644.
8. Commission *requires* pipeline to recompute the purchased gas costs escalation for period involved in accordance with method approved in Opinion No. 269. P. 644.
9. Upon court remand, Commission *modifies* and *adopts* prior opinion; *denies* petition to reopen and *directs* refunds.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

There remains before the Commission in this proceeding, upon court remand of our Opinion No. 344,[1] the issue involving the revenues received by Panhandle Eastern Pipe Line Company (Panhandle) from the extraction of gasoline and other liquids from natural gas prior to its entering the main transmission facilities, or during the gathering function of its business. More specifically, the liquid revenues in question are derived from operations at the Sneed, Texas, and Liberal, Kansas, extraction plants which are more fully discussed below. Since the rate period covered by this proceeding is that from January 1, 1955, through August 31, 1958, our consideration herein is for the purpose of fixing rates and refunds for a past, rather than a prospective, period.

In Opinion No. 344 the Commission adopted the treatment of the Presiding Examiner's decision in which he included all liquid extraction costs, including 5¾ percent return on investment in extraction facilities, and credited the net profits from such liquids to the pipeline cost of service. As we stated in Opinion No. 344, "Panhandle insists that the evidence presented by it, showing to what extent the extraction process was desirable, should limit the amount of revenue credited"; *i.e.*, only the revenue from that volumetric portion of extraction shown to be desirable (for increasing the efficiency of pipeline operations) should be allocated to the pipeline cost of service, and the remaining portion of the revenue should be allocated to its claimed "non-jurisdictional" extraction business. As a corollary to the allocation of extraction revenues, Panhandle recommends the allocation (between the pipeline and extraction

[1] *Panhandle Eastern Pipe Line Company*, Opinion No. 344, 25 FPC 787, Order Denying Rehearing, 25 FPC 1215; remanded in *Panhandle Eastern Pipe Line Company* v. *F.P.C.*, 305 F. 2d 763 (CADC 1962) certiorari denied 372 U.S. 916 (1963).

functions) of both extraction costs and the costs of the natural gas stream entering such extraction plants. These latter costs included all production and purchased gas costs and gathering costs.

Following the Commission's denial of Panhandle's application for rehearing, the company sought court review of Opinion No. 344 and order. The court in 1962, remanded the case to the Commission on the extraction issue, ". . . to reach an independent determination, in light of our opinion in the *City of Detroit* case, *as to whether* there should be an allocation of the extraction plant profits at Sneed and Liberal."[2] [Emphasis added.] The court expressed doubt as to whether the Commission had properly understood its earlier decision in that case,[3] which involved the same company and the same extraction plant operations as in this case, saying:

> . . . Indeed, there are strong indications that the Commission believed that *City of Detroit* requires, where extraction operations in some way improve the efficiency of a transmission system, that the entire extraction revenues be credited to the pipeline.

The court then gave its own interpretation of the law as made in that case. It said that *City of Detroit* would, under certain circumstances, permit the Commission to allocate costs between its pipeline and extraction operations, but that the Commission was hardly compelled to thus allocate costs and revenues.[4] The matter, it said, is within the Commission's reasonable discretion. We shall endeavor in this opinion to follow the views of the court as set forth in that decision, in the light of its 1962 decision.

1. *The Record Evidence*

The record shows that during the test year, the gas which Panhandle produced and purchased in the Panhandle and Hugoton Fields in Texas, was processed by Phillips Petroleum Company's Sneed, Texas, gasoline plant under a 1943 contract. The residue gas was delivered to Panhandle, and Phillips sold the gasoline and paid Panhandle for 58.8 percent of the extracted liquid at prevailing market prices. Phillips also provided a volume of its own residue gas equivalent to the volume of the shrinkage so as to equalize the outlet with the inlet gas volumes, passing through the plant. During the test year ending October 31, 1954 Panhandle received $517,578 from Phillips as its share of the liquid revenues.

The gas produced and purchased by Panhandle during the test year in the Hugoton Field in Oklahoma, and in Kansas, was processed in Panhandle's own hydrocarbon extraction plant at Liberal, Kansas. For all liquids sold during the test year, Panhandle received total Liberal plant revenues of $1,007,993 and had total extraction operation costs of $587,114, a net profit of $420,879. These extraction operation costs included, in addition to extraction plant costs, an allocated share of the costs of producing, purchasing, gathering, and transporting the shrinkage volumes of gas to the Liberal Plant.

In his testimony, Panhandle's engineering witness explained the manner and extent to which extraction of gasoline aided pipeline operations. He testified that hydrocarbons (mainly gasoline) contained in natural gas condense into

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[2] Panhandle's petition to reopen (*infra*, p. 643) cites the West Publishing Company's head note of the court's opinion (305 F. 2d 763), stating that the case was remanded "for a determination of the proper allocation of revenues from hydrocarbon and gas extraction . . ." This is obviously not an accurate restatement of the court's language quoted correctly above and, therefore, is of no effect. *Burbank* v. *Ernst*, 232 U.S. 162 (1914). The question is *whether* such an allocation of extraction costs should be utilized. *Mid-America Pipeline Co.* v. *F.P.C.* 330 F. 2d 226 (CADC–1964).

[3] *City of Detroit, Michigan,* v. *F.P.C.*, 230 F. 2d 810 (CADC, 1955), certiorari denied, 352 U.S. 829, rehearing denied, 352 U.S. 919 (1956).

[4] *Mid-America Pipeline, supra*, fn.[2], at pages 228–229 and fn.[4]

liquids when the temperature of the gas (governed mainly by ground temperatures, except as affected by compression of the gas from station to station) declines below the hydrocarbon dew point of the gas at any particular operating pressure. When such ground temperatures occur, the liquids tend to form on pipe walls and settle in low points of the pipeline. As they form on pipe walls, the liquids move more slowly than the gas and absorb some pressure and energy. The formation of liquid pools at low points in the pipeline reduces total flow capacity and operating pressure.

Panhandle's witness presented a study based upon certain assumed constant factors, including composition of the gas, pressure at various points along the pipeline, minimum temperatures and the dew points at which liquids would be formed. As a result of these computations, he concluded that most of the volumes extracted at the Sneed and Liberal plants must be characterized as "superfluous in the sense that the operations are carried on in summer months when not required to insure that liquids will not form in the lines. He testified that during the test year only 499,207 gallons out of 23,653,457 (2.11 percent) actually extracted at Sneed would have had to be removed from the gas during four coldest winter months to avoid condensation, and, that at Liberal, only 1,897,098 gallons out of 20,048,918 (9.47 percent) would have had to be removed during seven coldest months.

From the study thus presented, Panhandle's witness concluded that the extraction plants were operated for two purposes—for the sale of hydrocarbons at an unregulated profit, and for the protection of the pipeline service. Upon the basis of its witness's conclusions in this regard, Panhandle contends that only that portion of the profit (revenues less costs) of the extraction plants which is attributable to operations "beneficial" to the pipeline should be credited to pipeline operations.

On the basis of his analysis, Panhandle's witness credited the pipeline cost of service with the total amount of $314,875. Of that amount, $112,842 resulted from his calculations of net profits at Sneed Plant, and $202,033 at Liberal Plant. Allocating 88 percent of this amount to jurisdictional sales, the end result of his calculations was a credit to the jurisdictional cost of service in the amount of $277,000.

The net profit of $112,842 allocated at Sneed Plant was the sum of two amounts, $10,921 and $101,921. The amount of $10,921 is 2.11 percent of Panhandle's share of the gasoline revenues ($517,578) obtained by Phillips from sale of gasoline extracted from Panhandle's gas. Panhandle's share of the total liquid revenues was $619,714, or 58.8 percent of $1,053,935, but Panhandle's witness excluded $102,136 of revenues from the sale of extracted butane and propane on the theory that their removal did not benefit the transportation of natural gas. The remaining credit in the amount of $101,921 resulted from the witness's allocations to the "superfluous" extracted liquids of a portion of the cost of the gas at the plant inlet. The allocation of gas supply and gathering costs was on a volumetric basis and the allocation of the cost of transporting those volumes to the plant was a segregated-facilities allocation utilizing selected capacity factors, assuming constant pressure, temperature and specific gravity.

The net profit of $202,033 allocated at Liberal Plant was, likewise, the sum of two amounts, $31,638 and $170,395, of which the former was computed in a somewhat different manner from that at Sneed. The amount of $31,638 is 9.47 percent of the net profits (gasoline revenues less cost of extraction plant operations) obtained by Panhandle from its own sale of gasoline extracted at Liberal Plant. Panhandle's witness testified that the total liquid revenues at Liberal Plant were $1,007,983, and the total extraction plant operation cost was $587,114, leaving a net profit for all liquids of $420,879. Of this latter amount, on the basis of

proportions of liquid revenues, he allocated 20.63 percent, $86,796 to propane and butane, whose removal, he testified, was not "beneficial" to transportation of natural gas. Of the remaining net profit attributable to gasoline, $334,083, the witness allocated 9.47 percent, $31,638, to the pipeline cost of service, together with $170,395 as an allocated portion of the cost of gas at plant inlet attributable to the "superfluous" gasoline (gas supply, gathering and transmission costs, in the same manner as at Sneed Plant).

The presiding Examiner's treatment of these extraction costs and revenues followed the Commission's court-approved method. This method was adopted, as modified by the Commission, in Opinion No. 344. It includes all extraction operations costs, in the amount of $403,209, and credits the combined total revenues from both plants, in the amount of $1,627,707, to that cost of service. The extraction costs include return on extraction plant investment at 5¾ percent (the allowed rate of return on overall pipeline investment), income taxes, depreciation, maintenance, wages, salaries and other operating expense attributable to the extraction operations. Unlike Panhandle's method, since no recognition is given to extraction as a "separate" business, no allocation is made of production, gathering and other costs of gas at the plant inlet. The Examiner's treatment resulted in a net revenue credit of $1,224,498, of which approximately 88 percent, or $1,077,000 was then allocated to reduce the jurisdictional cost of service. Thus, the reduction in Panhandle's jurisdictional cost of service found by the Examiner as approved by the Commission was approximately $800,000 more annually than the $277,000 figure proposed by Panhandle.

These computations of the effect upon the jurisdictional cost of service of the gasoline extraction issue have been somwhat altered by Panhandle's computations submitted July 25, 1961, in accordance with Opinion No. 344, as approved by the Commission's order issued May 7, 1963. Panhandle's July 1961 computations, by reflecting the costs and volumes found in Opinion No. 344, reduced the net credit to the pipeline cost of service from the $1,224,498 found by the Examiner, to $1,201,808. Moreover, Panhandle claimed that the operable figures utilizing its allocation bases were likewise changed from the net credit of $314,875 presented in hearing, to $234,916. The Commission's order issued May 7, 1963 required Panhandle to make refunds to reflect the cost of gas produced (elimination of its claimed commodity value for such gas) and permitted Panhandle to compute the gasoline extraction credit on the basis of the annual amount, $234,916, subject to its later determination which is made herein. Thus, the annual amount now in issue is a difference of $966,892 in the pipeline cost of service, and (at 88 percent), a difference of approximately $850,865 in the jurisdictional cost of service.

2. *Discussion*

Panhandle's contentions were briefly summarized and disposed of by the court in its 1962 opinion:

> Finally, Panhandle argues that the Commission should not have credited *all* of the revenues from the Liberal and Sneed hydrocarbon and gas extraction plants to the pipeline cost of service, and that only that proportion of the extraction business which improves the pipeline's efficiency should be credited to the pipeline business.
>
> Put another way, Panhandle seems to claim:
>
> . . . (1) that extraction operations which improve pipeline efficiency must be treated as within the Commission's jurisdiction, while those that do not should be treated as non-jurisdictional, and (2) that when jurisdictional and non-jurisdictional operations use the same facilities, the operating cost of these facilities should be allocated between them.

We have found no real authority for these propositions advanced by Panhandle. On the contrary, the treatment of the extraction revenues here utilized by the Commission has been followed in numerous cases.

* * * * * * *

In sum, crediting revenues such as those in issue to the operating expenses of the pipeline business is the "normal" and judicially approved method employed by the Commission.

However, as we pointed out above, the court expressed doubt that the Commission had properly understood and applied the court's earlier decision in *City of Detroit*. In remanding the matter to the Commission, the court gave its own interpretation of its earlier decision as follows:

There is little doubt that the *City of Detroit* decision would, under certain circumstances, *permit* the Commission to allocate costs among a company's pipeline and extraction operations. But the Commission is hardly *compelled* to make such an allocation. We construe the *City of Detroit* case as not foreclosing the question of allocation as a matter within the Commission's reasonable discretion. [Emphasis added]

Thus, it is clear from the court's language that it rejected Panhandle's position that the Commission *must* allocate extraction costs and revenues between its pipeline and its claimed "separate" or "superfluous" extraction business. It is also clear that, the Commission is permitted, in the reasonable exercise of its discretion under the Natural Gas Act, either to make some type of allocation or to adhere to the "normal" court-approved method of including all extraction costs and of crediting all extraction revenues to the pipeline cost of service. It was for the purpose of insuring that the Commission had exercised its discretion that the court remanded the matter to us.

Upon further consideration of all the facts and circumstances herein, we have concluded that Panhandle has failed to provide a method which would fairly allocate the extraction costs and revenues between pipeline and "superfluous" extraction operations, and that the record does not provide any other basis for making any such allocation, or even for determining that such other allocation would have been appropriate. Since this case is not one involving prospective ratemaking we see no reason for reopening the proceeding to give Panhandle a further opportunity of meeting the burden of deviating from the court-approved "normal" method of treating extraction operations, *i.e.*, the way we, in fact, treated them in Opinion 344.

Panhandle bases its allocation method upon the evidence it introduced showing that not all the liquids extracted from the natural gas stream passing through the Sneed and Liberal plants improve the pipeline's efficiency. As we have more fully set forth above, its engineering witness made calculations and testified that only relatively small percentages (2.11 percent at Sneed, and 9.47 percent at Liberal) of the *annual* volumes of gasoline extracted were needed to be removed to avoid condensation, drag and line blockage. Relying upon such facts, Panhandle contends that only a similar portion of the profit from such extraction operations and sales of extracted liquids should be credited to the pipeline cost of service. This conclusion does not follow and is not supported by the evidence.

As indicated above, the necessary or beneficial extraction takes place during the cold winter periods. Thus, during the five warmer months Panhandle assigned none of the extraction volumes to beneficial purposes, whereas during the other seven months it assigned portions of the gasoline extracted to beneficial purposes which cumulatively totaled 2.11 and 9.47 percent, respectively, of the total annual gasoline volumes produced at Sneed (23,653,457 gallons) and at Liberal (20,048,918 gallons). Upon cross-examination, Panhandle's engineering witness testified that at the lowest dew point experienced (underground tempera-

tures at which liquids condense at 600 pounds pressure) of 32° Fahrenheit it would be desirable to maintain extraction operations at the rate of 0.0068 gallon of gasoline per 1,000 Mcf of gas processed. Applying that rate to the total volume of gas processed in the week of maximum extraction (February 1–S, 1956) 1,717,592 Mcf, the maximum weekly beneficial extraction, according to the witness, would have been 114,735 gallons. On days warmer than 32° F., lesser extraction rates would be applicable. How this extraction rate compares with the actual extraction was never shown, nor was the percentage shown of such maximum weekly extraction which he deemed to be "beneficial".

These figures, however, do not tell the entire story, for the maximum beneficial utilization of the extraction plants cannot be determined by any weekly or even daily percentage. Obviously, the maximum utilization of the two plants would occur during the coldest hours of the coldest days of the year. That this maximum might well approximate 100 percent is indicated by the testimony of Panhandle's own witness who with respect to the Sneed Plant testified, "[i]f only 2.11 percent had been removed, there would not have been any profit on the operation because the costs would not have been very much less than they were . . ."

Accordingly, there is no basis in this record for assuming that any of the fixed costs of the extraction operations were *not* attributable to facilities necessary or beneficial for the pipeline's jurisdictional operations. Nor can it be contended that an allocation could be made on this record because there may have been variable extraction costs clearly not assignable to pipeline operations. Not only is the record completely barren of any evidence upon which such costs could be calculated, there is not even proof that such severable variable costs exist in any significant amount.

Thus, there is no basis for assuming that save for non-jurisdictional considerations the extraction facilities could or would be shut down during the summer months or operated at lesser cost in other periods. On the contrary, Panhandle's witness testified that extraction plants are designed to be, and are, operated on a relatively stable basis the year around, and as a technical matter, should not be operated on a fluctuating or unstable basis.

Finally, there is another significant factor which Panhandle has not taken into account. This is the cost to its jurisdictional rate payers of the loss of cheap expansibility of downstream pipeline facilities resulting from the utilization of such facilities for transporting gas for any "non-jurisdictional" extraction at the two plants and for the loss in Btu or heating value of the gas stream as a result of the extraction operations.[5] That this is a factor which must be considered by the Commission in a pipeline's rate case has only recently been expressly reaffirmed by the District of Columbia Circuit Court of Appeals in the appeal from the most recent *Northern Natural* rate case.[6]

In view of all of these considerations, we conclude that Panhandle has not demonstrated any basis for our deviating from our normal practice of assigning all costs of the extraction operations to its pipeline cost of service and crediting all annual profits above a 5¾% return on investment in such facilities (the same return afforded all other pipeline transmission property) to its cost of service.

In further support of its claim that the Commission should adopt its allocation method, Panhandle contends that "[t]he profit from the excess or superfluous operations should inure solely to the benefit of the stockholders, as they

[5] At the Sneed Plant, in effect, Phillips reimburses Panhandle for such loss, but under the latter's theory over 97% of this sum is kept by the company.

[6] *Mid-America Pipeline Co.* v. *F.P.C.*, 330 F. 2d 226 *supra*, at pp. 229–230 (CADC), affirming *Northern Natural Gas Company*, Opinion No. 374, 28 FPC 1155, 1160; 29 FPC 450, 451.

would have been required to bear the loss if the [gasoline] price had been so low that the revenues were less than the cost of carrying out the operation." The answer is that Panhandle's stockholders would have the risk of loss only if we agreed with its theory that the major portion of costs and revenues should be attributed to the excess liquids as a "separate business". Especially since its own witness admitted that the extraction operations should be carried on "even though you had to throw the [extracted] material away", and that the extraction costs "would have been a proper component of the cost of service" even "if the price of gasoline had been low", we cannot agree that the responsibility for these costs should be borne by the stockholders.[7]

To agree with Panhandle would leave the stockholders responsible for the cost of maintaining essential pipeline operations, an obviously erroneous result. Since it is recognized that the necessary extraction should be undertaken even at a loss the pipeline phase of the business should be treated as responsible for the costs and corollary revenues attributable thereto. This would leave the stockholders with no risk of loss other than that involved in its normal opportunity to earn a regulated rate of return.

Upon our reconsideration of all these facts and circumstances, we have concluded that Panhandle has failed to show that its method is based upon a proper relationship between the criteria used (necessary extraction volumes) and the costs which may fairly be attributed to the pipeline cost of service. Consequently, Panhandle has failed to justify a departure from the Commission's "normal" method utilized in similar circumstances in the past with full court approval.

3. *Panhandle's Petition to Reopen Proceedings*

On April 19, 1963, Panhandle filed a petition for opportunity to present additional evidence as to the extraction issue remanded by the court. In view of the nature of the court's remand and Panhandle's long drawn out efforts on this issue, we have given first consideration to the evidence of record before determining whether the record should be supplemented. We are mindful of the fact that Panhandle was allowed a general reopening of its case on this issue by the Presiding Examiner in 1956, following the *Detroit* remand. Moreover, the company sought and was allowed a second reopening for the "commodity value" issue in 1960.

As the Commission has stated before in rulings upheld by the courts, "there must be an end to administrative proceedings" such as this,[8] and it should be kept in mind that "a party who tries and fails to make a *prima facie* showing to support severable elements of his claim is [not] entitled to a postponement of adjudication thereon."[9] Having tried its case on one theory and failed to satisfy the Commission and the court, Panhandle is not entitled to try the case on a new theory.[10]

Nevertheless, since the exercise of discretion upon a petition to reopen is particularly within the province of the Commission,[11] we have given consideration

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[7] Panhandle's engineering witness admitted upon cross-examination that under certain operating conditions a certain percentage of extraction operations are required for proper operating efficiency, to "prevent dramatic interruptions of service", and should be carried on "even though you had to throw the [extracted] material way." These statements are contrary to the Commission's finding urged by the company, in Opinion No. 269, remanded by *City of Detroit*, that "Panhandle would be able to discontinue the extraction of gasoline without incurring serious operating difficulties." 13 FPC 77.

[8] *Colorado Interstate Gas Company*, Opinion No. 313, 19 FPC 1012, 1017.

[9] *Panhandle Eastern Pipe Line Company* v. *F.P.C.* 236 F. 2d 606, 608 (CA3, 1956).

[10] *Automatic Canteen Company* v. *F. T. C.*, 194 F. 2d 433, 439 (CA7, 1952).

[11] *Interstate Commerce Commission* v. *Jersey City*, 322 U.S. 503, 514–515; *cia Mexicana de Gas, S.A.* v. *F.P.C.*, 167 F. 2d 804, 808.

to the petition to reopen and conclude that in the words of the *Detroit* opinion (affirming the Commission's refusal to reopen that proceeding), there is no "clear indication that the evidence offered . . . would likely lead to a different result." [12]

The petition fails to specify what kind of evidence would be offered and fails to allege what Panhandle would show. Panhandle does not show how it plans to meet the requirements of the court's two opinions in its attempt to justify utilization of an allocation of extraction costs and revenues. Instead, the petition merely recites some of the inadequacies of its evidence which were pointed out in the Commission's brief before the court. Moreover in the light of the discussion above we cannot, with any assurance, find that further evidence would be likely to provide a fair method of allocation and appropriate justification for failing to credit the revenues. Of course, in a subsequent rate case Panhandle may attempt to make an adequate showing in conformity with the views expressed herein. But it would be inappropriate to reopen this proceeding dealing with a long-past locked-in period, with no assurance of the result.

4. *Purchased Gas Cost Escalation*

As we pointed out in our order of May 7, 1963, until we finally determined all issues in G–1116, we could not finally and completely determine Panhandle's cost of service in G–2506. The reason is that in Opinion No. 269, in the prior proceeding, we allowed Panhandle a 23.31336 percent resale price escalation of the cost of gas purchased from Phillips Petroleum Company, Shamrock Oil and Gas Company, and Magnolia Petroleum Company. This escalation was allowed as one having occurred prior to our taking jurisdiction over independent producers, and is applicable to gas purchased in both G–1116 and G–2506. However, since the formula for computing the escalation is based upon the 1952 increase in Panhandle's cost of service over prior rates, the exact percentage could not be computed until we finally determined, as we have this date in both G–1116 and G–2506, all issues including the gasoline revenue extraction issue. We shall, therefore, require Panhandle to recompute the escalation to be allowed in this proceeding in accordance with the method utilized in Opinion No. 269 (Appendix I, Table 10).[13]

The Commission finds:

(1) Upon reconsideration, in accordance with the court's remand of the Commission's Opinion No. 344, issued herein on April 27, 1961, as modified by the Commission's order denying rehearing, issued June 26, 1961, the opinion should be further supplemented by the additional findings and conclusions set forth above, and as so amended, should be adopted.

(2) Panhandle's petition to reopen this proceeding filed April 19, 1963 is not in the public interest in carrying out the provisions of the Natural Gas Act, and should be denied.

The Commission orders:

(A) The Commission's Opinion No. 344, as amended by its order denying rehearing, is hereby further amended to include the additional findings and conclusions set forth above, and as so amended is adopted.

(B) Panhandle shall within 45 days after the issuance date of this order file with the Commission (and serve copies upon its customers, parties and interested State commissions), a report of its re-computation of its purchased gas cost, allocations, jurisdictional cost of service, rates, and re-computed revenues and

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[12] *City of Detroit, supra,* Page 822; *I.C.C. v. Jersey City, supra.*

[13] Rough calculations indicate the escalation should be approximately 14.5 percent instead of 23.31336 percent. See our reservation of this issue in *Phillips Petroleum Company,* Opinion No. 338, 24 FPC 537.

resulting refunds, including interest, as submitted on June 6, 1963, in accordance with Opinion No. 344, as amended herein, subject to the Commission's approval.

(C) Any customer, party, or interested State commission may file objection to Panhandle's report within 10 days after Panhandle has filed its report pursuant to paragraph (B) above.

(D) Unless notified by the Secretary of the Commission prior thereto that its report is unacceptable, Panhandle, within 60 days from date of issuance of this order, shall make the additional refunds and interest payments to its jurisdictional customers in accordance with the report required by paragraph (B) above.

(E) Within 20 days after making refunds as required by paragraph (D) above, Panhandle shall file with the Commission and serve upon all parties a verified statement setting out that it has made the refunds of principal amount and interest to each customer as shown in the report filed pursuant to paragraph (B) above, together with proof of payment to each customer of amounts due.

(F) Panhandle's petition to reopen this proceeding filed on April 19, 1963, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOUTHERN CALIFORNIA EDISON COMPANY, DOCKET NO. E-7167; CALIFORNIA ELECTRIC POWER COMPANY, DOCKET NOS. E-6351 AND E-6223

ORDER AUTHORIZING AMENDMENT OF PERMIT CHANGING NAME OF PERMITTEE, ELIMINATING CERTAIN FACILITIES AND TERMINATING FORMER ORDER AUTHORIZING EXPORTATION TO MEXICO

(Issued August 20, 1964)

By order issued December 20, 1956, in Docket No. E-6351, 16 FPC 1363, and subsequently supplemented by orders issued July 21, 1958, 20 FPC 61, and December 31, 1958, 20 FPC 886, California Electric Power Company was authorized, pursuant to Section 202(e) of the Federal Power Act, to export electric energy to Industrial Electrica Mexicana in Mexico. The transmission of the electric energy for exportation was authorized to be made over facilities on the international boundary between Mexico and the United States located in or near Calexico, California, Andrade, California and Gadsden, Arizona, respectively as specified in a Presidential Permit signed by the President of the United States on November 5, 1949 and subsequently amended by amendments dated April 6, 1956 and June 23, 1958, in Docket No. E-6223.

By order issued October 1, 1963, 30 FPC 942 (Docket No. E-7106), the Commission authorized the merger of California Electric Power Company with Southern California Edison the latter to be the surviving corporation.

On May 28, 1964, Southern California Edison Company filed an application, Docket No. E-7167, in which it advised the Commission that the contract for the supply of power to Industrial Electrica Mexicana terminated on December 31, 1963 and no other arrangements were made to export power inasmuch as the Mexican utility now relies wholly upon its independent sources of generation. Furthermore, all of the border facilities heretofore used by California Electric Power Company under its Presidential Permit have been removed except for one 161 kv line located at the International Boundary near Andrade, California, 3 feet east of Monument No. 206.

In its application, Southern California Edison requests that the name of the Permittee be changed to Southern California Edison Company and states that

it wishes to maintain the 161 kv border facilities near Andrade, California, so that it may be available for use by California Edison or others if future arrangements are made for deliveries of power to or from Mexico, and points out that any such arrangements which would be within the Commission's jurisdiction would not be made without prior approval by the Commission.

The Commission finds:

(1) Under the circumstances related above, the Commission's order in Docket No. E-6351 authorizing California Electric Power Company to export power to Mexico should be terminated.

(2) Amendment of the Presidential Permit, issued in Docket No. E-6223 to reflect the change of name of the Permittee, California Electric Power Company by reason of its merger with Southern California Edison Company will not be inconsistent with the terms of the Permit.

(3) Good cause has been shown that the Presidential Permit should be further amended to eliminate authorization to maintain all facilities on the international boundary between Mexico and the United States except the 161 kv facilities located near Andrade, California.

The Commission orders:

(A) The Commission's order issued December 20, 1956 in Docket No. E-6351 as amended by orders issued July 21, 1958, and December 31, 1958 authorizing California Electric Power Company to export electric energy to Mexico is hereby terminated.

(B) The Presidential Permit signed by the President of the United States on November 5, 1949 in Docket No. E-6223 and subsequently amended shall be further amended to: (1) change the name of the Permittee from California Electric Power Company to Southern California Edison Company, and (2) modify Article 2 of the Permit by eliminating reference to all facilities except the 161 kv facilities located near Andrade, California on the international boundary.

(C) Nothing in this order shall be deemed to constitute authorization or approval to export electric energy to Mexico by means of the facilities authorized to be maintained by the Presidential Permit referred to above without prior approval by the Commission pursuant to Section 202(e) of the Federal Power Act.

(D) No importation of electric energy by means of the facilities authorized to be maintained by the Presidential Permit referred to above shall be made without first notifying the Commission in writing of the amount to be imported and the terms and conditions of such importations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. RP64-16

ORDER CONDITIONALLY APPROVING RATE SETTLEMENT, PRESCRIBING REFUNDS AND TERMINATING PROCEEDINGS

(Issued August 21, 1964)

This matter relates to a rate proceeding arising from proposed changes in rates, charges, classifications and services tendered for filing [1] by Kansas-Nebraska Natural Gas Company, Inc. (Kansas-Nebraska) on January 31, 1964, pursuant to Section 4 of the Natural Gas Act. By order issued March 13, 1964, a public hearing was ordered, the revised tariff sheets were suspended and the use thereof deferred until August 17, 1964, or until such time as they may be made effective in the manner prescribed by the Natural Gas Act.

Conferences between Kansas-Nebraska, the Commission Staff and the parties to the proceeding were held on July 1, and July 13, 1964. As a result of these conferences, all parties present have agreed, subject to the Commission's approval, to a settlement of this proceeding and all issues involved herein. No objections have been received from any parties to the proceeding or customers of Kansas-Nebraska.

On July 14, 1964, Kansas-Nebraska filed a document entitled "Stipulation and Agreement to Terminate Proceedings" (Stipulation), and revised tariff sheets, with the Commission and served copies thereof upon all interested parties to the proceeding. Briefly summarized, the proposed Stipulation provides, in part, as follows:

(1) An agreed-upon jurisdictional cost of service to the Nebraska customers of $5,108,838, which results in a rate increase of $352,756.

(2) Revised tariff sheets to be accepted for filing by the Commission which reflect a commodity level of 23¢ per Mcf and a demand level of 6.25¢ per Mcf of billing demand per day.

(3) Changes in the billing demand to reflect 100 percent of the contract demand for the months of November, December, January, February and March; 80 percent of the contract demand for the months of April, May, September and October; and 60 percent of the contract demand for the months of June, July and August.

(4) Elimination of the clause in the rate schedule which automatically increased purchaser's contract demand when overrun gas was taken, and substituting therefor a penalty clause of $2.00 per Mcf for the first 50 Mcf or 3 percent of the contract demand, and $10.00 per Mcf for all additional gas taken above the contract demand when complete curtailment orders were in effect on the system.

(5) Group billing will be available to certain customers.

(6) A moratorium for the filing of any rate increase by Kansas-Nebraska for one year from the date of either approval of the settlement agreement, or August 17, 1964, whichever date is later.

We note that the Stipulation makes no reference to the pass-through of refunds received by Kansas-Nebraska from its suppliers and to give effect in its

[1] First Revised Sheet Nos. 6, 8, 8A, 8B, 8C, 8D, 8E and 10A; Second Revised Sheet Nos. 2, 3 and 7; and Third Revised Sheet Nos. 4, 5 and 9 to its FPC Gas Tariff, First Revised Volume No. 1.

rates to any rate reductions put in effect by its suppliers. It has been the consistent practice to require such refund and rate reduction provisions in settlement agreements approved and accepted by the Commission. Accordingly, we shall condition our acceptance of this Stipulation to provide for refunds and rate reductions. However, in order to avoid multiple minimal refunds and filings reflecting reductions in future rates, Kansas-Nebraska shall not be required to flow-through refunds which it receives from its suppliers, or make effective rate reductions passed on by said suppliers until they have accumulated to an aggregate of one-tenth of one cent per Mcf.

The Commission finds:

(1) The settlement of the proceeding in Docket No. RP64–16 on the basis of the Stipulation filed with the Commission on July 14, 1964, is appropriate and in the public interest in carrying out the provisions of the Natural Gas Act and should be approved and made effective subject to the terms and conditions hereinafter provided and ordered.

(2) The increased rates and charges contained in the Kansas-Nebraska filing in this docket and which was the subject of this proceeding have not been shown to be just and reasonable, or otherwise lawful under the Natural Gas Act and should be disallowed and denied.

The Commission orders:

(A) The proposed increased rates and charges contained in the Kansas-Nebraska filing in this docket as hereinabove set forth be, and the same are disallowed and denied.

(B) The settlement of this proceeding, upon the basis set forth in the Stipulation, is approved and made effective as proposed therein, subject to the terms and conditions herein ordered.

(C) The 30-day notice provision of Section 154.22 of the Commission's Regulations under the Natural Gas Act is hereby waived and within 10 days of the issuance date of this order, Kansas-Nebraska shall tender to the Commission for filing, revised tariff sheets acceptable to the Commission, reflecting the changes contemplated by the Stipulation to be effective as of August 17, 1964.

(D) The acceptance of the Stipulation is conditioned to provide that Kansas-Nebraska, subject to the approval of the Commission, shall pass on to its jurisdictional customers, the proportionate share of any refunds it receives from its suppliers. It shall pass such refunds on to its customers within 30 days after they have accumulated in the manner prescribed above.

(E) The acceptance of the Stipulation is further conditioned to provide that Kansas-Nebraska, subject to the approval of the Commission, shall make such reductions in its rates as are made to it by its suppliers. It shall, within 30 days of such rate reductions having accumulated in the manner prescribed above, make appropriate tariff filings reflecting these reductions with this Commission, and serving a copy thereof upon each of its jurisdictional customers and interested State commissions.

(F) Within 20 days of making any refund herein, Kansas-Nebraska shall report to the Commission, in writing, and under oath, the amount of refund to each customer, together with a computation showing the manner in which such refund was determined. Kansas-Nebraska shall concurrently serve a copy of this report upon each customer and interested State commissions, and shall submit to this Commission a copy of the release signed by each customer acknowledging receipt of the amount refunded.

(G) Kansas-Nebraska shall, over the signature of a responsible officer, file with the Commission, within 30 days from the date of issuance of this order, in

writing and under oath, an original and one copy of its acceptance or rejection of the terms and conditions of this order.

(H) Upon full compliance by Kansas-Nebraska with the terms and provisions of this order and of the Stipulation, this proceeding shall be deemed terminated, subject only to the continuing obligation to make suppliers' refunds and to pass on supplier rate reductions pursuant to Paragraphs (D), (E) and (F).

(I) This order is without prejudice to any findings or orders which have been, or may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, Kansas-Nebraska, the Commission Staff, or any other party affected by this order, in any proceeding now pending or hereafter instituted by or against Kansas-Nebraska Natural Gas Company, Inc., or any other persons or parties affected by this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

E. W. CAMPBELL (OPERATOR), ET AL., DOCKET NO. RI64-688; PEARL G. CAMPBELL, DOCKET NO. RI64-716; PEARL G. CAMPBELL, ET AL., DOCKET NO. RI64-717

ORDER DENYING MOTIONS FOR RECONSIDERATION

(Issued August 24, 1964)

On April 20, 1964, E. W. Campbell (Operator), *et al.*, (Operator) tendered for filing a letter[1] requesting reconsideration of the order issued April 10, 1964, in Docket No. RI64-688. On May 22, 1964, Pearl G. Campbell and Pearl G. Campbell, *et al.*, (Campbell) tendered for filing a letter[1] requesting reconsideration of the order issued May 6, 1964, in Docket Nos. RI64-716 and RI64-717. Both of these orders suspended proposed increased rates as hereinafter described.

All of the proceedings relate to the jurisdictional sales of natural gas to Northern Natural Gas Company (Northern) from the Hugoton Field, Kearny County, Kansas. The proposed increased rates, designated as Supplement No. 1 to Operator's FPC Gas Rate Schedule No. 4 and Supplement Nos. 3, 1, 1, and 1 to Campbell's FPC Gas Rate Schedule Nos. 1, 2, 3, and 4 respectively, were suspended for the statutory five-month period by orders issued April 10 and May 6, 1964 in the above proceedings.

In support of the motion in Docket No. RI64-688, Operator states that the Btu content of the gas is 925, and that like increases have been granted to others under similar circumstances. In support of the motion in Docket Nos. RI64-716 and RI64-717, Campbell states that they were contractually entitled to the increased rate on February 28, 1963, and that the Commission has granted similar increases without suspension, citing rate filings under Anadarko Production Company (Anadarko) FPC Gas Rate Schedule No. 38, and Ben F. Brack FPC Gas Rate Schedule No. 2, which were accepted in February, 1961, and May, 1959, respectively.

The previous acceptance of increased rates identical to those presented here does not preclude suspension of the instant rates when there is sound justification for doing so as indicated below. Cf. *F.C.C.* v. *Pottsville Broadcasting Company*, 309 U.S. 134, 145 (1940); *Panhandle Eastern Pipe Line Company* v. *F.P.C.*, 236 F. 2d 289 (3rd Cir., 1956).

[1] These letters are construed as motions for reconsideration.

The presently effective rate in Docket No. RI64–688 is 10.4458¢ per Mcf, at 14.65 psia. The rate includes a base rate of 11.0¢ per Mcf less a downward Btu adjustment for gas containing less than 925 Btu's. No change is proposed in the 11.0¢ per Mcf base price, but the suspended filing amends the contract to eliminate any reduction in price for gas containing less than 925 Btu's. Although Operator stated that the gas contains 925 Btu's it is apparent from the filing showing increased annual revenues that the actual Btu content is lower, so that the rate for 925 Btu gas would exceed the 11.0¢ per Mcf area ceiling price for increased rates as set forth in the Commission's *Statement of General Policy, No. 61–1*, as amended [18 CFR, Chapter I, Part 2, Section 2.56].

The presently effective rates in Docket Nos. RI64–716 and RI64–717 are the same as that involved in Docket No. RI64–688, and Campbell proposes to eliminate the reduction in price for gas containing less than 925 Btu's. In these two proceedings, however, Campbell submitted actual test data showing the Btu content of the gas to be below 925. As in Docket No. RI64–688 the 11.0¢ minimum price for the subject gas would be equivalent to rates in excess of 11.0¢ per Mcf for 925 Btu gas.

The Commission finds:

The motions for reconsideration of the suspension orders issued in the above designated proceedings should be denied.

The Commission orders:

The motions for reconsideration of the suspension orders issued in the proceedings in Docket Nos. RI64–688, RI64–716 and RI64–717 are denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

LAKE SHORE PIPE LINE CO., DOCKET NO. CP64–225

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 24, 1964)

On April 3, 1964, Lake Shore Pipe Line Co. (Applicant) filed in Docket No. CP64–225 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the 12-month period following the date of certification and the operation of lateral and field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof in the general area of Applicant's existing transmission system, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in producing areas generally coextensive with said system.

The total cost of the proposed facilities will not exceed a maximum of $100,000, with no single project to exceed a cost of $25,000, which costs will be financed by cash on hand, or by short-term loans.

Due notice of the subject application was published in the Federal Register on July 30, 1964 (29 F.R. 10630). No petition to intervene, notice of intervention or protest to the granting of the application has been received.

At a hearing held on August 20, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Lake Shore Pipe Line Co., an Ohio corporation having its principal place of business in Cleveland, Ohio, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order accompanying Opinion No. 205 issued February 15, 1951, in Docket No. G–1210, *et al.* (10 FPC 22, 32).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in this transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the 12-month period following the date of issuance of this order, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $100,000, with no single project to exceed a cost of $25,000.

(8) Good cause appears for waiver of the cost limitations imposed by Section 2.58 of the Commission's Rules of Practice and Procedure, as amended.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Lake Shore Pipe Line Co., to construct during the 12-month period following the date of issuance of this order, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above, a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general

terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted by paragraph (A) above is hereby limited to construction during the 12-month period following the date of issuance of this order, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $100,000, with no single project to exceed a cost of $25,000.

(E) The cost limitations imposed by Section 2.58 of the Commission's Rules of Practice and Procedure, as amended, are hereby waived in this proceeding.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MONTANA-DAKOTA UTILITIES CO., DOCKET NO. CP64-307

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 24, 1964)

On June 24, 1964, Montana-Dakota Utilities Co. (Applicant) filed in Docket No. CP64-307 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of: (1) approximately 19.7 miles of 4, 6 and 8-inch pipelines with connections and measuring stations at 17 gas wells located in the Pavillion and Muddy Ridge fields, and a dehydration plant; (2) approximately 20.7 miles of 10-inch gas transmission pipeline connecting with the facilities described in (1) above and extending to a connection with Applicant's 12-inch main transmission line; (3) approximately 8.8 miles of 4-inch pipeline, with meter station and dehydration plant, to connect the Dinty Moore field to Applicant's 12-inch main transmission line; and (4) approximately 2.9 miles of 4-inch pipeline, with meter station and dehydration plant, to connect the Howard Ranch field to Applicant's 12-inch main transmission line. All of the above described facilities will be located in Fremont County, Wyoming, as more fully described in the application.

The purpose of the proposed facilities is to receive and transport natural gas from wells in the various fields to supply Applicant's customers with greater gas reserves and provide for normal growth in Applicant's service area.

The estimated total cost of the proposed facilities is $1,284,200, which will be financed through internally generated funds and first mortgage bonds now in the process of issuance.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 20, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Montana-Dakota Utilities Co., a Delaware corporation having its principal place of business in Minneapolis, Minnesota, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 22, 1946, in Docket Nos. G-220 and G-402 (5 FPC 64).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the subject facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Montana-Dakota Utilities Co., to construct and operate the subject facilities for the purpose stated, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. RP65-1

ORDER PROVIDING FOR HEARING, FOR PREHEARING CONFERENCE, AND SUSPENDING PROPOSED TARIFF SHEETS

(Issued August 24, 1964)

On July 15, 1964, United Gas Pipe Line Company (United), tendered for filing certain tariff sheets[1] to become effective September 1, 1964. The tariff sheets propose changes in the jurisdictional rates resulting in an estimated net increase of $2,390,230 over and above the increase proposed by United in Docket No. RP63-1.

In support of the proposed increase, and pursuant to Section 154.63 of the Regulations under the Natural Gas Act, United has submitted its studies, cost data and prepared testimony. Review of the filing indicates that the rates proposed

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[1] Second Revised Sheet No. 9-A, Fifth Revised Sheet No. 99, Seventh Revised Sheet Nos. 34, 35, 44 and 45, Eighth Revised Sheet Nos. 8 and 14, Ninth Revised Sheet Nos. 4, 6, 10, 12, 21, 23, 25, 27, 28, 30 and 32, and Tenth Revised Sheet No. 100 to United's FPC Gas Tariff, First Revised Volume No. 1.

reflect certain questionable items in United's presentation, including *inter alia*, rate of return, working capital allowance, federal income tax allowance, shifts in purchase gas and sales patterns, depreciation reserve, and adjustments to operating expenses.

The increased rates and charges contained in United's FPC Gas Tariff as proposed to be amended herein, have not been shown to be justified and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

In view of the fact that United has filed this major rate increase while its petition for rehearing of Commission decision in Docket No. RP63–1 is still pending, and since our preliminary analysis of the application indicates that a number of the contentions upon which United's claim for increased rates are closely related to matters which have been fully litigated in RP63–1, we believe that expeditious handling of the present application justifies deviation from the normal procedures set forth in Section 2.59 of our Rules. Specifically, we believe that this proceeding can be expedited by directing the examiner to hold an immediate prehearing conference rather than awaiting filing of direct evidence by the staff and interveners' and rebuttal evidence by United. It is hoped and expected that through such a conference, the examiner will be able to expedite the proceeding and give full and complete effect to the policies and intent expressed in Rule 2.59 and particularly subsections (f) and (j) thereof. Cf. *Panhandle Eastern Pipe Line Company* v. *F.P.C.*, 232 F. 2d 467, 473 (C.A. 3, 1956) Cert. den. 352 U.S. 891. If he deems it will aid in bringing this proceeding to a prompt solution, he is authorized to provide for early cross-examination of the applicant's direct case prior to the submission of the written evidence of the staff or interveners.

Staff Counsel filed a motion in Docket Nos. RP63–1 and RP65–1 entitled "Staff Counsels' Motion to Reject Proposed Rate Increase Filing" on August 6, 1964. Answers to this motion were filed on August 14 and 17, 1964 by United and other parties to these proceedings. This motion and the answers thereto raise important questions of law which deserve our full consideration which cannot be completed within the time within which, if the rate filing was properly filed under Section 4(d) of the Act, we would be required to suspend the filing or allow the increase to go into effect.

The Commission finds:

(1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the rates and charges contained in United's FPC Gas Tariff, as proposed to be amended herein, and that the proposed tariff sheets listed above be suspended, and the use thereof be deferred as herein provided.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the disposition of this proceeding be expedited in accordance with the procedures set out below.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4 and 15 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act [18 CFR, Chapter I], a public hearing shall be held on a date to be fixed by notice from the Presiding Examiner concerning the lawfulness of the rates, charges, classifications, and services contained in United's FPC Gas Tariff as proposed to be amended herein.

(B) Pending such hearing and decision thereon, United's proposed tariff sheets

listed above are hereby suspended and the use thereof is deferred until February 1, 1965, and until such further time as they may be made effective in the manner prescribed by the Natural Gas Act.

(C) Presiding Examiner Max L. Kane, or any other officer designated by the Chief Examiner for that purpose (see Delegation of Authority, 18 CFR 3.5(d)), shall prescribe other relevant procedural matters not herein provided, shall preside at the prehearing conferences and at the hearing in this matter, and shall control this proceeding in accordance with the policy expressed by the Commission in § 2.59 of its Rules of Practice and Procedure, especially paragraph (j) thereof.

(D) Pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure, a prehearing conference before the Presiding Examiner shall commence at 10:00 a.m. (EST) on September 9, 1964, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., 20426, for the purpose of reaching such agreements as will expedite the determination to be made herein, including, but not limited to, stipulation of facts, narrowing and defining the issues, and establishment of dates for the service of testimony and for the cross-examination of all testimony.

(E) This order is without prejudice to such action as the Commission may deem necessary and proper with respect to the motion of Staff Counsel filed August 6, 1964 and the answers thereto filed August 17, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

BLACKSVILLE OIL AND GAS COMPANY, DOCKET NO. CP64-200

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued August 25, 1964)

On March 9, 1964, as supplemented on May 6, 1964, Blacksville Oil and Gas Company (Applicant) filed in Docket No. CP64-200 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing The Manufacturers Light & Heat Company to continue its established physical connection of its transportation facilities with facilities of the Applicant, which are now connected upon an emergency basis, and to sell and deliver to Applicant a peak day volume of 84 Mcf of natural gas.

Applicant states that it is a public utility corporation under the laws of West Virginia and that it is now distributing and selling natural gas in the community of Blacksville, West Virginia, through its existing distribution system; that part of the gas supply is obtained from local gas producers; but such source of supply is not adequate to meet the demand for gas service in Blacksville and therefore public necessity requires that the additional supply of gas from The Manufacturers Light & Heat Company be made to continue upon a permanent basis and under Manufacturer's Rate Schedule (CDS-1).

Construction of new connecting facilities is not required since the existing connection is adequate.

On May 6, 1964, The Manufacturers Light & Heat Company filed its answer to the application, above mentioned, stating that it has no objection to rendering the requested service to Applicant, providing there be no requirement to deliver gas at a pressure in excess of 5 psig, which is the present delivery pressure. Applicant agrees to such condition of service.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on August 4, 1964 (29 F.R. 11198). No protest, petition to intervene or notice of intervention in opposition to the granting of the applications has been filed.

The Commission finds:

(1) The Manufacturers Light & Heat Company, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 29, 1944, in Docket No. G–953 (4 FPC 44).

(2) Applicant, Blacksville Oil and Gas Company is a public utility corporation organized and existing under the laws of West Virginia and is authorized to engage in the business of distributing and selling natural gas within the said State and The Municipality of Blacksville, and Applicant is now distributing and selling natural gas in said community.

(3) It is necessary and desirable in the public interest that The Manufacturers Light & Heat Company be directed to continue to maintain and operate the physical connection of its natural gas transmission system at a point near Blacksville, Monongalia County, West Virginia, and to continue to sell to Applicant a maximum peak day volume of 84 Mcf, as set forth in the application in this proceeding and as hereinafter ordered and conditioned.

(4) The requirement that The Manufacturers Light & Heat Company continue to serve Applicant, as requested, will not place an added or undue burden upon it nor will it impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) The Manufacturers Light & Heat Company be and it is hereby directed to maintain the physical connection of its natural gas transmission system with Applicant's distribution system serving Blacksville, West Virginia, and to sell and deliver up to 84 Mcf of natural gas per day to Applicant to augment the supply of gas from local gas production.

(B) Applicant, Blacksville Oil and Gas Company, shall execute with Manufacturers and file with the Commission an appropriate service agreement under Manufacturers' Rate Schedule CDS–1, in accordance with the Commission's Regulations under the Natural Gas Act.

(C) Manufacturers shall not be obligated to deliver natural gas to Applicant at a pressure in excess of 5 psig.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TEXACO INC., DOCKET NO. RI60–134

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICES OF CHANGE, AND TERMINATING PROCEEDING

(Issued August 25, 1964)

On June 19, 1964, Texaco Inc. (Texaco) submitted an offer of settlement in the above-designated proceeding, involving the jurisdictional sales of natural gas under Texaco's FPC Gas Rate Schedule Nos. 52, 53, and 99 to Hugoton Plains Gas and Oil Company (Plains) from the Hugoton Field, Seward County, Kansas (Kansas Area) and Texas County, Oklahoma (Oklahoma Panhandle Area). Plains gathers and processes the gas in its Tyrone Gasoline Plant and resells the residue gas to Northern Natural Gas Company (Northern).

The presently effective rate is 19.0426¢ per Mcf at 14.65 psia under Texaco's FPC Gas Rate Schedule No. 53, and 19.0688¢ per Mcf at 14.65 psia under Texaco's FPC Gas Rate Schedule Nos. 52 and 99. These increased rates have been in effect subject to refund in Docket No. RI60–134 since April 25, 1960. Texaco's rates are based on a revenue sharing arrangement with Plains whereby Texaco is entitled as a contractual matter to receive a rate which is 1.1166¢ per Mcf (corrected for compressibility) less than Plains' resale rate to Northern. The rates in effect subject to refund were based on Plains' increased rate of 20.1628¢ per Mcf for the sale of gas to Northern which was suspended in Docket No. RI60–102. The proposed settlement rates are based on Plains' settlement rate of 15.75¢ which was approved by order issued October 8, 1963 in Docket No. RI60–102.

In its offer of settlement, Texaco proposes to reduce its increased rates effective from April 25, 1960, to 14.6334¢ per Mcf at 14.65 psia, subject to any applicable contractual deduction for compression.[1] Further, Texaco proposes a moratorium on rate increases for sales made under its FPC Gas Rate Schedule Nos. 52, 53, and 99, until March 1, 1966, which is the moratorium period provided in the Commission's companywide settlement order issued December 30, 1963, in *Texaco Inc.*, Docket No. G–8969, *et al.*, 30 FPC 1631. Refunds are not involved because Texaco has not collected rates above the proposed settlement rates.

Inasmuch as the proposed settlement rates are directly related through a revenue sharing arrangement to the 15.75¢ per Mcf resale settlement rate of Plains, acceptance of Texaco's proposed settlement is in the public interest. Our action here does not constitute either a change in our present policy of suspending all increased rates above 11¢ per Mcf in these areas for the sale of pipeline quality gas within the meaning of the Commission's Statement of General Policy No. 61–1, as amended, or a change in our general settlement policy, but is based solely on the special circumstances presented in this case, in which the Commission's recognition of the agreement made by the parties does not affect the price to the pipeline purchaser.

Our action should not be construed as constituting approval of any future rate increases, if any, that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in any future rate proceedings, including area rate proceedings, involving Texaco's rates and rate schedules.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Texaco on June 19, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Texaco on June 19, 1964, is hereby approved in accordance with the provisions of this order.

(B) Texaco shall file within 30 days from the date of issuance of this order, notices of change in rate providing for the 14.6334¢ per Mcf at 14.65 psia rates specified in its offer of settlement. The notices of change shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

[1] After September 8, 1961, it was necessary for Plains to compress the subject gas, and a compression charge of 1¢ per Mcf has been in effect pursuant to the contract since that date.

(C) The settlement rates approved herein shall be applicable during the moratorium period provided for all sales of natural gas from all acreage dedicated as of the date of issuance of this order under each of the subject rate schedules.

(D) Upon notification by the Secretary of the Commission that Texaco has complied with the terms and conditions of the order, the rates and charges of 14.6334¢ per Mcf at 14.65 psia, specified in its offer of settlement, subject to any applicable contract deductions, shall be effective as of the issuance of this order, and the above-designated proceeding shall be deemed terminated.

(E) The acceptance by the Commission of Texaco's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Texaco, including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PENNSYLVANIA POWER & LIGHT COMPANY, PROJECT NO. 487

ORDER AMENDING LICENSE (MAJOR)

(Issued August 26, 1964)

Application was filed on January 29, 1964 under the Federal Power Act (Act) by Pennsylvania Power & Light Company, licensee for Project No. 487, for amendment of Article 20 of the license for the project and to render inapplicable to such license amortization reserve Regulation 17 in effect when the license was issued.

The purpose of the amendment is to make the license subject to the current regulations of the Commission with respect to the establishment and maintenance of a reserve for amortization.

The Commission finds:

(1) Public notice of the application has been given. No protests or petitions to intervene have been received.

(2) The license for Project No. 487, amended as hereinafter provided, is in the public interest.

The Commission orders:

(A) The license for Project No. 487 is hereby amended, effective as of July 1, 1946, as follows:

PARAGRAPH I. The paragraph of the license beginning "NOW, THEREFORE" is amended by inserting the words "except Regulation 17" after the phrase "being subject to all the terms and conditions of the Act and of the rules and regulations of the Commission pursuant thereto in force on the 6th day of June 1921,".

PARAGRAPH II. Article 20 of the license is amended to read as follows:

Article 20. After the first twenty (20) years of operation of the project under the license, namely after June 30, 1946, six(6) percent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings of the project for the establishment and maintenance of amortization reserves, pursuant to Section 10(d) of the Act; one-half of the project surplus earnings, if any, accumulated after the first twenty (20) years of operation under the license, in excess of six(6) percent per annum of the net investment, shall be set aside in a project amortization reserve account as of the end

of each fiscal year, provided that, if and to the extent that there is a deficiency of project earnings below six (6) percent per annum for any fiscal year or years after the first twenty (20) years of operation under the license, the amount of such deficiency shall be deducted from the amount of any surplus earnings accumulated thereafter until absorbed, and one-half of the remaining surplus earnings, if any, thus cumulatively computed, shall be set aside in the project amortization reserve account; and the amounts thus established in the project amortization reserve account shall be maintained therein until further order of the Commission.

(B) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgement of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

AREA RATE PROCEEDING, ET AL. (SOUTHERN LOUISIANA AREA), DOCKET NO. AR61–2, ET AL.

ORDER ON PRESIDING EXAMINER'S CERTIFICATION

(Issued August 27, 1964)

The Presiding Examiner has certified four appeals from his rulings entered August 7, 1964, as well as pages 13,966 to 14,032 of that day's transcript. These rulings grow out of the Commission's order of July 13, 1964, in this proceeding (32 FPC 97) which holds that our prohibition against individual company cost presentations in this area rate proceeding does not go to the admissibility, for purposes other than showing the costs of particular respondents, of an array, consistently and uniformly developed, of the ingredients of composite cost presentations. The context of that order was our consideration of a particular array as presented by the Hunt Oil Group in Exhibit No. 182 and as described by their counsel in an appeal from an exclusionary ruling.

It appears that prior to our July 13 order at least some of the participants considered such arrays to be inadmissible for any purpose. (Obviously the Hunt Oil Group felt otherwise. We are now informed that Sun Oil Company presented arrays in its Exhibit No. 189 of "Net investments per volume," "D. D. & A. per volume," and "Cash expense per volume" for the single-production included in the composites and that Sun's exhibit has "not yet been stricken from the record.") In any event, reacting to our order as an invitation, the staff has indicated its intent to present an array-type study and counsel for the Hunt Oil Group has stated that it has spent money, time and effort in the development of certain additional arrays. The Amerada Group and the Associated Gas Distributors Group have indicated that they are seriously considering the possibility of making such a presentation.

In this situation the Presiding Examiner has sought to permit the presentation of certain additional array-type evidence at this time while avoiding a series of

full-fledged individual-company inquiries or other prolonged and repetitive presentations. These goals will plainly require the exercise of a careful discretion on the part of the officer in ruling on the admission of particular evidentiary presentations which are offered.

In advance of such offers, however, the Presiding Examiner has felt it advisable to issue advisory rulings and to submit those rulings for interlocutory review under Section 1.28 of our Rules of Practice and Procedure. The particular rulings follow:

> 1) I am going to rule that any party desiring to present an array-type of exhibit or study in this proceeding will be limited to applying to the individual company data of each of the 81 composited companies the identical methods, factors, allocation ratios, and the like, which have been employed by the Staff in its composite cost presentations in this proceeding. And I will not receive in evidence any proposed array exhibit which uses any other techniques, methods, ratios, or approaches. (89: 14,016)
>
> 2) * * * in connection with the limited type of array presentation which my ruling will permit, I will permit testimony by any witness to support the significance to be drawn from an array prepared in that manner or to attack the significance to be drawn from an array prepared in that manner; . . .
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> * * * * * * *
>
> . . . I would not permit the Staff witness presenting such an array exhibit for the Staff, or the witness presenting an array exhibit for any other party, to do anything more than explain the mechanical manner in which the array exhibit was constructed. I would not permit such a witness to testify either supporting a rationale as to why the method used makes sense or makes no sense or is useful or is not useful, or anything of that kind. That type of argument would have to be made by counsel in their briefs. (89:14,024)

The Examiner has certified appeals by The California Company, Sun Oil Company, Hunt Oil Company Group, and Amerada Group. Sun argues that new array-type evidence would be untimely and should therefore be rejected. Sun points out that it timely presented its own array evidence. Hunt's apparent objection goes to the first ruling, because it excludes an array based on a straight Btu allocation method. Hunt would desire to employ that method for array purposes, and points out that the method may be useful for revealing dispersions and relationships of costs whether or not it might be the proper costing method for determining the true cost level.

Neither of the other two appellants (The California Company and the Amerada Group) discloses the grounds for its appeal.

On this interlocutory review upon the Examiner's certification, but without prejudice to reconsideration of these matters at the time when the full record is before us, we reach the following conclusions: We deny Sun's appeal from the Examiner's ruling in favor of admitting certain new evidence at this time. We grant Hunt's appeal from the restriction of the new array-type evidence to employment of the staff's allocation methods. We also affirm the Examiner's restriction of the testimony accompanying any new array-type exhibit to a description of the mechanics employed.

Array-type evidence provides one approach to analyzing the ingredients of a composite cost. We think some kind of analysis is appropriate but we do not hold that only the numerical, array analysis will do. We cannot tell, on this

interlocutory review, whether the record contains some other kind of evidence which adequately performs this task and makes additional array evidence unnecessary. However, participants taking such opposite views of the usefulness of the composite cost data as our staff and the Hunt Group have concluded that the record probably should be supplemented in light of our July 13 order by additional array evidence. In these circumstances we cannot hold that the Examiner erred in permitting a further opportunity to present such evidence.

Aside from the colloquies and the Examiner's ruling being appealed from, the only portion of the record which has come before us to date is Hunt's proffered Exhibit No. 182. We thought that such a unit cost breakdown could shed light on the diverse ingredients making up the composite. We indicated in our July 13 order that it would be more useful if we were shown the relevant gas volumes as well as the unit costs. Then we could consider the dispersion of cost as weighted for volume. We would also like to know whether the weighted average cost of all the members of the array differed significantly in practice, as it might in principle, from the cost as determined directly from the composited data.

Counsel's comments in the transcript certified to us, as well as the previous appeal, indicate Hunt's grasp of the issue and willingness to present meaningful array-type evidence. If expeditiously concluded, we would welcome the further efforts of Hunt, as well as of our staff, to make such presentations.[1] We here set aside the Examiner's first ruling, restricting the allocation methods to be employed in developing the arrays, since, in the case of the Hunt group it would deprive it of the opportunity to employ the straight Btu method for its additional studies. The cost relationships which an array would display may well be the same for all practical purposes no matter what allocation method is employed. Here, however, the Btu method would employ the same allocation ratio for all costs (cash expense, and D. D. & A., and return on investment) whereas the staff methods would apply different allocation ratios for each type of cost. We do not believe that Hunt, or any other party, should be foreclosed from exploring the consequences of this difference (if there be any substantial consequences). This does not mean, however, that the Examiner should now admit expert evidence sponsoring the appropriateness of the straight Btu method. Even assuming no testimony in favor of that method has been introduced into the record, we could consider evidence based upon its application if otherwise appropriate for the Btu method has been advocated in many prior Commission proceedings, in some of which it was adopted, in some modified,[2] and in some, perhaps most, rejected. It would thus be an exercise in pure redundancy to accept such sponsoring evidence at this late stage in the proceeding.

We have extensively discussed Hunt's prior presentation in Exhibit 182 only because that is the sole array which has actually come before us. We do not thereby tie the parties to that or any other particular form of array presentation. We must rely on our staff and the parties to present their data in the manner they deem most effective.

It should be understood that the only arrays now to be considered are those which analyze the costs, or allocated portion of the costs, which have been included in composited data of record. Thus if actual unadjusted test-year costs

[1] The Examiner has directed the staff to present its new array-type evidence by September 10. We trust that in light of this order he will fix a date as shortly thereafter as possible for presentations by the parties.

[2] Hunt's proposed use of the Btu method seems analogous to the Commission's employment of that method for purposes of determining certain trends, even though it modified the method for purposes of determining cost levels, in *Phillips Petroleum Co.*, 24 FPC at 698–99.

were included in the composite, those costs should not be normalized in an array. The same principle applies with respect to the test-year volumes.

We reiterate that we do not intend by this ruling to permit individual company cost studies to be introduced into the record under the guise of an array. Therefore any array which is offered should be developed by the application of the same method or methods to each company's data.

Finally, we affirm the Examiner's second ruling which limits the testimony that may accompany new, array-type evidence to a description of the mechanics by which the witness constructed his exhibit. This salutary ruling should obviate the need for any protracted cross-examination. Clarifications of the testimony, if deemed necessary, should be achieved through the exchange of workpapers and employment of interrogatories and similar procedural devices, as was accomplished in the Permian Basin proceeding. As the Examiner correctly pointed out, the significance of the array-type evidence can be adequately argued in briefs.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NEKOOSA-EDWARDS PAPER COMPANY, PROJECT NO. 2291

ORDER APPROVING REVISED PROJECT EXHIBITS

(Issued August 27, 1964)

On March 22, 1964, Nekoosa-Edwards Paper Company, licensee for Project No. 2291, filed application for Commission approval of revised Exhibits J and K to show the exclusion from the project of two parcels of lands.

The licensee advises that the area sought to be excluded is residential property not necessary for the operation of the project, and was inadvertently included in the initial application for license as a part of the project. According to the project maps and other information on file with the Commission, the parcels are not now and never were occupied by any of the project works and in view of the location thereon of family residences, the parcels would not lend themselves to use for recreational development and are not necessary for operation of the project.

The effect of Commission approval of the revised exhibits would be a reduction of privately-owned lands within the project boundary totaling 1.066 acres.

The Commission orders:

Exhibit J (FPC No. 2291–1) and Exhibit K (FPC No. 2291–2), revised to show the exclusion of the lands referred to above, are hereby approved as part of the license for Project No. 2291.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PUBLIC SERVICE COMPANY OF COLORADO, PROJECT NO. 2187

ORDER ISSUING LICENSE (MINOR)

(Issued August 27, 1964)

Application was filed on December 11, 1963, by Public Service Company of Colorado (Applicant) of Denver, Colorado, for a minor license under Sections 4(e) and 10(i) of the Federal Power Act (Act) for constructed minor Project No. 2187, located on South Clear Creek, a tributary stream in the South Platte River Drainage Basin, in Clear Creek County, Colorado, and affecting lands of the United States within the Arapaho National Forest and other lands of the United States.

The afore-mentioned application amended an application for a minor-part license for the project filed on June 6, 1955, amended on May 13, 1958, and supplemented on January 23, 1962, and superseded Applicant's request for a minor-part license.

The project works are operating on a run-of-stream basis without water storage. The energy generated by the project enters into Applicant's transmission and distribution system.

According to the application for minor license, all of the project works, including the powerhouse with an installation of 1930 horsepower, were constructed over 50 years ago and have been operating under a land use permit issued by the Department of Agriculture. Applicant does not claim any rights with respect to the aforesaid land use permit and we do not pass on its validity.

In the case of license applications timely and voluntarily filed under the Androscoggin decision, Opinion 357 (27 FPC 830), the Commission has fixed a termination date of December 31, 1993 regardless of when existing projects were originally constructed. Accordingly, licenses for projects formerly operated under federal permits should generally be issued for a period of 25 years or to extend to December 31, 1993 whichever is longer, except in cases where for good cause a different term is justified. In the circumstances of this case, we are issuing a license for a period terminating December 31, 1993.

The Department of Agriculture has reported that the project does not interfere with and would not be inconsistent with the purposes for which the Arapaho National Forest was created or acquired, provided recommended amended Articles 7 and 8 of Form L–7 are included in any license for the project.[1]

The Department of the Interior has recommended for inclusion in any license for the project a condition in the interest of providing free access to the public.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Colorado and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(2) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

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[1] Form L–7 contains terms and conditions usually included in licenses for minor projects affecting lands of the United States.

(3) The project affects lands of the United States within the Arapaho National Forest and other lands of the United States.

(4) The project does not affect a Government dam.

(5) The issuance of a license for the project as hereinafter provided will not interfere or be inconsistent with any reservation or with the purposes for which the Arapaho National Forest was created or acquired.

(6) The amount of annual charges to be paid under the license for the project for the purpose of reimbursing the United States for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(7) The substation mentioned in subparagraph (ii) of paragraph (B) below, which was included in the application for license, is part of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project.

(8) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

(9) It will be in the public interest to waive the terms and conditions contained in the following sections of Part I of the Act:

Section 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(a); 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 11; 12; 14, except insofar as the power of condemnation is reserved; 15; 18, except insofar as it relates to fishways; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to Public Service Company of Colorado (Licensee) of Denver, Colorado, under Sections 4(e) and 10(i) of the Act, effective as of August 1, 1964, and terminating December 31, 1993 for the continued operation and maintenance of minor Project No. 2187, located on lands of the United States within the Arapaho National Forest and other lands of the United States, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2187 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined.

(ii) A water gathering system comprising Murray (sometimes known as Murry) Lake, a reservoir of 80 acre-feet with earth filled dam 12 feet high; Silver Dollar Lake Reservoir of 440 acre-feet with earth filled dam 8 feet high; Clear Lake of 585 acre-feet, a rock filled dam 10 feet high with steel piling face; Green Lake of 270 acre-feet, a rock filled dam 8 feet high with concrete face; and Forebay Reservoir of 8 acre-feet, a rock filled dam 10 feet high with steel piling face: Water conduits consisting of Silver Dollar Ditch 1522 feet long, 2 feet wide at top, 1 foot wide at bottom and 1.5 feet deep, a diversion from South Clear Creek (also known as South Fork of Leavenworth Creek); Green Lake Gravity Pipe Line 3947 feet long, 22-inch diameter at source to 12-inch diameter at point of discharge into Green Lake, a diversion from Leavenworth Creek; Pressure Pipe Line 5410 feet long, 30-inch diameter at Forebay Reservoir and 26-inch diameter at hydro plant: Powerhouse containing two 720 kw generators (total of 1930 horsepower); substation; together with all other structures, equipment, or facilities used or useful in the maintenance and operation of the project

and located on the project area; which lands and project works are more specifically shown and described by certain exhibits which formed part of the application and which are designated and described as follows:

Exhibit J (FPC No. 2187-5) Georgetown Hydro Reservoirs and Water Conduits;

Exhibit K (FPC Nos. 2187-8, -9 and -11) Georgetown Hydro Reservoirs & Water Conduits;

Exhibit L (FPC No. 2187-10) Georgetown Hydro Reservoirs and Water Conduits.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located upon the project area, and all rights and interests the possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-7, December 15, 1953, entitled "Terms and Conditions of License for Minor Project Affecting Lands of the United States" (17 FPC 486), which terms and conditions, designated as Articles 1 through 14, are attached hereto and made a part hereof, except for Articles 7 and 8 thereof, and subject to the following special conditions set forth herein as additional articles:

Article 15. Effective as of January 1, 1965, the Licensee shall pay to the United States the sum of One Hundred Dollars ($100.00) annually for the purpose of reimbursing the United States for the costs of administration of Part I of the Act; or such other amount as may hereafter be determined as necessary to reimburse the United States for the costs of administration.

Article 16. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: Provided, that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health and property; and Provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the licensee may construct and maintain as required by the license.

Article 17. Timber on lands of the United States cut, used or destroyed in the construction and maintenance of the project works, or in the clearing of said lands, shall be paid for and the resulting slash and debris disposed of in accordance with the requirement of the agency of the United States having jurisdiction over said lands. Payment for merchantable timber will be at current stumpage rates, and payment for young growth timber below merchantable size will be at current damage appraisal value. However, the agency of the United States having jurisdiction may sell or dispose of the merchantable timber to others than the Licensee, with the provision that timber sold or disposed of will be cut and removed from the area prior to or without undue interference with clearing operations of the Licensee and in coordination with the project construction schedules. Such sale or disposal to others will not relieve the

Licensee of the responsibility for the clearing and disposing of all slash and debris from project lands.

Article 18. The Licensee shall do everything reasonably within its power and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon the request of officers of the agency concerned to prevent, make advance preparations for suppression, and suppress fires on the lands to be occupied or used under the license. The Licensee shall be liable for and pay the costs incurred by the United States in suppressing fires caused from the construction, operation, or maintenance of the project works or of the work appurtenant or accessory thereto under the license.

Article 19. The Licensee shall, within six months from the effective date of this license, file with the Commission a revised Exhibit K to define the final project boundary in accordance with rules and regulations of the Commission.

Article 20. The Licensee shall, within one year from the effective date of this license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

(D) The Commission reserves the right to determine at a later date the amount of annual charges to be paid to the United States for the purpose of recompensing it for the use, occupancy and enjoyment of its lands by the project.

(E) The terms and conditions of the Act, which it has been found herein to be in the public interest to waive, are hereby excluded from the license.

(F) The exhibits designated and described in paragraph (B) above are hereby approved as part of the license for the project.

(G) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.

ORDER PARTIALLY GRANTING REHEARING FOR FURTHER CONSIDERATION AND DISPOSAL OF MOTIONS TO DEFER AND TO RESCHEDULE FILING OF BRIEFS AND STATEMENTS

(Issued August 27, 1964)

On July 23, 1964, 32 FPC 254, the Commission issued its Opinion No. 436 in the above-entitled proceeding. A number of participants have submitted applications for rehearing, the first duly verified application being filed by Pan American Petroleum Corporation on August 6, 1964. In addition, various motions have been submitted for stay of certain actions required in the order accompanying Opinion No. 436. Since the statutory period under Section 19(a) of the Natural Gas Act is insufficient to permit a timely and proper disposition of these applications and motions, it is necessary and appropriate to grant rehearing for the purpose of enabling further consideration of the arguments and allegations adduced.

The limited rehearing herein granted will have, during its pendency, the effect of extending the time limitation set out in the ordering paragraphs with respect to which stay is sought.

The time for filing of briefs on the refund issue has already been extended by the Secretary to September 21, 1964, with replies due on or before October 1, 1964. In our opinion, a further delay is warranted to permit the Commission to give further consideration to the proper procedure for determining the refund issues, and we are accordingly deferring any filing of briefs, statements of fact or statements of evidence on this issue until further order of the Commission.

Kerr-McGee Oil Industries, Inc., and Phillips Petroleum Company have moved to reschedule the briefing called for in ordering paragraph (F) of Opinion No. 436 in the above-entitled matter. Such paragraph called for briefs by interested parties within 90 days of the effective date of said order. The motion would divide the 90-day period to provide for initial briefs within 70 days and reply briefs within the following 20 days. There being no opposition to this motion, it is hereby granted.

The Commission orders:

(A) Rehearing in this proceeding is hereby granted for the sole purpose of reconsideration of the said pending applications and motions.

(B) The provisions of ordering paragraph (F) of Opinion No. 436 issued July 23, 1964, are hereby modified to provide that initial briefs shall be filed on or before October 1, 1964, and that reply briefs may be filed on or before October 21, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64-303

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 28, 1964)

On June 19, 1964, El Paso Natural Gas Company (Applicant) filed in Docket No. CP64-303 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a measuring and regulating station to be located on Applicant's 5-inch pipeline running from Station No. 4 to Silver City, in Grant County, New Mexico. The proposed facility is to be used for the sale of natural gas to Western Gas Service Company for resale to Reese Mining and Manufacturing Company for use in its brick plant near Silver City, New Mexico, all as more particularly described in the application, above mentioned.

The estimated cost of the facilities is $5,500, which will be financed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 26, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G–242 and G–257 (3 FPC 851).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company to construct and operate the proposed facilities and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas authorized in paragraph (A) above shall commence as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

ROCHESTER GAS AND ELECTRIC CORPORATION, DOCKET NO. E–7154

ORDER DENYING REHEARING

(Issued August 28, 1964)*

On March 2, 1964, the Rochester Gas and Electric Corporation petitioned for a declaratory order that it does not require a license for the continued maintenance and operation of its four hydroelectric projects on the Genesee River, New York. The Corporation contended that the projects are not located on navigable

*Affirmed in part; vacated in part, *Rochester Gas & Electric Corp.* v. *F.P.C.*, 344 F. 2d 594; (CA2–1965); cert. denied, 382 U.S. 832.

waters of the United States. On facts stated in the Corporation's petition, the Commission on July 7, 1964, 32 FPC 48, found that: (1) the Genesee River from above the Rochester Gas and Electric Company's project works to its mouth at Lake Ontario is a "navigable water of the United States" within the meaning of subsection 23(b) of the Federal Power Act; (2) Rochester Gas and Electric Corporation maintains and operates four hydroelectric projects, designated Stations 2, 5, 26 and 160, across, along, or in the Genesee River without a permit or a valid existing right-of-way granted prior to June 10, 1920, or a license granted pursuant to the Federal Power Act. We ordered the Corporation to apply for a license for such projects.

The Corporation applied for rehearing on August 3, 1964. The Corporation acknowledges that the Genesee River has supported commerce, but contends that there is no evidence that this commerce was of an interstate character. The uncontested facts show that before the improvement of the river, agricultural and other products were rafted downstream to Rochester, New York, and after the completion of the Genesee Valley Canal, barges plied between Rochester and the Pennsylvania border.

It is inconceivable that some of the goods in this traffic never entered interstate or foreign commerce either by transshipment at Rochester to or from the Great Lakes or the Erie Canal, both of which the Supreme Court has declared to be navigable waters of the United States,[1] or by crossing the Pennsylvania border at the opposite end of the Genesee Valley Canal. In any event, the mere capability of use by the public for purposes of transportation in interstate or foreign commerce affords the true criterion of navigability.[2]

The Corporation argues that, even if the Genesee River has supported interstate commerce, it was not "substantial and permanent." It is clear that the navigation upon the Genesee River is at least as extensive as upon certain other streams which have been declared navigable waters of the United States. For example, conditions on the Fox River, Wisconsin, having its headwaters near Portage, Wisconsin, and its mouth at Green Bay, are very similar to those on the Genesee River. The Fox River was made difficult for navigation in its natural state by several rapids, two of the largest of which are Grand Chute and De Pere. "It is true," as the Supreme Court observed, "without the improvement by locks, canals," and dams the Fox River through its entire length could not be navigated by steam boats or sail vessels . . . ."[3] The Fox River was used as a waterway between Green Bay and the Wisconsin River. It was found to be a navigable water of the United States in *The Montello*.[4]

The Supreme Court has stated expressly that it is not necessary for navigability that the use should be permanent. This principal is contained in *Economy Light and Power Co.* v. *United States*[5] and *United States* v. *Appalachian Electric Power Co.*[6] The navigation upon the Genesee River is at least as enduring as upon the waterways involved in these cases. In the *Economy* case, the Supreme Court said:[7]

> The Desplaines River, after being a practical service as a highway of commerce for a century and a half, fell into disuse, partly through

[1] *The Genesee Chief* v. *Fitzhugh*, 53 U.S. (12 How.) 443, 457 (1851) (Lake Ontario); *The Robert W. Parsons*, 191 U.S. 17, 28 (1903) (Erie Canal).

[2] *The Montello*, 87 U.S. (20 Wall) 430, 441 (1874); *United States* v. *Appalachian Power Co.*, 311 U.S. 377, 407 (1940).

[3] *The Montello*, 87 U.S. (20 Wall.) 430, 441 (1874).

[4] *Id.*

[5] 256 U.S. 113, 114 (1921).

[6] 311 U.S. 317, 409 (1940).

[7] See note 5.

changes in the course of trade, or methods of navigation, or changes in its own condition, partly as the result of artificial obstructions.

In consequence, it has been out of use for one hundred years; but a hundred years is a brief space in the life of a nation; improvements in the methods of water transportation or increased cost in other methods of transportation may restore the usefulness of this stream; since it is a natural interstate waterway, it is within the power of Congress to improve it at the public expense; and it is not difficult to believe that many other streams are in like condition and require only the exertion of federal control to make them again important avenues of commerce among the States. *If they are to be abandoned, it is for Congress, not the courts, so to declare.* [Emphasis added.]

The Corporation alleges, at least by implication, that a canal using water from a river and running beside it is not a reasonable improvement of the river, even if the barge traffic in places travels in the channel of the river itself. For purposes of determining Congress' control of waterways under the commerce clause, there is no distinction between improvements for navigation actually in the bed of a stream and those merely along it.[8] Both are subject to national planning and control in the regulation of interstate and foreign commerce.[9]

The Corporation challenges the constitutionality of Section 3(8) of the Federal Power Act (16 U.S.C. 796), defining navigable waters, on the ground that it improperly includes "interruptions between the navigable parts of . . . streams or waters by falls, shallows, or rapids compelling land carriage." This section, far from innovating in defining navigable waters, was in effect a codification of the extensive case law on the subject. The Supreme Court cases cited in note 6 of our declaratory order refute any suggestion that the section is unconstitutional. As the Supreme Court observed in *First Iowa Hydro-Electric Cooperative* v. *F.P.C.*,[10] the statutory scheme of the Federal Power Act has been several times reviewed and approved by the courts.

The Corporation denies that there is evidence that, with reasonable improvements, the Genesee River again could support interstate transportation. Aside from the suggestive authorities referred to in notes 3 and 4 of our declaratory order, there is ample support for our holding in Exhibit C, entitled "Genesee River Flows, 1907–1962", of the Corporation's petition. The flows of the Genesee River compare favorably with those of a variety of other rivers which have been declared navigable.

The Corporation's several other contentions are merely ancillary to those set forth and answered above.

The Commission finds:

It is appropriate and in the public interest in administering Part I of the Federal Power Act (16 U.S.C. 791–823) that the Rochester Gas and Electric Corporation's application for rehearing filed on August 3, 1964, on the declaratory order, issued on July 7, 1964, requiring the Corporation to file application for licenses for its four hydroelectric projects on the Genesee River, New York, be denied.

The Commission orders:

The aforesaid application for rehearing by Rochester Gas and Electric Corporation is hereby denied.

[8] See *The Robert W. Parsons*, 191 U.S. 17, 26–27 (1903), and *United States* v. *Cress*, 243 U.S. 316, 326 (1917).

[9] *United States* v. *Appalachian Power Co.*, 311 U.S. 377, 426 (1940).

[10] 328 U.S. 152, 181 (1946).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP64-213

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 28, 1964)

On March 24, 1964, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP64-213 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain natural gas transmission facilities, and requesting the issuance of a certificate of public convenience and necessity authorizing the construction and operation of certain replacement natural gas transmission pipeline facilities, all as more fully set forth in the application.

Applicant proposes to abandon: (a) approximately 1.8 miles of 8-inch pipeline which traverses a recently urbanized area outside Greenville, Washington County, Mississippi, by sale to Mississippi Valley Gas Company (Mississippi Valley) which company Applicant is presently serving by said pipeline; (b) approximately 0.6 mile of 8-inch tie-over pipeline which presently connects Applicant's Greenville Compressor Station with the line to be sold to Mississippi Valley in (a) above; and (c) two parallel 6-inch pipelines, each 10.2 miles long, extending from Applicant's 12-inch Slaughters-Montezuma pipeline to its Oaktown Storage Field Compressor Station in Knox County, Indiana. The facilities to be abandoned in (b) and approximately six miles of those in (c) above will be salvaged and returned to stock. The remainder are in poor condition and will be abandoned in place.

Applicant proposes to construct and operate: (a) approximately 10.2 miles of 12-inch pipeline to replace the two 6-inch lines in Knox County, Indiana, and (b) approximately 2 miles of 12-inch pipeline to perform the service presently being rendered by the 8-inch and tie-over lines in Washington County, Mississippi.

The estimated cost of the proposed 12-inch pipelines to be constructed is $518,000, which will be defrayed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, as supplemented and amended, has been filed.

At a hearing held on August 26, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorizations sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1948, in Docket No. G-855 (7 FPC 213).

(2) The facilities proposed to be abandoned by Applicant, as hereinbefore described and as more fully described in the application filed in this proceeding, are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the

public convenience and necessity and permission and approval therefor should be granted as hereinafter ordered.

(4) The proposed construction and operation of facilities, and the transportation of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application, filed in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The aforesaid proposed construction and operation of facilities, and the transportation of natural gas in interstate commerce are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant, Texas Gas Transmission Corporation, of the facilities hereinbefore described, as more fully described in the application and exhibits filed in this proceeding, are hereby granted.

(B) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Texas Gas Transmission Corporation, authorizing the construction and operation of facilities, and the transportation of natural gas as hereinbefore described, all as more fully described in the application, upon the terms and conditions of this order.

(C) The certificate issued by paragraph (B) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(D) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

(E) The facilities hereby authorized shall be constructed and placed in actual operation, and the transportation of gas authorized in paragraph (B) above shall commence as provided in paragraph (b) of Section 157.20 of the aforesaid regulations within six months of the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP64-266

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 28, 1964)

On April 30, 1964, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP64-266 an application pursuant to Section 7(c) of the Natural

Gas Act for a certificate of public convenience and necessity authorizing the construction, installation and/or operation of facilities which may be necessary to enable Applicant to define, develop and/or test prospective gas storage reservoirs during the 36-month period [1] commencing on the date of granting of such authorization at a total cost not to exceed $2,000,000 during the first year, with no single project to exceed a cost of $1,250,000, all as more fully set forth in the application.

The purpose of this proposal is to permit Applicant to engage in a vigorous and continuing program of adding storage facilities to its system whenever such additional storage will benefit its system operations and service to its customers.

The total volumes of natural gas to be injected into the prospective underground storage projects during the first year will not exceed 5,000,000 Mcf with not more than 2,000,000 Mcf injected in any single project.

Only off-peak gas will be used for the testing purposes hereunder. No new sales or service are involved.

Due notice of the subject application was published in the Federal Register on July 31, 1964 (29 F.R. 11135). No petition to intervene, notice of intervention or protest to the granting of the application has been received.

At a hearing held on August 26, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in the Presiding Examiner's decision in Docket No. G-855, affirmed by the Commission in its order issued April 2, 1948 (7 FPC 223).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction, installation and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction, installation and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction and installation during the 12-month period commencing on the date on which this order issues, and the total expenditures thereunder should be limited to a maximum of $2,000,000, with no single project to exceed a cost of $1,250,000. Total injections of natural gas to be used in the testing of all storage projects

[1] Applicant has agreed informally to accept authorization limited to a 12-month period from date of authorization, and a limitation of total injection volumes during such period to 5,000,000 Mcf.

should not exceed 5,000,000 Mcf with not more than 2,000,000 Mcf injected in any single project.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement showing by projects: (a) a description of the facilities constructed and installed under this authorization, (b) the location of said facilities, (c) the cost of said facilities, (d) the estimated capacity of each successful project, and (e) the volume of gas injected and withdrawn from each reservoir.

(8) Costs incurred with respect to any single unsuccessful gas storage reservoir should be charged to Account 822, Exploration and Development.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Texas Gas Transmission Corporation, to construct and/or install during the 12-month period commencing on the date on which this order issues, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to test and develop prospective gas storage reservoirs in Kentucky and Indiana as applied for.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is hereby limited to construction and installation during the 12-month period commencing on the date on which this order issues, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $2,000,000, with no single project to exceed a cost of $1,250,000. Total injections of natural gas to be used in the testing of all storage projects shall not exceed 5,000,000 Mcf with not more than 2,000,000 Mcf injected in any single project.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement showing by projects: (a) a description of the facilities constructed and installed under this authorization, (b) the location of said facilities, (c) the cost of said facilities, (d) the estimated capacity of each successful project, and (e) the volume of gas injected and withdrawn from each reservoir.

(E) Applicant shall charge the costs incurred with respect to any single unsuccessful gas storage reservoir to Account 822, Exploration and Development.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP62-154

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING SERVICE AGREEMENT AND TARIFF SHEETS FOR FILING

(Issued August 31, 1964)

On June 2, 1964, El Paso Natural Gas Company (Applicant) filed in Docket No. CP62-154 an application to amend the order of the Commission issued October 17, 1962, 28 FPC 614, in Docket No. CP62-154 authorizing Applicant to sell and deliver on an interruptible, best efforts basis, under its Rate Sched-

ule G–X–2, FPC Gas Tariff, Original Volume No. 1, during the calendar year 1962, up to 25,700,000 Mcf of natural gas (at 14.9 psia) to Southern California Gas Company and Southern Counties Gas Company of California (jointly "Southern") for resale by Southern in the California market area. The application to amend seeks authorization to extend Applicant's authorization to permit resumption of sales of best efforts excess gas to California customers, namely Southern, all as more fully set forth in the application to amend.

Applicant states Southern will use the subject gas to increase the reserves in its storage reservoirs which were depleted due to subnormal spring temperatures and to provide additional interruptible industrial service. Service will be under Applicant's Rate Schedule G–X–2 at a rate of 22.48 cents per Mcf for a limited period ending December 31, 1965.

Applicant tenders for filing and acceptance (1) an executed service agreement dated May 22, 1964, between Applicant and Southern providing for the sale and delivery of natural gas on a best efforts basis through December 31, 1965, and (2) Fifth Revised Sheet No. 27–I and First Revised Sheet No. 91–N, FPC Gas Tariff, Original Volume No. 1.

Due notice of the filing of the application to amend and opportunity for hearing has been given by publication in the Federal Register on July 25, 1964 (29 F.R. 10404). No protest, petition to intervene or request for hearing has been filed concerning this amendment.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the Commission's order issued October 17, 1962, in Docket No. CP62–154 be amended as hereinafter ordered.

(2) The public convenience and necessity require that both the service agreement dated May 22, 1964, and revised tariff sheets, hereinabove described, be accepted for filing to become effective on the date this order issues.

The Commission orders:

(A) The Commission's order issued October 17, 1962, in Docket No. CP62–154 be and the same is hereby amended so as to authorize, during the limited period commencing with the date of issuance hereof and continuing through December 31, 1965, the sale and delivery of a maximum of 174,680 Mcf of natural gas (at 14.73 psia) daily to Southern California Gas Company and Southern Counties Gas Company of California.

(B) El Paso Natural Gas Company's service agreement dated May 22, 1964, with Southern providing for the sale and delivery of natural gas on a best efforts basis through December 31, 1965, and Fifth Revised Sheet No. 27–I and First Revised Sheet No. 91–N, FPC Gas Tariff, Original Volume No. 1 are hereby accepted for filing to become effective on the date this order issues.

(C) Applicant shall report at the end of each thirty day period the volumes of natural gas sold and delivered to Southern.

(D) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NOS. RP65-2 AND RP65-5

ORDER SUSPENDING PROPOSED REVISED TARIFF SHEETS, INSTITUTING INVESTIGATION OF TARIFF PROVISIONS, CONSOLIDATING PROCEEDINGS AND PROVIDING FOR HEARING

(Issued August 31, 1964)

On July 6, 1964, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin), tendered for filing certain revised tariff sheets,[1] to become effective as of September 1, 1964. Michigan Wisconsin states that the purpose of the filing is to delete Section 7.4 from its Rate Schedule ACQ-1. Section 7.4 provides that, under certain conditions, customers of Michigan Wisconsin purchasing gas under Rate Schedule ACQ-1 may, if they so desire, release a portion of their annual contract quantity for purchase by other customers who desire volumes of gas in excess of their annual contract quantity. Michigan Wisconsin in support of its filing states that Section 7.4 is a unique provision which was justified only as a temporary measure to facilitate the transition by its customers from a straight rate to a two-part rate. Michigan Wisconsin also claims that the proposed filing will not affect its rate level. The schedule attached to the filing indicates, however, that while the proposal may have no net effect on Michigan Wisconsin's revenue, the proposed elimination of Section 7.4 will result in a rate increase to a number of customers.

Comments on this and petitions to intervene[2] have been filed by some of Michigan Wisconsin's customers.[3] Each contends that it may be adversely affected by these proceedings. Michigan Consolidated Gas Company and Wisconsin Fuel and Light Company support the proposed change. Michigan Gas Utilities Company, Madison Gas and Electric Company, Iowa Electric Light and Power Company, Michigan Gas and Electric Company and Iowa Southern Utilities Company oppose the deletion, stating that such an action may increase their annual average purchase gas cost. Michigan Gas and Electric Company, in addition recommends that the filing be rejected because Michigan Wisconsin alleges no changed facts or circumstances occurring since the Commission issued Opinion No. 387 which would now justify a piece-meal change in the Commission approved rates. Iowa Electric Light and Power Company contends that "there has been no change in the situation since the rates prescribed in Docket No. G-17512 became effective which would warrant changing the relative positions of the customers and accordingly Section 7.4 would be continued."

Preliminary review of the possible impact of the deletion of Section 7.4, the controversies and misunderstandings between Michigan Wisconsin and some of its customers, as alluded to in its filing, and recent proceedings involving sales for resale for industrial purposes, indicate a need for general investigation of Michigan Wisconsin's tariff, including the general terms and conditions. Among others, the following factors and the tariff provisions relating thereto appear to

[1] First Revised Sheet Nos. 8 and 32, Fourth Revised Sheet No. 9 and Fifth Revised Sheet No. 28 to Michigan Wisconsin's FPC Gas Tariff, Second Revised Volume No. 1.

[2] The petitions to intervene will be the subject of a separate order.

[3] Michigan Consolidated Gas Company, Wisconsin Public Service Corporation, Wisconsin Fuel and Light Company, North Central Public Service Company, Iowa Electric Light and Power Company, Milwaukee Gas Light Company, Michigan Gas Utilities Company, Madison Gas and Electric Company, Michigan Gas and Electric Company and Iowa Southern Utilities Company.

warrant investigation: (1) the release of gas by customers under Section 7.4 and subsequent purchase of gas under the overrun provisions of Rate Schedule OS–1; (2) the impact on customers of the proposed deletion of Section 7.4; (3) the use by customers of their total ACQ before expiration of the contract year and subsequent purchases under Rate Schedule OS–1; (4) the present method and terms for establishing of a customer's MDQ and ACQ, including the need for such limitations of service; (5) the penalty provisions for excessive takes of volumes of gas; (6) the possible need for tariff provisions relating to sales for resale for industrial use, both firm and interruptible, to assure sufficient storage gas to meet customers' firm requirements during the winter months; (7) the advisability of providing storage or peaking service under separate rate schedules; and (8) such other modification of the tariff provisions as may be necessary and appropriate to complement and effectuate any of the foregoing.

The Commission finds:

It is necessary and proper in the public interest and to aid in the enforcement of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the rates, charges, classifications and services contained in Michigan Wisconsin's FPC Gas Tariff, Second Revised Volume No. 1 and into the rules, regulations, practices, service agreements, or contracts relating thereto, as proposed to be amended by First Revised Sheet Nos. 8 and 32, Fourth Revised Sheet No. 9 and Fifth Revised Sheet No. 28, and that those sheets should be suspended and the use thereof deferred as hereinafter provided.

The Commission orders:

(A) Pursuant to the authority of the National Gas Act, particularly Sections 4, 5, 15 and 16 thereunder, the Commission's Rules of Practice and Procedure and the Regulations under the Natural Gas Act (18 CFR, Chapter 1), a public hearing be held on a date fixed by notice from the Presiding Examiner Francis L. Hall concerning the lawfulness of the rates, charges, classifications and service contained in Michigan Wisconsin's FPC Gas Tariff, Second Revised Volume No. 1 and the rules, regulations, service agreements or contracts relating thereto, as proposed to be amended by First Revised Sheet Nos. 8 and 32, Fourth Revised Sheet No. 9 and Fifth Revised Sheet No. 28, tendered for filing on July 6, 1964.

(B) Pending such hearing and decision thereon, Michigan Wisconsin's proposed revised tariff sheets identified in Paragraph (A) above, hereby are suspended and their use deferred until February 1, 1965, and thereafter until such further time as they are made effective in the manner provided by the Natural Gas Act.

(C) Michigan Wisconsin shall file its complete case-in-chief on all issues, including those referred to above, on or before October 9, 1964, and concurrently shall serve copies thereof upon the Staff, and all other parties of record.

(D) The Staff of the Commission shall file such evidence as it proposes to adduce in this proceeding and shall serve such evidence upon Michigan Wisconsin and other parties on or before November 6, 1964.

(E) All other parties desiring to present evidence herein shall file their testimony and exhibits and shall serve copies thereof upon the Staff and all other parties on or before November 16, 1964.

(F) The Presiding Examiner shall set the time for filing of rebuttal evidence by Michigan Wisconsin and, if he determines it to be necessary and appropriate and without unduly delaying the proceedings, may provide for filing of cross-rebuttal between the parties (including Staff) on a date prior to the date set for filing of Michigan Wisconsin's rebuttal.

(G) If the Commission, after a hearing has been had, shall find with respect to Michigan Wisconsin that its tariff or any of its rules, regulations, practices,

classifications, service agreements or contracts, subject to the jurisdiction of the Commission are unjust, unreasonable, unduly discriminatory, or preferential, the Commission will thereupon determine and fix by order or orders, just and reasonable tariff provisions, rules, regulations, practices, classifications, service agreements or contracts to be therafter observed and in force.

(H) The proceedings in the above Docket Nos. RP65–2 and RP65–5 are hereby consolidated for purpose of hearing and decision.

(I) Pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure, a prehearing conference before the Presiding Examiner shall commence at 10:00 A.M. (EDT) on November 30, 1964, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C. for the purpose of defining the issues, reaching an agreement and stipulation thereon and any other facts relevant to this matter, and, if necessary, to prescribe procedures for hearing herein giving effect to the Commission's intent that this matter be expedited. The Presiding Examiner may in his discretion, provide for any other conferences or procedures he deems appropriate in carrying out the policy and intent of Section 2.59 of the Commission's Rules of Practice and Procedure.

(J) Interested State Commissions may participate as provided by Sections 1.8 and 1.37(f) of the Commission's Rules of Practice and Procedure.

(K) Notices of Intervention or Petitions to Intervene in these consolidated proceedings may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the Rules of Practice and Procedure on or before October 1, 1964. Petitioners listed above need not submit further petitions to intervene.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

WISCONSIN VALLEY IMPROVEMENT COMPANY, DOCKET NO. E–7178

ORDER APPROVING HEADWATER BENEFITS ARRANGEMENT

(Issued August 31, 1964)

On August 19, 1963, the Wisconsin Valley Improvement Company (Company), with principal offices in Wausau, Wisconsin, requested approval of a method of compensating it for headwater benefits from its water storage reservoirs in the Wisconsin River basin, Wisconsin. Section 13.1 of the Regulations under the Federal Power Act provides for Commission review and approval of headwater benefit arrangements in lieu of a headwater benefits determination under subsection 10(f) of the Federal Power Act (16 U.S.C. 803(f)).

The Company is owned by four utilities and eight pulp and paper companies which operate some twenty-six hydroelectric plants receiving headwater benefits from the Company's twenty-one water storage reservoirs, collectively licensed as Project No. 2113. These twelve corporations and their respective hydroelectric projects are listed below:

Corporation	*Hydroelectric project*
Wisconsin Public Service Corporation	Otter Rapids
	Hat Rapids
	Jersey
	Tomahawk
	Grandfather
	Alexander
	Merrill
	Wausau

Corporation	*Hydroelectric project*
Rhinelander Paper Company	Rhinelander
Tomahawk Power and Pulp Company	Kings
Owens-Illinois Glass Company	Grandmother
Marathon, a Division of American Can Company	Marathon (Rothschild)
Consolidated Papers, Inc	Wisconsin Rivers Division (Jordon)
Mosinee Paper Mills Company	Mosinee
Consolidated Water Power Company	Du Bay
	Stevens Point
	Biron
	Wisconsin Rapids
Whiting-Plover Paper Company	Plover
Nekoosa-Edwards Paper Company	Centralia
	Port Edwards
	Nekoosa
Wisconsin River Power Company	Petenwell
	Castle Rock
Wisconsin Power & Light Company	Kilbourn
	Prairie du Sac

These corporations make payments to the Company for headwater benefits according to Laws of Wisconsin 1907, ch. 335, as amended from time to time and particularly in Laws of Wisconsin 1939, ch. 497, which constitute the Company's enabling act. Section 5 of this act reads in pertinent part:

> The company . . . shall, subject to the supervision and control hereinafter provided for, be entitled to charge, collect and receive reasonable and uniform tolls from the owner or owners, lessee or lessees, or operators of each and every improved and operated water power located upon the Wisconsin river, or any tributaries thereof below any of said reservoirs benefited thereby, but not exceeding in aggregate of all its revenues sufficient to pay all reasonable costs of operation and maintenance, including taxes and depreciation, and a net return not exceeding seven percent on the capital invested, and a reasonable allowance for working capital.
>
> Said tolls shall be semiannually ascertained, fixed and determined by the [Wisconsin public service] commission as hereinafter provided. Said tolls shall be fixed in proportion to the benefits conferred by the reservoir system upon each of the improved and operated water powers aforesaid:

The method presently used for apportioning tolls for a six-month period under this language is as follows: The costs to be distributed, called the "total tolls", are the direct operating and maintenance expenses, administrative expenses, depreciation and taxes, less miscellaneous income, plus a maximum return on the capital invested of 3.5 percent for a six-month period. (A return of 2.3023 percent was allowed for the first semi-annual period of 1963.) The "total tolls" are prorated among the users of the water in proportion to their respective "toll heads", which are found by multiplying the "operating head" (the average of the actually measured net head for the period of reservoir release occurring during the six-month reporting period) of each downstream plant by the portion of the release from the headwater improvements which the plant is capable of using.

Under this system, the owners of downstream plants for the most recent re-

ported period—July 1, 1963, through December 31, 1963—were assessed as follows:

Corporations	*Assessments*
Wisconsin Public Service Corporation	$41,969.80
Rhinelander Paper Company	3,104.35
Tomahawk Power and Pulp Company	2,511.71
Owens-Illinois Glass Company	4,647.92
Marathon, A Division of American Can Company	5,312.60
Consolidated Papers, Inc	9,606.97
Mosinee Paper Mills Company	3,980.81
Consolidated Water Power Company	41,768.91
Whiting-Plover Paper Company	363.88
Nekoosa-Edwards Paper Company	18,839.03
Wisconsin River Power Company	31,460.12
Wisconsin Power & Light Company	27,074.16
Total	190,640.26

Beginning with the first semi-annual period following June 10, 1920, when the Federal Water Power Act (Part I of the Federal Power Act since 1935) was approved, through June 20, 1963 (that is, to the beginning of the last reported period), the owners of the downstream plants or their predecessors were assessed as follows:

Corporations	*Assessments*
Wisconsin Public Service Corporation	$2,174,925.79
Rhinelander Paper Company	195,749.86
Tomahawk Power and Pulp Company	133,026.13
Owens-Illinois Glass Company	274,577.86
American Can Company	312,943.31
Mosinee Paper Company	265,691.27
Consolidated Water Power Company	2,127,488.70
Whiting-Plover Paper Company	18,610.16
Nekoosa-Edwards Paper Company	1,137,439.16
Wisconsin River Power Company	750,751.75
Wisconsin Power & Light Company	1,381,388.75
Consolidated Papers, Inc	612,038.78
Total	9,384,631.52

The Commission finds:

(1) The aforesaid assessments from July 1, 1920, through December 31, 1963, are reasonable compensation to the Wisconsin Valley Improvement Company for headwater benefits from its developments in the Wisconsin River basin.

(2) The above-described method for determining compensation to the Wisconsin Valley Improvement Company for headwater benefits from its developments in the Wisconsin River basin is reasonable and equitable.

The Commission orders:

The aforesaid assessments from July 1, 1920, through December 31, 1963, and future assessments similarly made are approved under Section 13.1 of the Regulations under the Federal Power Act in lieu of a headwater benefit determination under subsection 10(f) of the Federal Power Act.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

CUMBERLAND NATURAL GAS COMPANY, INC., DOCKET NO. G–18740; TRUMAN DRAKE, DOCKET NO. G–18744; CREEK OIL COMPANY, INC., DOCKET NO. CI64–457; J. C. MILLER OIL COMPANY, INC., DOCKET NOS. G–18743 AND CI64–1107

ORDER DENYING MOTION TO OMIT THE INTERMEDIATE DECISION PROCEDURE

(Issued September 1, 1964)

There is presently before us for consideration a motion filed by Tartan Oil Company (Tartan), an intervener, seeking omission of the intermediate decision by the Presiding Examiner in the above consolidated proceeding. The applicants Cumberland Natural Gas Company, Inc., Creek Oil Company, Inc., and Har-Ken Oil Company, an applicant who has filed for succession to certain J.C. Miller Oil Company, Inc., interests in Docket No. G–18743, have filed a joint answer in opposition to the motion.

We have given careful consideration to the arguments supporting and opposing waiver of the intermediate decision. It appears from the motion and answer thereto that, although the record is comparatively small, there is considerable conflicting expert testimony particularly as it relates to allegations contained in the original pleadings of the parties. In instances such as this we have consistently held, based on supporting experience, that the Presiding Examiner is better able to appraise and reconcile the testimony, and to identify and evaluate the points on which the differences are irreconcilable. We do not find support for a conclusion that due and timely execution of the Commission's functions imperatively and unavoidably requires the omission of the intermediate decision procedure. In view of the foregoing, the motion must be denied.

The Commission orders:

The motion of Tartan Oil Company for omission of the intermediate decision procedure made herein is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

EQUITABLE GAS COMPANY, DOCKET NO. CP64–196

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued September 2, 1964)

On March 6, 1964, as supplemented on June 5, 1964, Equitable Gas Company (Applicant) filed in Docket No. CP64–196 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon operation of its Kerby Gas Storage Pool (Kirby Pool) and related facilities located in Greene County, Pennsylvania, and to transfer other related facilities now used in the operation to other gas utility operations on its system, all as more fully described in the application.

Applicant estimates that it would cost approximately $2,505,000 to bring approximately 60 wells in the Kirby Pool up to the standards prescribed under the "Gas Operation, Well Drilling, Petroleum and Coal Mining Act" of Penn-

sylvania (52 Purdon's Pa. Stat. § 2101–2504). Applicant states that upgrading of the wells to conform to the requirements of the Act would not increase the usefulness of the Pool as a storage reservoir and the expenditure of $2,505,000 would render the continued operation of the Pool uneconomic. Applicant has notified the Department of Mines and Mineral Industries of Pennsylvania of its intention to abandon the storage reservoir. Approval of the proposed abandonment has been given by that Department.

Applicant further states that abandonment of Kirby Pool will not result in any reduction of gas service to its customers and that the gas in the storage pool will be withdrawn and connecting lines retired gradually during an estimated period of 13 years.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 26, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, exhibits and supplements, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Equitable Gas Company, a Pennsylvania corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of May 9, 1944, in Docket No. G–275 (4 FPC 588).

(2) The facilities proposed to be abandoned as hereinbefore described and as more fully described in the application in this proceeding are subject to the jurisdiction of the Commission and the abandonment thereof by Applicant is subject to the provisions of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity, and an order permitting and approving the same should be issued as hereinafter ordered.

The Commission orders:

(A) Applicant, Equitable Gas Company, be and it is hereby permitted to abandon certain natural gas facilities and to remove certain other facilities as hereinbefore described and as more particularly described in the application in this proceeding.

(B) Applicant shall advise the Commission from time to time during the period of abandonment as to the removal and reemplacement of the facilities being removed.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

CITY OF KUTTAWA, KENTUCKY, DOCKET NO. CP64–279

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE AND DELIVERY OF NATURAL GAS

(Issued September 2, 1964)

The City of Kuttawa, Kentucky (Applicant) filed in Docket No. CP64–279, an application on May 20, 1964, and a supplement thereto on July 10, 1964, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Texas Gas Transmission Corporation (Texas Gas) to establish physical

connection of its transmission facilities with the proposed facilities of and to sell natural gas to Applicant for distribution and resale in the City of Kuttawa, Kentucky, and environs, all as more fully set forth in the application and supplement thereto.

Applicant proposes to construct and operate a distribution system and approximately 16.1 miles of 6-inch, 4-inch and 2-inch lateral pipeline extending from the proposed interconnection with Texas Gas to points of distribution in and near the City of Kuttawa, Kentucky. Peak day and annual natural gas requirements for the initial three year period are stated to be: 970 Mcf and 190,407 Mcf, 1031 Mcf and 262,759 Mcf, and 1099 Mcf and 286,117 Mcf, respectively.

The total estimated cost of the proposed laterals and distribution facilities for the project is $408,000.00, which Applicant proposes to defray from an A.P.W. grant of $196,000.00 by the United States government and a loan of $225,000.00 made by the Community Facilities Administration (a part of the Housing and Home Finance Agency).

The Public Service Commission of Kentucky has issued appropriate authorization for the proposed distribution system and related facilities.

On July 6, 1964, Texas Gas filed an answer to the application and stated therein it had no objection to the rendering of the requested service provided: (a) the maximum daily delivery obligation of Texas Gas did not exceed 1099 Mcf, (b) Applicant executed an acceptable service agreement, and (c) the point of delivery of natural gas to Applicant is located at the outlet side of a measuring station to be constructed by Texas Gas at the point of interconnection.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on August 4, 1964 (29 F.R. 11198). No protest, petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order dated March 30, 1948, in Docket No. G–855 (7 FPC 213).

(2) Applicant, City of Kuttawa, Kentucky, is a legal entity duly authorized to sell and distribute natural gas in the State of Kentucky and has received the necessary local franchises to render the services proposed.

(3) It is necessary and desirable in the public interest to direct Texas Gas to establish physical connection of its transmission facilities with those proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under its appropriate rate schedule and a service agreement to be executed by Applicant with Texas Gas in accordance with the Commission's Regulations, up to 1099 Mcf of natural gas per day for distribution and resale as hereinbefore described.

(4) The requirement that Texas Gas serve Applicant, as hereinafter ordered, will not (a) place an undue burden upon Texas Gas, (b) require Texas Gas to enlarge its transportation facilities or (c) impair Texas Gas' ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Texas Gas for distribution in the City of Kuttawa, Kentucky and environs within one year from the date of the issuance of this order.

The Commission orders:

(A) Texas Gas Transmission Corporation be and is hereby directed to establish physical connection of its facilities with the facilities proposed to be con-

structed and operated by Applicant, City of Kuttawa, Kentucky, as hereinbefore described and to sell and deliver up to 1099 Mcf of natural gas per day to Applicant under a service agreement to be executed by Applicant with Texas Gas in accordance with the Commission's Regulations, for the transportation, distribution and resale as hereinbefore described. Such service shall be rendered pursuant to Texas Gas' presently filed appropriate rate schedule.

(B) Texas Gas shall report to the Commission the date of commencement of service to Applicant within 15 days after such service begins.

(C) Applicant shall be prepared to receive service from Texas Gas as directed herein within one year from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

PACIFIC AMERICAN FISHERIES, INC., PROJECT NO. 1098

ORDER ACCEPTING SURRENDER OF LICENSE

(Issued September 2, 1964)

Application was filed on May 5, 1964 by Pacific American Fisheries, Inc. (Applicant), under Section 6 of the Federal Power Act (Act) for surrender of its license for minor Project No. 1098 located on Snowbird Creek, a tributary of Anchorage Bay, an arm of Chignick Bay, on the south coast of the Alaska Peninsula in the Third Judicial Division, Alaska, and affecting lands of the United States.

According to the application, Applicant desires to terminate the license because the decline in salmon runs and high operating costs of the cannery served by the project power makes the continued operation of the cannery economically unsound.

The current license, License No. 4, was issued on December 28, 1960, 24 FPC 1195, for a period of 10 years, effective as of September 9, 1960. Annual charges under the license in the amount of $15.00 have been paid through December 31, 1963, and Applicant's copy of the license instrument was returned with the application.

By letter dated July 16, 1964, the Department of the Interior reported that the lands of the United States formerly occupied by the project have been restored to a condition satisfactory to the Department, and that the latter has no objection to Commission acceptance of surrender of the license.

The Commission finds:

Acceptance of surrender of the license for the project is appropriate, as hereinafter provided.

The Commission orders:

Surrender of the license for Project No. 1098 is hereby accepted, effective as of July 16, 1964, subject to the payment of annual charges through said date in the amount of $8.11.

OPINION NO. 434–A

SHELL OIL COMPANY, OPERATOR, ET AL., CI62–1037; HUMBLE OIL & REFINING COMPANY, CI63–383; THE SUPERIOR OIL COMPANY, CI63–409

MEMORANDUM OPINION AND ORDER DENYING APPLICATIONS FOR REHEARING

(Issued September 2, 1964)*

Syllabus

1. Under any test, Court or Commission applied, Aneth prices are not in "suspect" category. P. 686.
2. Prices permanently certificated in *Aneth* case, and all subsequent permanently certificated prices in same area in noncontested proceedings, are comparable under all Commission and Court criteria, to prices here. P. 686.
3. Having failed to specify any distinguishing features in conditions of exploration, production and marketing between the two fields, Commission *concludes* Interveners' contentions are without merit. P. 686.
4. Commission *denies* applications for rehearing.
   Commissioner Black *dissenting.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

O'CONNOR, *Commissioner:*

This order relates to the merits of applications for rehearing filed by the State of California, Public Utilities Commission of the State of California, Southern California Gas Company and Southern Counties Gas Company of California with respect to our Opinion No. 434 and Order issued July 6, 1964, 32 FPC 34.

In Opinion No. 434 we found the in-line price for the sales in question to be 17.7 cents per Mcf and that certification of the initial contract rate would be in the public interest and will serve the public convenience and necessity. The aforementioned applicants, interveners in the certificate proceeding, principally urge that the Commission reconsider its decision and condition the certificates to 13.0 cents per Mcf which, they assert, is consistent with the price in the San Juan Basin.

Opinion No. 434 carefully set forth the position of the parties on each of the issues, analyzed the evidence presented and set forth our reasons in support of our conclusions. In brief, the issues raised by the applicants were fully considered in our original Opinion and Order and no purpose will be served in repeating our discussion except for the comments below.

In reaching our determination of an in-line price, we compared the proposed sales to sales in the same area which have already been subjected to the *CATCO* doctrine[1] and judicially approved.[2] Moreover, we underscored the fact that all evidence of record in this proceeding compelled a finding that the gas after processing is wholly comparable to that sold to El Paso at the tailgate of the Aneth plant. Further, our examination of the record establishes that the residue

*Affirmed, *sub nom. People of the State of California* v. *F.P.C.*, 353 F. 2d 16 (CA9–1965).
[1] *Atlantic Refining Co.* v. *P.S.C.*, 360 U.S. 391 (1959).
[2] *Texaco Inc., et al.* v. *F.P.C.*, 290 F. 2d 149 (CA5–1961).

volumes available to El Paso from the East Boundary Butte area—after treating charges ranging from 3.2 to 4.65 cents per Mcf have been deducted—will cost the pipeline, and consequently the consumer, approximately the same amount per Mcf as the gas purchased in the San Juan Basin.

Absent minor, but considered, distinctions[2] between the sales certificated in Opinion No. 335, 23 FPC 369, and the gas produced at East Boundary Butte, the record makes it pointedly clear that the sales from East Boundary Butte are comparable to the Opinion No. 335 sales.

The gas produced from Boundary Butte, East Boundary Butte and Aneth is all delivered into the Aneth pipeline. The Aneth, Boundary Butte and East Boundary Butte fields are all located in the Southeast Paradox or Blanding Basin. These fields are within eight miles of one another and the average producing depths of the wells are almost identical. Drilling conditions are similar. Although the type of gas produced at Aneth differs from that at East Boundary Butte, the quality differences are eliminated prior to the price computation to the end, as noted in the Opinion, that "the gas, after processing, is of approximately the same pipeline quality and Btu content as the residue gas available to El Paso at the tailgate of the Aneth plant." Conversely, the evidence clearly shows, as it did in the Aneth case, that the fields in the Southeastern Paradox Basin are not comparable with the San Juan Basin fields. They lie in a different geological basin, are located between 50 and 75 miles away, were developed at a much later point in time and have different drilling conditions and produce from different horizons. Further, under any test which has been applied either by the courts or the Commission, the Aneth prices and the Boundary Butte prices are not in the "suspect" category.

The prices permanently certificated in the Aneth case, and all subsequent permanently certificated prices in the same area in noncontested proceedings, are comparable under all criteria promulgated by this Commission and the courts to the prices in question in the instant proceeding. The applicants have failed to specify any distinguishing features in the conditions of exploration, production and marketing between the two fields in question and we must conclude that their contentions are without merit.

The Commission finds:

The assignments of error and grounds for rehearing set forth in the applications for rehearing filed by the State of California, Public Utilities Commission of the State of California, Southern California Gas Company and Southern Counties Gas Company of California present no new facts or principles of law which were not considered by the Commission when it issued its Opinion No. 434 and Order on July 6, 1964, or which having now been considered warrant any change or modification of said order.

The Commission orders:

The applications for rehearing filed by the State of California, Public Utilities Commission of the State of California, Southern California Gas Company and Southern Counties Gas Company of California are hereby denied.

Commissioner Black *dissenting* for the reasons set forth in the dissenting statement appended to Opinion No. 434 and order issued July 6, 1964.

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[2] In the East Boundary Butte area the producers are required to gather and, if necessary, compress the gas; in the Aneth and Boundary Butte fields these services are performed by the pipeline, El Paso.

OPINION NO. 428–A

UNITED GAS PIPE LINE COMPANY, DOCKET NO. RP63–1

OPINION AND ORDER ON REHEARING

(Issued September 2, 1964) *

Syllabus

1. Commission uses test year of twelve months ending March 31, 1962, adjusted to include extensive facilities put in service before November 30, 1962, since otherwise base period would not have been representative of future. P. 689.
2. Because additional facilities increased capacity, and rates for future are involved, it is necessary to use volumes of gas estimated for delivery in 1963 by means of facilities put into service up to November 30, 1962—1963 sales, based on estimates of pipeline's customers, constitute known change ascertainable with reasonable accuracy. P. 689.
3. Under *Mississippi River Fuel Corp.* Commission could not accept affiliated producer's filed rates untested. P. 689.
4. Commission *modifies* prior order to conform to Court stay so that pipeline's purchased gas costs shown by record shall be used for interim period as basis of computation undiminished by affiliated producer's rate case reductions. P. 690.
5. Commission *rejects* contention of error in failure to use liberalized depreciation and guideline-rate depreciation in computing pipeline's Federal income tax allowance, even though pipeline did not make use thereof in tax returns. P. 690.
6. Line of questioning attempting to show motivation for not utilizing such depreciation methods [*Supra* note 5] for reducing taxes was relevant and should have been allowed. P. 690.
7. Since 1963 balance of accumulated gas prepayments represents an abnormal situation, it should not be included in working capital but the amount of average test year balance of such prepayments should be subject to tax deduction. P. 690.
8. Commission frequently adjusts test year costs for known changes occurring within a reasonable time afterwards, but will not take into account changes too remote in time. P. 691.
9. It was proper to adjust Federal income tax rate to 50 percent in 1964, since it represented a known change resulting from Congressional action occurring less than two years after end of test year. P. 691.
10. Commission questions, as matter of regulatory policy, further adjustment of Federal income tax rate to 48 percent in 1965, *defers* decision thereon in accordance with prior order. P. 691.
11. It would stultify rate regulation if for life of a project Commission were limited by methods of cost allocation used by United in a certificate proceeding. P. 692.
12. That at one time in past differential between commodity rates in two zones was less than 3.5 cents is not controlling, anymore than that in subsequent rate settlements it was more—as system operation changes, it may be possible to decrease or eliminate such differential. P. 692.

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* See Opinion 428–B, *infra*, p. 879 rejecting application for rehearing in part, and denying stay. Set aside, *United Gas Pipe Line Co.* v. *F.P.C.*, 357 F. 2d 230 (CA5–1966); affirmed 386 U.S. 237 (1967).

13. While departure here from *Seaboard* rate design method is substantial, there is no absolute way to forecast precisely the effect of a given departure. P. 693.
14. While it does not appear that pipeline's commodity charge would prevent it from competing with gas from southern Louisiana, there is no need that it be put in a position to compete with all producers. P. 693.
15. Modification of rate filing and refund requirements herein ordered could, in some instances, result in United being unable to recover revenues representing full cost of service from January 1, 1963—Commission *notes* this is one of the hazards assumed by a natural-gas company initiating an increase in rates. P. 693.
16. Section 4 of the Natural Gas Act is not a device by which a regulated pipeline can sweep away regulatory requirements—United's obligation to make rate adjustments prescribed herein shall continue until otherwise ordered. P. 694.
17. Commission is concerned with protection of public interest involved in "* * * selling natural gas for ultimate distribution to the public." Merely ordering pipeline to make refunds to its immediate customers could not fully discharge Commission responsibilities. P. 695.
18. Purpose in instant case was to establish a procedure for presentation of evidence which would expedite rate proceedings—no additional opportunity need be afforded intervenors to answer each other as well as United. PP. 695, 696.
19. Upon rehearing, Commission *denies* rehearing in part; *confirms* prior opinion with certain modifications.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

BLACK, *Commissioner:*

On June 30, 1964, 31 FPC 1629, we granted rehearing for purposes of adequate consideration of our Opinion and Order No. 428 issued May 14, 1964, 31 FPC 1180, after applications for rehearing were filed by Mississippi Valley Gas Company on June 8, 1964, United Gas Pipe Line Company and Public Service Commission of the State of New York on June 11, 1964, Mississippi River Fuel Corporation, Western Kentucky Gas Company, Texas Gas Transmission Corporation, Indiana Gas and Water Company, Inc., and Louisville Gas and Electric Company on June 12, 1964, and Texas Eastern Transmission Corporation, Southern Union Gas Company, Laclede Gas Company, Willmut Gas and Oil Company, Natural Gas Pipeline Company of America and Memphis Light, Gas and Water Division on June 15, 1964.

The Independent Natural Gas Association of America by letter of June 15, 1964, also filed a request for rehearing, reconsideration and permission to participate.

In our order of June 30, 1964, we noted that we had not yet determined the specific areas, if any, to which we wished to give further consideration. We have studied the Opinion and Order and the record in the light of the applications for rehearing, and except for necessary clarification and other minor changes discussed below, we find that there are but three respects in which we need change our order. One relates to purchased gas costs discussed below. The other relates to the disposition of the refunds to be made by United. On this latter matter we shall modify our original order and order further proceedings wherein opportunity will be afforded the Independent Natural Gas Association and other parties to file briefs at the appropriate time. Finally, as explained below, we will give further consideration to whether, as provided in the original

order, United's rates and refunds should be adjusted for the corporate income tax reduction to 48 percent in 1965, and are affording opportunity to file answers to United's application for rehearing on this matter in accordance with our June 30, 1964 order.

Most issues raised on rehearing essentially restate the parties' positions throughout these proceedings. It is our view that on most points our original opinion clearly expresses our position and reasoning, and no purpose would be served by further discussion. We shall thus turn to those points where we believe that further discussion is warranted following, in general, the order of the original opinion.

Test Year

The question of the test year is involved in a number of United's contentions and while it is unnecessary to discuss all of the issues, we must emphasize that we are not using a 1963 test year. We are using a test year defined by a base period of twelve months ending March 31, 1962, adjusted to include the extensive facilities put in service before November 30, 1962. Without this adjustment and others made necessary by it, the base period would not have constituted a test year representative of the future. Because the additional facilities increased United's capacity, and we are setting rates for the future, we found it necessary to use volumes of gas estimated by United for delivery in 1963 by means of its facilities put in service up until November 30, 1962. These sales, based on estimates of United's customers, in our opinion, constitute a known change whose magnitude is ascertainable with reasonable accuracy.

United's test year contention apparently underlies its objection to much of the basis of our cost of service. For example, United objects to our figure of $10,772,145 for interest on long-term debt. It says we improperly used material from the excluded Exhibit 46, and should have used the 1963 figure taken from its Annual Report on Form 2. We have in fact derived this figure from the data contained in United's Form 2, but consistent with our test year, the 1962 figure was used. Thus contrary to United we did not use the excluded Exhibit 46. The 1962 Form 2 shows total bonds outstanding on December 31, 1962, to be $239,381,000 and the average rate of interest to be 4.5 percent, resulting in a deduction for interest expense of $10,772,145.

Cost of Service

United objects to our treatment of the cost of gas purchased from its affiliate, Union Producing Company. Under *Mississippi River Fuel Corp.* v. *F.P.C.*, 252 F. 2d 619 (CADC), we could not accept Union's filed rates untested. To avoid duplicative proceedings we made use of the *Union* case in Docket No. G–13811, *et al.*[1] With the exception of four out of Union's numerous rate schedules under three Docket Nos. G–14114, G–14553 and G–17589 we provisionally accepted Union's filed rates in determining United's rates subject however to the results to be determined in the *Union* case on the basis of the up-to-date test year of 1963. Since Union's rate increases relating to these four rate schedules had already been disallowed in the earlier phase of the *Union* case, we reduced the allowance for payments to Union by these disallowed rate increases.

United argues that this reduction might result in its being unable to recover its costs, if the Commission is reversed on court appeal in the earlier phase of the *Union* case. We note that the Commission's order in the *Union* case has

[1] See *Union Producing Company, et al.*, 31 FPC 41, Opinion No. 414, Docket No. G–13811, *et al.*, January 9, 1964.

been stayed. To avoid the result of United's argument and also the possibility of loss from Union's rate increases being allowed in whole or in part in the later phase of the *Union* case we shall modify our order to conform to the stay so that the purchased gas costs shown by the record in the amount of $249,893,776 shall be used for an interim period as a basis of computation undiminished by the *Union* case reductions in the amount of $724,021. As discussed below, this purchased gas allowed is subject to further reductions because of producer rate decreases becoming effective before January 1, 1963, and later. The result of this modification of our order is not of substantive significance, because the allowance for gas purchased from Union is subject as before to the determination made in the later phase of the *Union* case based on the test year 1963. The effect is thus merely to postpone any purchased gas cost reduction for Union's gas until a final determination is made in the *Union* case.

The Memphis Light, Gas and Water Division contends that we erred in failing to use liberalized depreciation and guideline-rate depreciation in computing United's federal income tax allowance, even though United did not make use of these methods of depreciation in its tax returns. In our opinion Memphis has not shown on this record that computation of a cost of service assuming United's use of these methods of depreciation, which initially provide greater tax deductions, is necessarily in the public interest. The record shows that United has not used liberalized depreciation in the past, indicating that the company's present practices are not merely a response to regulatory policy. Counsel for Memphis attempted on cross-examination of United's witnesses to show that the motivation for not utilizing these methods for reducing taxes was to keep United in a substantial tax position against which could be written off tax losses generated in other branches of the business. The examiner sustained objections to these questions. We feel this line of questioning was relevant and should have been allowed. The record shows, however, (see appendix 5 to original opinion) that United's taxable income is so greatly in excess of losses, and possible losses, on the part of its affiliates that the inquiry here attempted would not have revealed anything of significance. Consequently, it would not be in the public interest to reopen the record on this point.

United contends that in allowing accumulated gas prepayments as a part of working capital we were in error in using the amount of $5,937,060 representing an average test year balance of prepayments rather than the amount of $15,340,800 related to estimated 1963 sales or the amount of $19,829,638 representing prepayments as of December 31, 1963. We note that United itself used the $5,937,060 amount in the proposed findings attached to its exceptions filed July 5, 1963, although the examiner had used the $15,340,800 amount (reduced by taxes). Also, while we used those 1963 sales of gas representing volumes of gas deliverable by the facilities included in the rate base herein, as noted earlier, we are not employing a 1963 test year or 1963 operations as a basis of rate making. The amount of $5,937,060 also reflects the record indication that the accumulated prepayments will be eliminated in the near future. It may be that our statement on page 1201 of our opinion is a little too optimistic interpretation of United's ability to take its minimum take-or-pay contract quantities. However, the record is not precise on this matter, which is uniquely within United's knowledge, and it appears that the accumulated prepayments will be made up soon after 1965 if not in that year. Thus the 1963 balance of $15,340,800 represents an abnormal situation and should not be included in the working capital, but the amount of $5,937,060, subject to tax deduction, is appropriate.

United urges that in computing income taxes our deductions from return shown in Appendix 4 to our original opinion in the amount of $14,350,856 are

excessive with respect to interest on long-term debt already discussed and with respect to the amount $2,740,569 representing the balance of tax depreciation over book depreciation, which it says is excessive by $456,548. Here United is insisting on using 1963 figures. The tax figure in the record corresponding most closely to the base year ended March 31, 1962, are the figures for the calendar year 1961, and we have used these with respect to this item and other items deducted in computing the tax allowance.

United further objects to our requiring rate reductions and refunds based on corporate income tax rate reductions to 50 percent in 1964 and 48 percent in 1965, pointing out that there may be increases in other cost of service items. Frequently we adjust the test year costs for known changes occurring within a reasonable time afterwards, but we will not take into account changes that are too remote in time, which might destroy the representative character of the test year. See *Panhandle Eastern Pipe Line Co.*, 25 FPC 787, 795; remanded on other grounds *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 305 F. 2d 763 (CADC, June 30, 1962). In the present proceeding the base period used for the test year terminated March 31, 1962, but was adjusted for newly constructed facilities going into service before November 30, 1962, and for 1963 sales that could be handled by the adjusted facilities. On February 26, 1964 the corporate income tax was changed[3] making a 50 percent rate effective January 1, 1964. The 48 percent rate was not made effective until January 1, 1965. In this proceeding we have ordered the filing of rates that look to the future based upon a test year that has been extensively adjusted to reflect United's changed operations. We think that the adjustment of the rate to 50 percent in 1964 was proper since it represented a known change resulting from Congressional action occurring less than two years after the end of the base period used for the test year. In prescribing this adjustment, we did not, of course, mean thereby, to preclude United from reflecting the full effect of all the adjustments contemplated by the new tax law, Public Law 88–272. With respect to the further adjustment to 48 percent in 1965, we have some question as a matter of regulatory policy whether such an adjustment extends too far in the future. Therefore, we shall defer decision in this question and, in accordance with our order of June 30, 1964, shall provide opportunity to file answers to United's application for rehearing on this issue.

Allocations

Most of the contentions with respect to the subject of allocations have been made previously. It is argued that Method 8 should be retained for allocations, that the Southwest Zone should include more territory (Eugene Island), or less territory (the proposed Lafayette Zone), and that the rate differential established between the northern zones is too large, or too small.

As to the general allocation method our objective as expressed in our original opinion was to reflect in the allocation prescribed the evolution of United's system. There we traced the growing interdependence of the various parts of United's system and looked forward to further integration in the future. Thus we would not be justified in trying to isolate certain portions of United's system from rising gas costs by establishing different zones or shifting zone boundaries as United and some of the interveners would have it. On the other hand we did not in the present proceeding go to a complete roll-in of costs as we have in other cases, for the operations of the system had not become so interdependent as to justify this method or the drastic changes in price structure

[3] Section 121 of Public Law 88–272 amending Section 11 of the Internal Revenue Code.

which might result. While we characterized United as a fully integrated pipeline in our Opinion No. 401, *United Gas Pipe Line Company*, 30 FPC 560, Docket No. CP62–161, issued August 26, 1963, the question there was one of jurisdiction over the operations of only one part of United's system.

Texas Gas argues that we failed to give consideration to its offer of proof that in Docket No. CP61–151 the new line from south Louisiana was authorized and additional sales were undertaken by United to its pipeline customers, including Texas Gas, upon the basis of Method 8. However, there is nothing in the examiner's decision in that docket or the Commission's order affirming it which makes the grant of the certificate dependent on Method 8 (28 FPC 1035, 1039). It would indeed stultify rate regulation if for the life of a project we were limited by the methods of cost allocation used by the applicant in the certificate proceeding.

Natural Gas Pipeline Company of America argues that the examiner and the Commission should have prescribed a Southwest Zone rate for it rather than requiring it to pay the PL-C rate for the Central Zone filed by United. The basis of its argument is that it receives delivery from United at Goodrich, Texas, well within the Southwest Zone. However, the Commission determined that Natural should be classified with United's Central Zone customers because it is a beneficiary of the new line from south Louisiana to Sterlington. As the record shows, the additional gas available from Louisiana permits a smaller take from Texas in the Agua-Dulce-Sterlington line and thus leaves capacity available to serve National at Goodrich. In fact, United would not be able to make deliveries to Natural at Goodrich without the gas from the Louisiana line. The record does indicate that United might have been able to meet its obligations to Natural by the construction of additional horsepower south of Goodrich, but as the system is now operated the sale to Natural is made possible by the delivery of Louisiana gas at Sterlington, and in our opinion Natural should be subject to the PL-C rate.

Several parties object to our prescribed zone rate differential providing commodity rates in the Central Zone approximately 3.5 cents lower than in the Jackson Zone. This differential is less than the cost differential that would be produced by the application of Method 8, and is a judgment figure designed to reflect the movement toward greater integration of the system. We do not think it is controlling that at one time in the past the differential was less than 3.5 cents, any more than that under subsequent rate settlements it was more. As the operation of the system changes, it may be possible to decrease it or eliminate it.

Rate Design

Like the rate differential between the northern zones the question of the relationship between the demand and commodity components of United's rate is contested from both sides. Several of United's pipeline customers and United itself contend that we made the demand component too low and the commodity component too high. On the other hand Laclede and Memphis contended we used too high a demand component and too low a commodity component. Both sides contend that the record does not support the result we reached.

The parties have raised no new question here except to contend that the results are inconsistent with our recent *United Fuel* opinion. As we have indicated, there is no mathematical way on the basis of this record, or on the basis of any evidence the parties could have adduced, that can be used to derive an exact result. In our recent opinion in *United Fuel Gas Co.*, 31 FPC 1342, Opinion No. 430, Docket No. G–20270, issued June 2, 1964, we discussed the infirmities of the *Seaboard* formula,[3] under which fixed costs and expenses are usually assigned

[3] *Atlantic Seaboard Corp., et al.*, 11 FPC 43.

50 percent to demand and 50 percent to commodity and variable costs are normally assigned 100 percent to commodity. In *United Fuel*, as in many other cases, we have prescribed departures from the *Seaboard* formula with respect to rate design, and we have done nothing here that is inconsistent with *United Fuel*.

While the departure here from the *Seaboard* method in rate design is substantial, though not as great as that proposed by United, there is no absolute way to forecast precisely the effect of a given departure. An extreme shift from one rate design to another would have a detrimental effect on United's operations for the reasons expressed in our original opinion. We cannot test our orders before applying them, but we have sought to reverse the trend of United's rates towards the demand component, and have further reversed this trend by providing that cost reductions be applied to the demand component until the demand component bears the same relationship to the commodity components as it did in the G–1142 settlement made in 1954.[4]

United and several of the interveners vigorously contest our order in this respect saying that we have disregarded competitive conditions, particularly competition from producers in establishing too high a commodity and in providing that cost reductions be applied to the demand component. We take notice that the larger blocks of new gas will be coming from the southern Louisiana area. There our guideline rate at 14.65 psia is 19.01 cents for the area within the Federal domain and 20.72 cents for the area within the State jurisdiction. For comparison with the prescribed United commodity charge of 18.16 cents at 14.9 psia, or 17.86 at 14.65 psia, in the Central Zone, transportation costs would, of course, have to be added to allegedly competing producer prices so that it does not appear that United's commodity charge would prevent it from competing with gas from southern Louisiana. Apart from this we do not see that United must be put in a position to compete with all producers.

Rate Filings and Refunds

A number of the interveners object to the apparent effect of our ordering paragraph (B) in authorizing United to file increased rates effective January 1, 1963. This was not our intention and we will amend paragraph (B) accordingly so as to clarify our order in this regard. The result could be that United will be unable to recover revenues in some instances representing its full cost of service from January 1, 1963, but this is one of the hazards assumed by a natural-gas company initiating an increase in rates. *F.P.C.* v. *Tennessee Gas Transmission Co.*, 371 U.S. 145. In spite of this possible result we would not be justified in making our modified allocation and rate design effective prospectively only, as United suggests, for the facts here require that the changes in method of allocating costs be put into effect at the commencement of the period covered by these Section 4 proceedings.

The potential rate increases herein authorized are, however, actually reduced or eliminated altogether by the adjustments listed in paragraphs (C) and (D) in our order and by certain other additional adjustments relating to purchased gas costs. United apparently has misconstrued our intentions regarding giving immediate effect to producer gas cost reductions. It contends that our order would require that such reductions be given effect from January 1, 1963. It was our intention that these reductions be given effect from the date the producers were required to reduce their rates.

In addition to the purchased gas cost reductions referred to in our order occurring after January 1, 1963, we now understand that certain producer rate

[4] 13 FPC 398, 406.

reductions took effect before January 1, 1963, and were not reflected in United's exhibits in the record. These reductions should be given effect by United in making the rate filings required by paragraph (B), and we shall amend that paragraph accordingly. Of course, if any rate increases are still involved, we reaffirm our determination that United be authorized to put them into effect prospectively although we shall not order it to do so.

Controversy has also arisen over the effect of the *Union* case, already discussed in connection with the cost of service. It was our intention that the remanded *Union* case serve as a means of determining United's cost of purchased gas from its affiliate Union. Therefore, once Union's rates are determined, they should take effect for refund purposes from January 1, 1963. This is not retroactive rate making but, in effect, the severing out of an issue and the separate determination of United's correct purchased gas costs from its affiliate during the period put in issue by its filing of increased pipeline rates. We shall amend our ordering clauses to make this result clear. The reduction in Union's rates, if any, should be given effect in United's rates as prescribed by paragraphs (D) and (E) of our order.

United contends that paragraph (F) of our order is beyond our authority in that it improperly requires the filing of adjustments in rates even though the rates herein prescribed have been superseded. Paragraph (F) neither sanctions nor prevents the institution of proceedings to increase rates but provides that such action shall not supersede or terminate the requirements of our order until such time as the Commission has disposed of the issues raised by the new proceedings, and they have become final and effective pursuant to law. We are of the opinion that Section 4 of the Natural Gas Act is not a device by which a regulated pipeline can sweep away our regulatory requirements. Upon the basis of these very elaborate proceedings we have already determined the necessity for the several adjustment factors listed in our ordering clauses in order to give effect to the rate determination made here. It would be wasteful of our time and that of our available staff and contrary to the public interest if we were immediately required to determine the same questions over again in connection with new filings. United should not be able to destroy at will the effects of this proceeding. Therefore we have required that United's obligation to make the rate adjustments prescribed in this proceeding shall continue until otherwise ordered by the Commission. We note that United has put in issue the question of its authority to supersede totally the rates herein prescribed by its tender for filing of increased rates identified as Docket No. RP65–1. The staff motion with respect thereto filed August 6, 1964, and the issue therein raised will be disposed of in a separate and distinct proceeding.

Paragraph (I), of our original opinion and order, renumbered herein as paragraph (K), provided for treatment of refunds received by United from producers. In the present paragraph (K) we have modified this language to clarify it and make it consistent with the other paragraphs. We are providing that where United receives refunds from producers after January 1, 1963, including those attributable to gas purchases prior to that date, which United is already obligated to flow through to its customers pursuant to our order of March 12, 1962, 27 FPC 504, these refunds shall be retained by United subject to the further order of the Commission just as the amounts due from United itself must be retained. The effect of paragraph (K) is terminated when superseding rates become final and effective.

A number of the interveners object to the provisions of paragraph (J) of our original order requiring the pipeline customers of United and successive customers to refund to their customers refunds received from United. Funda-

mentally these parties argue that the Natural Gas Act prescribes the proper procedures for changing rates and that original ordering paragraph (J) is beyond the authority of this Commission, particularly as it purports to order refunds allocable to nonjurisdictional sales. Concededly, this is a novel question of great regulatory importance. But, we are here not concerned with the justness or reasonableness of these customers' present rates, per se. Rather, we are here faced with the proper and equitable distribution of a fund of money created by our own process. Under the Natural Gas Act we are concerned with the protection of the public interest involved in "* * * selling natural gas for ultimate distribution to the public." Merely ordering United to make refunds to its immediate customers could not fully discharge our responsibilities. We think, however, some modification of ordering paragraph (J) is appropriate to conform to the procedure recently prescribed in our order approving a settlement in *Humble Oil & Refining Company*, 32 FPC 49, Docket Nos. G–9287 and G–9288, issued July 8, 1964, where we provided that Humble should compute and report the amount of potential refunds and retain these amounts subject to further order. In general we shall follow this procedure here. United shall be required [present paragraphs (G), (H) and (I)] to hold the amounts which are computed to be subject to refund but shall be given the option whether to mingle them with its assets and employ them in its business or deposit them in escrow. As in our original opinion, we are requiring the computation of further refunds and these amounts, together with refunds received from producers, will be treated similarly [present paragraphs (J) and (K)].

As with *Humble* we shall also by separate action direct each of the pipeline purchasers to submit reports of their own setting forth whether they intend to pass on all or part of such refund amounts to their customers and the names of such customers and amounts of refund each would receive, or, if they claim the right to retain any portion of the refunds, a brief statement as to the legal or equitable basis for such claim. In the event the reports indicate that the refunds will flow through to ultimate consumers or distribution companies not subject to the Commission's jurisdiction, we shall order United to release such refund sums as well as sums due customers that are not pipelines (unless a state regulatory authority after notification of the sum to be made available to a company subject to its regulatory jurisdiction asks us to defer releasing the funds until it can determine their ultimate disposition). In the event a pipeline purchaser from United (or a pipeline customer of such a pipeline) indicates that it is asserting a claim to retain refund sums the Commission will by further order prescribe the procedure for determining the relative rights to such funds as between such pipeline and its customers. We shall apply the same procedure to amounts reported as subject to refund on later dates as required in paragraph (J) herein.

Due Process

Southern Union and Mississippi River Fuel object to rejection of evidence submitted by them on allocations and rate design after the October 1, 1962, deadline for submittal of evidence by parties other than United. They contend that we were in error even though we found that the results reached would not have been any different if the evidence had been received.

As set forth in our procedural order of August 6, 1962, 28 FPC 295, our purpose was to establish a procedure which would expedite rate proceedings where the Supreme Court has found inordinate delay. See *Atlantic Refining Co.* v. *F.P.C.*, 360 U.S. 378, 391. United was given an opportunity to present its case, the interveners and staff to answer and United to present rebuttal evidence. We do not

see that additional opportunity need be afforded the interveners to answer each other as well as United.

Apart from this, Southern Union's evidence is chiefly concerned with a separate zoning proposal by which the Texas zone would be broken into a northern Louisiana and Texas zone. As such the evidence is not in the nature of rebuttal, but is a separate proposal which should have been presented on October 1, 1962, with the evidence of the other interveners. In any case Southern Union's evidence, which we have examined, but have not admitted, would not cause us to change our allocation and rate design. The evidence would change the present zones and would establish differentials between the zones based on differences in cost, including transportation. On our part we recognize that there are differences in cost, but as the system becomes more unified these differences become less relevant. For this reason we have rejected proposals to develop further the system of zones used and have rolled together the two northern zones.

Southern Union states that the staff was permitted to abandon its testimony and evidence late in the hearing and submit new evidence although it had submitted its proposed evidence on November 16, 1962, before the hearing began on November 27, 1962. The record shows that the staff was permitted to substitute new exhibits for those originally filed to reflect gas volumes used by United. This change, of course, does not represent a change in methods of allocation and rate design.

Mississippi River Fuel's proffered exhibit (41) and explanatory testimony was directed to alleged losses which the company might suffer if the rate designs proposed by Laclede or the staff were used. Specifically, the proposed evidence assumes that Mississippi River Fuel would lose 12 billion cubic feet of industrial sales if United's rates were so designed and from that an alleged loss in payments to United for gas not taken is computed. In the first place, the same presentation could have been made without use of this evidence, for nothing is added to the record except an estimate for compressor fuel, which could have been eliminated as indicated by company counsel. Furthermore, we recognize the possible loss of industrial sales even with the substantial departure from the *Seaboard* formula employed here. This is one of the necessary compromises in rate design. Thus the formal admission of this evidence would represent a useless act. Mississippi River Fuel near the end of the hearing also made a motion to put in additional testimony on the subject of rate design. Admission of such testimony, even if relevant, would have been completely out of order and would have prolonged the proceedings without foreseeable benefit.

The Commission further finds:

The assignments of error and grounds for rehearing set forth in the applications for rehearing filed herein present no facts or principles of law which were not considered by the Commission when it issued its Opinion No. 428, or which, having now been considered, warrant any change in, modification of, or rehearing of such opinion and order, except as specified below.

The Commission orders:

For the purpose of effecting the changes discussed above and terminating the stay provided in our order of June 30, 1964, the ordering clauses of our order of May 14, 1964, are hereby deleted and reissued as part of this order, subject to deferral of decision with respect to the 48 percent corporate income tax reduction as provided in paragraph (O) below.

(A) The proposed increased rates filed by United referred to in finding clause (2) of our original opinion are hereby disallowed.

(B) Within 45 days from the date of issuance of this order United shall file substitute tariff sheets conforming to this opinion and satisfactory to the Commission containing the rates set forth in Appendix 7 to our original opinion except that the rates shall be adjusted to reflect (1) purchased gas cost reductions in the producer rates included in the cost of service used herein, not taken into account by the original opinion, and effective as reduced charges on or before January 1, 1963, and (2) the elimination of the $724,021 reduction in purchased gas costs provided in our original order as a result of the *Union* case. Such tariff sheets shall be effective for the period January 1, 1963, through December 31, 1963. However, nothing contained herein shall be construed to authorize United to increase the dollar effect of its rates to any of its jurisdictional customers during the calendar year 1963 over the rates presently in effect subject to refund in this proceeding.

(C) Within 45 days from the date of issuance of this order United shall file substitute tariff sheets conforming to this opinion and satisfactory to the Commission effective January 1, 1964, through December 31, 1964, which shall reflect the rates filed pursuant to paragraph (B) above and the following:

(i) A Federal income tax rate of 50 percent adjusted to reflect the effect of the consolidated return.

(ii) Any purchased gas cost reductions occurring after January 1, 1963, up till the date of this order with respect to any producer rates included in the cost of service used herein and conditionally effective January 1, 1963.

(iii) Final allowance of tax deductions for gas prepayments if it occurred before the date of this order.

(iv) Should rates computed according to this paragraph when applied to any of United's jurisdictional customers represent increases over those presently in effect subject to refund in this proceeding, then, United, for the period January 1, 1964, to the date of filing hereunder, shall file rates having no higher dollar effect than the rates in effect subject to refund as of January 1, 1963. For the period succeeding the date of filing through December 31, 1964, United is authorized but not required to file rates that represent increases if in accordance with paragraphs (B) and (C).

(D) Before January 31, 1965, United shall file substitute tariff sheets conforming to this opinion and satisfactory to the Commission effective January 1, 1965, until changed in accordance with the Natural Gas Act or as provided herein, which shall reflect the rates filed pursuant to paragraphs (B) and (C) above and the following:

(i) A Federal income tax rate of 48 percent adjusted to reflect the effect of the consolidated return.

(ii) Adjustments listed in paragraph (C) (ii) and (iii) above if they become effective during the year 1964 after the date of this order and have not already been given effect.

(iii) Any modification of the rates of Union pursuant to the Commission's remand in Docket No. G–13811, *et al.*

(E) If any of the factors listed in paragraphs (C) and (D) become effective in the calendar year 1965 or any year thereafter, before January 31 of the succeeding year, United shall file substitute tariff sheets conforming to this opinion and satisfactory to the Commission effective as of the beginning of the year of filing until changed in accordance with the Natural Gas Act or in accordance with this paragraph (E). The changed rates so filed shall reflect the rates filed pursuant to paragraph (B) and the factors listed in paragraphs (C) and (D).

(F) The institution of proceedings by United to increase rates shall not terminate its obligation to file rates under paragraphs (D) and (E) but when such new rates have become final either as a result of a rate proceeding, approval of a settlement, or other Commission action the rate filing requirements of paragraphs (D) and (E) shall cease.

(G) United shall compute the excess of the total amounts charged and collected from January 1, 1963, until the date of this order over and above the amounts which would have been charged for sales to such customers under the rates prescribed by paragraphs (B) and (C) with interest at the rate of 7 percent per annum from the date of payment to United until the date of filing of the report required below. In making the computation it shall be assumed that the cost adjustment referred to in paragraph (C)(iii) be given effect from January 1, 1963, and those in paragraph (C)(ii) be given effect only from the dates the reduced rates are actually effective. United shall within 45 days from the date of this order submit a report to the Commission and serve a copy on each of the purchasers involved setting out by purchasers the amount of refund related to each rate schedule (showing separately the principal and applicable interest), the basis used for such determination and the periods covered. United shall retain the amounts shown in the report subject to further order of the Commission directing the disposition of those amounts.

(H) If United elects to commingle these retained refunds with its general assets and use them for its corporate purposes, it shall pay interest thereon at the rate of 6 percent per annum on all funds thus available from a date 45 days after the date of issuance of this order to the date on which they are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission.

(I) If United elects to deposit the retained refunds in a special escrow account, United shall tender for filing within 45 days of the issuance of this order an executed Escrow Agreement, conditioned as set out below accompanied by certificate showing service of a copy thereof upon each of its jurisdictional customers. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between United and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(1) United, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such Agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable only for such interest as the invested funds described in paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which com-

pensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the trust account for the quarterly period.

(J) Before January 31, 1965, and each succeeding year United shall file a report similar to that required in paragraph (G) showing the difference between what United charged and what it would have charged since January 1, 1963, had the cost adjustments referred to in paragraphs (C) (iii) and (D) (iii) been given effect from January 1, 1963, and those in paragraph (C) (ii) from the dates the reduced rates were actually effective. United shall likewise retain the amounts shown in such report subject to further order of the Commission and, at its option, treat them either as provided in paragraph (H) or as in paragraph (I) above.

(K) All refunds received by United from producers since January 1, 1963, including those attributable to gas purchases prior to January 1, 1963, which United is obligated to flow through to its customers pursuant to our order of March 12, 1962, 27 FPC 504, shall be retained subject to further order of the Commission, and, at its option shall be treated either as provided in paragraph (H) or (I) above.

(L) If the question of the deduction of gas prepayments for income taxes has not been finally resolved at the time of issuance of this order, and if it has not already done so, United shall establish a special reserve account on its books out of earned surplus and credit such reserve with the difference between revenues received and the revenues that would have been received if the prepayments added to working capital had been reduced by the taxes saved as a result of deducting such prepayments for income tax purposes. This reserve account shall be terminated upon transfer of the amounts involved into escrow as provided above or by paying the full amount in refunds as ordered by the Commission.

(M) Rates required to be filed by paragraphs (B), (C), (D) and (E) above that represent modifications and ajustments of the rates set forth in appendix 7 of our original order shall be designed in accordance with the requirements of Opinion No. 428 and the present opinion and order subject to the approval of the Commission.

(N) The obligations imposed on United by this order shall apply only to the period before the rates herein prescribed (and as modified by further filings required) are superseded by subsequent rates prescribed or approved by the Commission as the result of rate proceedings or settlements.

(O) The effectiveness of those portions of this order, relating to the adjustment of United's rates and refunds by reason of the reduction of the corporate income tax rate to 48 percent in 1965 is deferred pending further order of the Commission. With respect to this issue, answers to United's application for rehearing may be filed on or before September 15, 1964.

(P) The examiner's decision issued June 17, 1963, herein to the extent not inconsistent with Opinion Nos. 428 and 428–A and with this order is hereby adopted as part of Opinion No. 428.

(Q) Exceptions not granted herein are hereby denied.

(R) The relief requested in the applications for rehearing or reconsideration is hereby denied except to the extent expressly granted and Opinion No. 428 is confirmed as the opinion of the Commission except to the extent modified herein.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP61-311

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 4, 1964)

On July 7, 1964, Arkansas Louisiana Gas Company (Applicant) filed an application to amend further the Commission's order issued November 21, 1961, 26 FPC 749, in Docket No. CP61-311, as amended, by extending until July 22, 1965, the term of sale of natural gas to Texas Eastern Transmission Corporation (Texas Eastern) authorized by said order, as amended, all as more fully set forth in the application to amend.

The subject order, among other things, authorized Applicant to sell and deliver at intersecting points in Harrison County, Texas, and Grant County, Arkansas, a maximum annual volume of 8,125,000 Mcf (14.65 psia) of natural gas to Texas Eastern for a period of one year from the date of initial delivery, which date was July 22, 1961. By subsequent orders the authorization was extended twice for one-year periods, so that the present authorization expired on July 22, 1964.

The subject application indicates that the arrangement has worked out very satisfactorily for both parties and that the deliver-only-when-available privileges of Applicant and the purchase-only-when-needed privileges of Texas Eastern offer ideal flexibility for both. Further, it appears that due to the geographical differences of market areas and due to the movement of cold-front weather patterns in these different market areas, it is not uncommon for Applicant to have maximum volumes available during periods of Texas Eastern's peak demands.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on August 13, 1964 (29 F.R. 11613). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued November 21, 1961, as amended, in Docket No. CP61-311 be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued November 21, 1961, in Docket No. CP61-311 be and the same is hereby further amended by extending to July 22, 1965, the term of the sale of natural gas by Applicant to Texas Eastern authorized by said order. The maximum annual volume of natural gas sold during the extended term from July 22, 1964, to July 22, 1965, shall be 8,125,000 Mcf at 14.65 psia.

(B) In all other respects, said order, as amended, shall remain in full force and effect.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

CENTRAL INDIANA GAS COMPANY, DOCKET NO. CP64-287

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued September 4, 1964)

On June 3, 1964, Central Indiana Gas Company (Applicant) filed in Docket No. CP64-287 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Panhandle Eastern Pipe Line Company (Panhandle) to establish physical connection of its transmission facilities with the proposed facilities of Applicant and to deliver natural gas to Applicant by means thereof for distribution and sale in the City of Montpelier, Indiana, and its environs, all as more fully and particularly described in the application.

Applicant proposes to construct and operate a lateral pipeline from the point of connection on Panhandle's main line in Wells County, Indiana, to the town border station at Montpelier and to construct a distribution system in the said community where it will provide the proposed service.

The application shows the estimated third year peak day and annual natural gas requirements for Montpelier and its environs to be 888 Mcf per day and 231,915 Mcf per year respectively.

The total estimated cost of the facilities proposed to be constructed by Applicant is $268,541, which will be financed from internally generated funds.

The total estimated cost of the facilities to be constructed by Panhandle is $29,500, which will be financed from funds on hand.

Applicant has obtained by ordinance appropriate authorization from the City of Montpelier and states that no further authorization is required.

On June 18, 1964, Panhandle filed its answer to the application herein stating that it has no objection to providing the proposed service to Applicant.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on August 6, 1964 (29 F.R. 11395). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

The Commission finds:

(1) Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G-254 (4 FPC 1081).

(2) Applicant, Central Indiana Gas Company, is a public utility company organized and existing under the laws of the State of Indiana and is engaged in the business of distributing and selling natural gas within said State.

(3) It is necessary and desirable in the public interest that Panhandle be directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver to Applicant up to a maximum daily volume of 888 Mcf of natural gas per day as set forth in the application and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Panhandle within one year from the date of issuance of this order.

(5) The requirement that Panhandle serve Applicant, as proposed, will not place any undue burden upon Panhandle nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Panhandle Eastern Pipe Line Company be and it is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to deliver to Applicant up to a maximum daily volume of 888 Mcf of natural gas as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Panhandle within one year from the date of issuance of this order.

(C) Panhandle shall report to the Commission in writing the date of commencement of service to Applicant for Montpelier within ten days thereof.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP64–179; PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP64–194

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT

(Issued September 4, 1964)

On March 2, 1964, as amended on April 23, 1964, Panhandle Eastern Pipe Line Company (Panhandle) filed in Docket No. CP64–194 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and for authority to abandon certain other facilities and the related sale of natural gas, all as more fully set forth in the application, as amended.

Panhandle states that it presently sells natural gas to The Gas Service Company (Gas Service) for resale and distribution in the communities of Paola and Osawatomie, Kansas, and Freeman and Harrisonville, Missouri. The gas sold for service to Paola and Osawatomie is delivered by Panhandle by means of lateral lines; the gas sold for service to Freeman and Harrisonville is transported and delivered to said communities by Cities Service Gas Company (Cities Service).

Panhandle proposes herein to sell to Gas Service approximately 9,530 feet of 8-inch pipe and 95.6 feet of 6-inch pipe of its Paola lateral and approximately 8,238 feet of 6-inch pipe of its Osawatomie lateral. Gas Service will be able to utilize these lines to serve customers located near said lines without having to construct new mains. Further, Panhandle proposes to construct and operate new metering and regulating stations for service to Paola and Osawatomie from the new connecting points with said laterals. Panhandle also proposes to abandon and retire the existing mainline regulator for service to Osawatomie.

Further, Panhandle proposes to abandon service to Freeman and Cities Service proposes in Docket No. CP64–179 to sell gas to Gas Service for resale and distribution in Freeman. Panhandle will continue service to Harrisonville and proposes to construct and operate a new metering and regulating station on its main line, approximately 1½ miles north of said community, necessary to deliver gas directly to Gas Service for service to Harrisonville. Gas Service will construct and operate an 8-inch lateral from Harrisonville to the proposed new mainline station. The proposed new arrangement for service to Freeman and Harrisonville will enable Cities Service to abandon its transportation lines for said communities. Such lines are stated to be badly deteriorated and Cities Service is experiencing a great deal of leakage and desires to abandon them by retirement as proposed in Docket No. CP64–179.

Panhandle also requests authority to abandon its metering and regulating station presently used to serve Harrisonville and Freeman.

The application shows Panhandle's total estimated cost of facilities, including retirement costs, to be $68,540, which costs will be financed from funds on hand.

On February 11, 1964, Cities Service filed in Docket No. CP64–179 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the sale and delivery of natural gas to Gas Service for resale and distribution in Freeman and for authority to abandon certain other facilities, all as more fully set forth in the application.

Specifically, Cities Service proposes to construct and operate new meter and regulator facilities to sell natural gas to Gas Service for resale and distribution in Freeman, and environs, and thereafter to abandon by retirement approximately 7.4 miles of its Harrisonville 8-inch line and 4 miles of its Freeman 3-inch line.

The application shows the total estimated cost of the facilities proposed in Docket No. CP64–179 to be $2,768, which cost will be financed from treasury cash. The application shows further an estimated net salvage value on the lines to be reclaimed of $5,500.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on September 3, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications, amendment and exhibits, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(3) The facilities hereinbefore described, as more fully described in the application in Docket No. CP64–179 and in the application, as amended, in Docket No. CP64–194, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Cities Service and Panhandle and the transportation and sale of natural gas proposed by Cities Service are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The construction and operation of the proposed facilities by Cities Service and Panhandle and the proposed transportation and sale of natural gas by Cities Service are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) The facilities to be abandoned by Cities Service and the facilities and sale to be abandoned by Panhandle, as hereinbefore described, are subject to the jurisdiction of the Commission and the abandonment of such facilities and sale is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(6) Such abandonment by Cities Service and Panhandle, as hereinbefore described, is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

(7) Cities Service and Panhandle are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(8) Public convenience and necessity require that the certificates issued hereinafter in Docket Nos. CP64–179 and CP64–194 and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued authorizing Applicant, Cities Service Gas Company, to construct and operate the proposed facilities and to sell and deliver natural gas, and authorizing Applicant, Panhandle Eastern Pipe Line Company, to construct and operate the proposed facilities, all as hereinbefore described and as more fully described in Cities Service's application in Docket No. CP64–179 and Panhandle's application, as amended, in Docket No. CP64–194, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized in Docket Nos. CP64–179 and CP64–194 shall be completed and placed in actual operation and the sale and delivery of natural gas by Cities Service authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

(D) Permission for and approval of the abandonment of facilities by Cities Service and of facilities and sale of natural gas by Panhandle hereinbefore described, all as more fully described in Cities Services' application in Docket No. CP64–179 and in Panhandle's application, as amended, in Docket No. CP64–194, be and the same are hereby granted.

(E) Cities Service and Panhandle shall advise the Commission of the date of their respective aforesaid abandonments within 10 days of the date thereof.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

KANSAS-COLORADO UTILITIES, INC., DOCKET NO. CP65–3

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 4, 1964)

On July 2, 1964, Kansas-Colorado Utilities, Inc. (Applicant) filed in Docket No. CP65–3 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and

operation of approximately 5.4 miles of 4-inch lateral pipeline together with two metering stations to enable Applicant to connect to its Hugoton Field, Kansas—Springfield, Colorado, transmission pipeline a new source of natural gas supply for its presently served Springfield, Colorado, market area, all as more fully set forth in the application.

Gas purchases from three producers in the West Sparks Field (Hugoton) in Kansas will total approximately 588 Mcf daily, and will be at a price of 13.5¢ per Mcf (14.65 psia).

The cost of the proposed facilities is estimated to be $30,652, which will be defrayed from cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 3, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Kansas-Colorado Utilities, Inc., a Kansas corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of July 24, 1945, in Docket No. G–577 (4 FPC 1026).

(2) The proposed construction and operation of facilities and the transportation of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application and exhibits filed in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and the transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Kansas-Colorado Utilities, Inc., authorizing the construction and operation of facilities and the transportation of natural gas in interstate commerce, as hereinbefore described, all as more fully described in the application and exhibits filed in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized by paragraph (A) above shall be constructed and placed in operation within 12 months from the date on which this order issues.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

K–B COMPRESSION COMPANY, INC. (OPERATOR), DOCKET NO. RI60–247

ORDER APPROVING OFFER OF SETTLEMENT

(Issued September 4, 1964)

On July 16, 1964 K–B Compression Company, Inc. (Operator) (K–B) filed an Offer of Settlement pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure. The proceeding in Docket No. RI60–247 relates to the jurisdictional sale of natural gas under K–B's FPC Gas Rate Schedule No. 2 to Lone Star Gas Company (Lone Star) in Stephens County, Oklahoma (Oklahoma "Other" area). The proposed favored-nation rate increase from 11¢ to 16.8¢ per Mcf at 14.65 psia, designated as Supplement No. 4 to K–B's FPC Gas Rate Schedule No. 2, was suspended and subsequently became effective subject to refund under a trust arrangement on April 10, 1961.

In its offer, K–B proposes a settlement rate of 11¢ per Mcf, with refunds, including applicable interest, of 70% of the monies collected subject to refund during 1961 and 1962 and 100% of the monies collected in excess of the proposed settlement rate thereafter.

K–B assigned its interest in the sale involved herein to Pan American Petroleum Corporation (Pan American), effective on June 24, 1963. No sales of gas were made subsequent to the acquisition by Pan American. By order issued November 12, 1963, in Docket No. CI64–401, Pan American was permitted to abandon the sale because of a unitization agreement, the effect of which was to discontinue the sale. Consequently, the proceeding in Docket No. RI60–247 involves a "locked-in" period from the date of the effectiveness of the rate subject to refund, to the date of assignment to Pan American.

By order issued August 6, 1964, 32 FPC 529, in Docket Nos. RI61–96 and RI62–536 in approving a settlement for Jack W. Grigsby, we indicated we would approve refund proposals of small producers in settlement cases on the basis set forth by K–B in its instant offer. In the Grigsby case we required as a condition to our approval of that settlement a moratorium on rate increase filings. Since the subject sales have been discontinued due to a unitization agreement, such a moratorium here would be of no effect.[1] While a moratorium provision is one of the more important aspects in a settlement case, we conclude under the special circumstances presented here that it is appropriate to approve K–B's settlement offer.

For all of the reasons set forth in our order issued July 8, 1964, in *Humble Oil & Refining Company*, Docket No. G–9287 *et al.*, 32 FPC 49, we shall require K–B to retain the amount of refunds, with interest, ordered herein in trust[2] until

[1] K–B has one other rate schedule on file with this Commission providing for the sale of gas at a life of the contract rate of 8¢ per Mcf.

[2] In view of the fact that K–B was required to place the amounts collected subject to refund in trust, we do not consider it appropriate as in the *Grisby* case to give K–B the option to utilize the refundable amounts in its business operations. With respect to those amounts now held in trust which are in excess of the amounts to be refunded, plus interest, K–B upon compliance with the provisions of this order may remove such amounts from the trust fund.

further order directing the nature of their disposition and also to submit within 45 days of this order to the Commission and to Lone Star a detailed report setting out the amount of refund related to the instant rate schedule, the volume of gas sold thereunder and the period covered. We shall also by separate action direct the pipeline purchaser within ten days from the receipt of such report to submit a report of its own setting forth whether it intends to pass on all or part of such refund amounts to its customers and the names of such customers and amounts of refund each would receive, or, if it claims the right to retain any portion of the refunds, a brief statement as to the legal or equitable basis for such claim. In the event such reports indicate that the refunds will flow through to ultimate consumers or distribution companies not subject to the Commission's jurisdiction, the Commission will authorize the release of such refund sums by K–B, (unless a state regulatory authority after notification of the sum to be made available to a company subject to its regulatory jurisdiction asks us to defer releasing the funds until it can determine their ultimate disposition). In the event a pipeline purchaser from Lone Star (or a pipeline customer of such a pipeline) indicates that it is asserting a claim to retain substantial refund sums the Commission will by further order prescribe the procedure for determining the relative rights to such funds of such pipeline or its customers.

We find that approval of the proposed settlement, as conditioned herein would serve the public interest.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by K-B on July 16, 1964, and as herein conditioned in the public interest is appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by K-B on July 16, 1964, is hereby approved in accordance with the provisions of this order.

(B) K-B shall compute the difference between the rate collected subject to refund and the related settlement rate for the period such rate was collected subject to refund, to the date of this order, together with interest as specified in the above docket to the date of this order, in accordance wih the percentages set forth in K-B's offer. K-B shall within 45 days from the date of this order submit a report to the Commission, and serve a copy on Lone Star setting out the amount of refund related to the subject rate schedule (showing separately the principal and applicable interest), the basis used for such determination and the period covered.

(C) K-B shall retain the refund amounts shown in the report required under paragraph (B) above in their present trust fund, subject to further order of the Commission directing the disposition of those amounts.

(D) Upon compliance by K-B with all the terms and provisions of this order, the Section 4(e) proceeding in Docket No. RI60–247 shall terminate.

(E) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by K-B, the Commission staff, or any affected party hereto, in any proceedings now pending, including area rate or similar proceedings, or hereafter instituted by or against K-B or any other companies, person or parties affected by this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP61-120

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 4, 1964)

On October 17, 1960, as supplemented on November 14, 1960, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP61-120 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 33 miles of 10-inch supply lateral pipeline and a purchase meter station to enable Applicant to purchase and receive natural gas into its existing pipeline system, all as more fully set forth in the application, as supplemented.

The subject gas will be produced in the Normanna Area, Bee County, Texas, and sold by Mrs. J. R. Dougherty, *et al.*, (Dougherty, *et al.*) and W. A. Stockard, *et al.*, (Stockard, *et al.*).*

The subject lateral line is to extend from a point of connection with Applicant's existing 26-inch pipeline in Refugio County, Texas, to a point in the Normanna Area. The estimated cost of the proposed facilities is $1,128,000, which cost will be financed from funds on hand.

By letter, dated December 1, 1960, Applicant was granted a temporary certificate authorizing the subject project.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, as supplemented, has been filed.

At a hearing held on September 3, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G-235 (3 FPC 830).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the described facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's com-

*By letters dated December 1, 1960, Dougherty, *et al.*, in Docket No. CI61-619 and Stockard, *et al.*, in Docket No. CI61-751 were issued temporary certificates authorizing the subject sales of gas at total initial price of 18.0 cents per Mcf at 14.65 psia.

pliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Natural Gas Pipeline Company of America, to construct and operate the subject facilities, as hereinbefore described, all as more fully described in the application, as supplemented, herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP62-144

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 4, 1964)

On April 27, 1964, as supplemented by letters of May 5 and June 19, 1964, Natural Gas Pipeline Company of America (Applicant) filed a motion to further amend the Commission's order issued June 8, 1962, 27 FPC 1126, in Docket No. CP62-144, by authorizing the construction and operation of an 880 horsepower compressor station in lieu of the 660 horsepower compressor station therein authorized, and by authorizing the injection of 6,000,000 Mcf of natural gas by December 31, 1965, instead of the presently authorized 2,800,000 Mcf by December 31, 1964, all in connection with the evaluation and testing of the underground natural gas storage reservoir in Louisa County, Iowa, known as the Cairo Storage Area.

The substitution of the 880 horsepower compressor unit for the 660 horsepower unit results from the availability of the larger unit at a total estimated cost of installation of $190,000, as compared to the estimated cost of $215,900 for the originally authorized smaller unit, a saving of approximately $26,000. Additionally, the increased horsepower will be available for expanded operations now contemplated to commence beginning with the winter of 1965-66.

The requested increase in volume of gas to be injected and the requested additional year for this operation result from the favorable indications of the testing thus far and the desirability of pursuing the development program.

Due notice of the subject motion to further amend has been given by publication in the Federal Register on August 12, 1964 (29 F.R. 11547). No petition to intervene, notice of intervention or protest to the granting of the application has been received.

The Commission finds:

It is in the public interest and appropriate in carrying out the provisions of the Natural Gas Act to further amend the certificate order issued June 8, 1962, in Docket No. CP62-144 as hereinafter ordered and conditioned.

The Commission orders:

(A) The order of the Commission issued June 8, 1962, as amended, granting a certificate of public convenience and necessity to Natural Gas Pipeline Company of America in Docket No. CP62–144 be and the same is hereby further amended by authorizing the construction and operation of an 880 horsepower compressor station at the Cairo, Iowa, Storage Area in lieu of the 660 horsepower compressor station therein authorized, and by authorizing the injection therein of 6,000,000 Mcf of natural gas by December 31, 1965, instead of the presently authorized 2,800,000 Mcf by December 31, 1964.

(B) In all other respects, said order issued June 8, 1962, as amended, in Docket No. CP62–144 shall remain in full force and effect, particularly the requirements as to monthly progress reports set forth in ordering paragraph (F) thereof.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP64–284

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued September 4, 1964)

On May 28, 1964, as amended on June 12, 1964, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP64–284 an application pursuant to Section 7 of the Natural Gas Act for authority to abandon certain facilities and for a certificate of public convenience and necessity authorizing the construction and operation of certain other facilities, replacing in part the facilities to be abandoned, to enable Applicant to increase deliveries of natural gas to Northern Illinois Gas Company (Northern) at Belvidere, Illinois, all as more fully set forth in the application, as amended.

Specifically, Applicant proposes to:

(1) Construct and operate approximately 3.6 miles of 24-inch pipeline partially looping Applicant's Illinois 20-inch line;

(2) Construct and operate 2.9 miles of 10 to 12-inch pipeline replacing that length of Applicant's existing 3-inch Belvidere sales lateral;

(3) Install an additional tap on the Illinois transmission line and construct a new meter and regulator station;

(4) Abandon in place approximately 0.81 miles of 3- and 4-inch lateral line, and

(5) Reclaim and retire approximately 2.3 miles of 3-inch lateral line and the existing Belvidere meter and regulator station.

Applicant states that the proposed project is required to enable it to meet the increased delivery requirements of Northern, an existing customer, for the winter of 1964–65. It appears that the Chrysler Corporation is building an industrial plant at Belvidere, Illinois, and that said plant will be a customer of Northern; thus, Northern will require an increase of peak-day deliveries at Belvidere.

Applicant states that the increased deliveries to Northern will be part of the gas Applicant has heretofore been authorized to sell and deliver to said company.

The total estimated cost of the proposed project is $447,910, including allowance for salvage of reclaimed material. Said estimated cost will be financed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, as amended, has been filed.

At a hearing held on September 3, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, amendment and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G–235 (3 FPC 830).

(2) The facilities hereinbefore described, as more fully described in the application, as amended, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) The facilities to be abandoned, as heretofore described, are subject to the jurisdiction of the Commission and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(7) Such abandonment by Applicant, as heretofore described, is permitted by the public convenience and necessity and an order authorizing and approving same should be issued as hereinafter ordered.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Natural Gas Pipeline Company of America, to construct and operate the proposed facilities, as hereinbefore described, all as more fully described in the application, as amended, herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

(D) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application, as amended, in this proceeding, be and the same are hereby granted.

(E) Applicant shall advise the Commission of the date of said abandonment within 10 days of the date thereof.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP64-312

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 4, 1964)

On June 29, 1964, Northern Natural Gas Company (Applicant) filed in Docket No. CP64-312 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the establishment of six new delivery points for the sale and delivery of natural gas to three existing utility customers for resale, all as more fully set forth in the application.

The requested authorization covers the construction and operation of measuring and regulating stations and appurtenances for delivery of natural gas to Minnesota Valley Natural Gas Company (Minnesota Valley) at two points in Scott County and one point in Carver County, both in Minnesota; to Peoples Natural Gas Division (Peoples) at one point in Olmsted County, Minnesota, and one point in Ford County, Kansas; and to Northern States Power Company (Wisconsin) at a point in La Crosse County, Wisconsin.

No increase in the presently authorized volume of sales or contract demands to the utility companies is proposed in the instant application.

The total estimated cost of the measuring facilities to be constructed, owned and operated by Applicant is $32,880, for which the distributing utilities will reimburse Applicant.

Due notice of the subject application was published in the Federal Register on August 12, 1964 (29 F.R. 11549). No petition to intervene, notice of intervention or protest to the granting of the application has been received.

At a hearing held on September 3, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used for the transportation and sale of natural gas in interstate commerce for resale subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Northern Natural Gas Company authorizing the construction and operation of facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of said Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within three months from the date on which this order issues.

(D) Applicant shall make the necessary changes in its related service agreements to reflect the new delivery points.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

REVENUE DATA ON WHOLESALE SALES OF "FIRM POWER" BY ELECTRIC UTILITIES—AMENDMENT OF ANNUAL REPORT FORM NO. 1, DOCKET NO. R-266

ORDER NO. 286

AMENDING ANNUAL REPORT FPC FORM NO. 1

(Issued September 4, 1964)*

By letter dated February 13, 1964, the Commission transmitted to all Class A and Class B privately owned electric utilities and licensees copies of the annual report FPC Form No. 1 for use in the preparation of the report they are required to make for the year 1963.

In its letter of transmittal the Commission advised the respondent companies that it has under consideration amending for 1964 and subsequent reporting years the schedule "Sales for Resale" on page 412 of Form No. 1 by subdividing the firm power statistical classification referred to in Instruction 2 at the head of the schedule into three categories, *viz.*, partial-requirements customers that take power and energy to supplement their own generation or other purchases, total requirements customers who receive credit for having available standby, and all other total-requirements customers. The letter then requested the companies' cooperation in supplying such data for 1963 in their 1963 reports.

*Published in the Federal Register on September 15, 1964 (29 F.R. 12916).

A breakdown of the "firm power" sales presently reported in the schedule is desirable to provide additional information regarding conditions of firm power service as an aid in the analysis of the charges reported for such service.

The Commission finds:

(1) In view of the foregoing, compliance with the notice, public procedure and effective date provisions of section 4 of the Administrative Procedure Act are unnecessary.

(2) Adoption of this amendment to annual report FPC Form No. 1 is necessary and appropriate for the administration of the Federal Power Act.

The Commission, acting pursuant to authority granted by the Federal Power Act, as amended, particularly sections 304, 309 and 311 thereof (49 Stat. 855, 858, 859; 16 U.S.C. 825c, 825h, 825j), *orders:*

(A) The form of annual report, FPC Form No. 1, prescribed for Classes A and B electric utilities, licensees and others by § 141.1, Subchapter D, Approved Forms, Federal Power Act, Chapter I of Title 18 of the Code of Federal Regulations, is amended by deleting the second sentence of Instruction 2, in the heading to the schedule Sales for Resale (Account 447) on page 412 of the report, and inserting in lieu thereof the following:

> For each sale designate statistical classification in column (b), thus: firm power, partial requirements customers that take power and energy to supplement their own generation or other purchases, FP(P); firm power, total requirements customers who receive credit for having available standby, FP(C); firm power, all other total requirements customers, FP; dump or surplus power, DP; other, O. Place an "x" in column (c) if sale involves export across a state line.

[Secs. 304, 309, 311, 49 Stat. 855, 858, 859; 16 U.S.C. 825c, 825h, 825j.]

(B) The amendment shall be effective for the reporting year 1964 and thereafter.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

SUN OIL COMPANY, DOCKET NO. G-8288, ET AL.; SUN OIL COMPANY, DOCKET NO. CI60-75

ORDER EXTENDING TIME FOR MAKING REFUNDS

(Issued September 4, 1964)

By order issued July 13, 1964, 32 FPC 110, in Docket No. CI60-75, the Commission, acting upon Sun Oil Company's (Sun) request to amend its certificate application in Docket No. CI60-75 to include additional acreage, granted temporary certificate authorization to Sun for sales from such additional acreage, required that Sun refund the difference between the contract price and 20.625¢ per Mcf, collected since April 1, 1963, and required that Sun, in other respects, conform to the provisions of the settlement previously entered into by the operator of the property whose certificate previously covered Sun's sale from such additional acreage. Sun was required by Paragraph (B) of this order to make such refunds on or before September 11, 1964.

On August 25, 1964, Sun filed a motion requesting that the prescribed time for making refunds be extended in Docket No. CI60-75 to run concurrently

with the time specified for making refunds in its company wide settlement offer in Docket No. G–8288, *et al.*, filed with the Commission on July 31, 1964.

In its motion for an extension of time, Sun notes that its company wide settlement proposal provides for compliance with our order of July 13, 1964 and also proposes to settle the matters involving the original acreage dedicated under the application in Docket No. CI60–75. Sun therefore requests that it be allowed to make all refunds at the same time.

Since Sun's company wide settlement proposal is presently before the Commission for consideration we shall extend the time for complying with Paragraph (B) of the order of July 13, 1964, until further order of the Commission.

The Commission orders:

The time prescribed for making refunds in ordering Paragraph (B) of the Commission's order amending temporary certificate, conditionally accepting rate filing and ordering refunds issued July 13, 1964, in Docket No. CI60–75 is hereby extended until further order of the Commission.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

UNITED FUEL GAS COMPANY, DOCKET NO. CP64–267

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 4, 1964)

On April 30, 1964, United Fuel Gas Company (Applicant) filed in Docket No. CP64–267 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of measuring and regulating facilities to provide a delivery point to the Atlantic Seaboard Corporation, at its Lost River Compressor Station located in the Lost River District, Hardy County, West Virginia, all as more fully described in the application above mentioned.

Applicant states that the proposed facilities will be used to deliver 20,800 Mcf of natural gas per day for a 180 day period commencing November 1, 1964, and yearly thereafter for a like period, from a newly developed field on the Whip Cove Anticline, Hardy County, West Virginia. The delivered volumes will be substituted for volumes currently being delivered to Atlantic at points in Kanawha County, West Virginia, thus eliminating 157 miles of additional transportation by Atlantic. There will be no increase in Applicant's contract demand to Atlantic.

The estimated cost of the proposed facilities is $22,000 which will be financed from current funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 3, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) United Fuel Gas Company, a West Virginia corporation, having its principal place of business at Charleston, West Virginia, is a "natural-gas company"

within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 29, 1944, in Docket No. G–593 (4 FPC 44).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12-months from the date on which this order issues.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

CIMARRON TRANSPORTATION COMPANY, DOCKET NO. CP64–280

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 8, 1964)

On May 22, 1964, as amended on June 24, 1964, Cimarron Transmission Company (Applicant) filed in Docket No. CP64–280 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition and operation by Applicant of certain facilities located in Love County, Oklahoma, from the California Oil Company and other natural gas producers, hereinafter referred to collectively as (California), and for authorization to make and install certain improvements upon the facilities to be acquired to enable Applicant to increase its sales of natural gas to Natural Gas Pipeline Company of America.

The facilities to be acquired by Applicant consist of numerous pipelines located in the Southwest Marietta Basal Oil Creek Sand unit in Love County, Oklahoma, which pipelines connect wells with a processing plant which is owned and operated by California.

The purchase price of the facilities to be acquired by Applicant is estimated to be $520,000, including the cost of improvements to be made during the first three years after the acquisition. This amount is based upon the original cost less depreciation plus the cost of the improvements which is estimated to be $87,500. The acquisition and construction are to be financed from a bank loan of $375,000 on a 15-year 6% basis, together with $125,000 to be obtained from the sale of preferred stock to Applicant's present stockholders.

Applicant states that the purpose of the acquisition is to enable it to increase its maximum daily delivery obligation to Natural from 40,000 to 55,000 Mcf per day.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 3, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cimarron Transmission Company, an Oklahoma corporation, having its principal place of business in Tulsa, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 17, 1959, in Docket No. G–17014 (22 FPC 1059).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and the related sale of natural gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The acquisition, construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant to acquire, construct and operate facilities and to sell natural gas to Natural Gas Pipeline Company of America as hereinbefore described, all as more fully set forth in the application and amendment in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general

terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The acquisition and construction hereby authorized shall be completed and operation of the facilities shall be begun by Applicant, as provided in paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 3 years from the date on which this order issues.

(D) The related rate filing of the Applicant of May 18, 1964 (Supplement 23 to FPC Gas Rate Schedule No. 1) is hereby accepted for filing, subject to the applicable rules and regulations of the Commission.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP64-257

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 8, 1964)

On April 29, 1964, as supplemented on June 15, 1964, Southern Natural Gas Company (Applicant) filed in Docket No. CP64-257 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a line tap and metering and regulating station to be located in Aiken County, South Carolina, all as more particularly described in the application above mentioned.

Such facilities are to be used to deliver 350 Mcf of natural gas per day to the South Carolina Natural Gas Company for resale and distribution in the community of Beech Island, South Carolina, and its environs.

Applicant is now selling natural gas to the South Carolina Natural Gas Company for resale at Aiken under a contract demand of 66,500 Mcf. It is now proposed to reduce that volume at Aiken by 350 Mcf and to make delivery of 350 Mcf at the new proposed Beech Island delivery point on Applicant's Plant Urquhart Branch Line.

The estimated cost of the Applicant's proposed facilities is $12,630. Applicant will be reimbursed by South Carolina Natural Gas Company for the cost of the facilities.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 3, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Southern Natural Gas Company is a "natural-gas company" within the meaning of the Natural Gas Act as found by the Commission in its order of October 6, 1942, in Docket No. G-296 (3 FPC 822).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12-months from the date on which this order issues.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

UNITED CITIES GAS COMPANY (SUCCESSOR TO V-M PIPELINE COMPANY), DOCKET NOS. CP65-27 AND G-1776

DECLARATION OF EXEMPTION AND FINDINGS AND ORDER TERMINATING CERTIFICATE AUTHORIZATION AND CANCELLING FPC GAS TARIFF

(Issued September 8, 1964)

On July 29, 1964, United Cities Gas Company (Applicant) filed an application for exemption from the provisions of the Natural Gas Act, as amended, pursuant to Section 1(c) thereof.

The application shows that Applicant acquired by merger in October 1963, two pipeline properties formerly owned and operated by V-M Pipeline Company (V-M). These pipelines, authorized by order of the Commission issued October 24, 1951, 10 FPC 1464, in Docket No. G-1776, are located wholly within the State of Illinois and provide natural gas service to the communities of Vandalia and Metropolis in that State.

The Commission finds:

(1) Applicant, United Cities Gas Company, is an Illinois corporation duly authorized to transport and distribute natural gas in said State.

(2) Applicant receives natural gas from Natural Gas Pipeline Company of America and Trunkline Gas Company within the State of Illinois, all of which gas is transmitted, sold and consumed within said State.

(3) The Illinois Commerce Commission has certified to the Federal Power Commission that it has and is exercising regulatory jurisdiction over the rates, service and facilities of Applicant.

(4) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the certificate authorization heretofore issued to Applicant's predecessor, V–M Pipeline Company, in Docket No. G–1776 be terminated and that the related V–M Pipeline Company FPC Gas Tariff, Original Volume No. 1 be cancelled.

Wherefore, The Commission declares, by reason of the foregoing:

United Cities Gas Company is exempt from the provisions of the Natural Gas Act and the orders, rules and regulations of the Commission thereunder.

The Commission orders:

(A) The certificate authorization heretofore granted to V–M Pipeline Company by order issued October 24, 1951, in Docket No. G–1776 be and the same is hereby terminated.

(B) The related V–M Pipeline Company FPC Gas Tariff, Original Volume No. 1 be and the same is hereby cancelled.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

CITIES SERVICE GAS COMPANY, DOCKET NO. RP64–9

ORDER GRANTING MOTION FOR SEPARATE PROCEEDING ON ISSUE OF ALLOWANCE FOR GAS PURCHASED FROM AFFILIATED SUPPLIERS AND PRESCRIBING PROCEDURE

(Issued September 9, 1964)

By order issued herein on July 10, 1964, 32 FPC 92, the Commission directed Cities Service Gas Company (Gas Company) to serve its cost evidence on or before September 8, 1964, pertaining to the amounts to be allowed in Gas Company's cost of service for gas purchased from its affiliated suppliers. In that order, the Commission stated that it "would be willing to consider a motion to try this issue apart from this proceeding and tentatively reflect the gas purchases from affiliates at the filed rates, provided Gas Company will stipulate that such reduced rates as may be determined for its affiliates in the separate proceeding will be reflected in the cost of service in this proceeding for all gas purchased from such affiliate and refunds, if any, resulting therefrom will be made by Gas Company to its customers from the date the proposed rates in this proceeding became effective subject to refund, *i.e.*, April 23, 1964."

On July 27, 1964, Gas Company filed a motion requesting the Commission to establish a separate proceeding for the determination of the amount to be included in its cost of service for gas purchased from its affiliated suppliers. Included within its motion was a stipulation in conformity with our order of July 10, 1964.

On August 6, 1964, the Municipal Interveners[1] filed an answer and objection to the motion. In that answer, the Municipal Interveners note that they have an application for subpoena pending before the Presiding Examiner.[2] Further,

[1] Comprising the Municipal Group For Opposing Increase in Natural Gas Rates, the City of Springfield, Missouri, and the Board of Public Utilities of the City of Springfield, Missouri.

[2] On August 20, 1964, the Presiding Examiner denied the application for subpoena.

that Gas Company has indicated in response to that application that issuance of the subpoena would require extension of time both for service of rebuttal and for response to the subpoena. The Interveners therefore urge that "establishing a separate proceeding as requested by the Gas Company is not likely to result in a significantly earlier determination of the other issues and might unnecessarily defer determination of the separated issue."

It would appear that the Interveners may have misconstrued our intent under a separate procedure on the affiliated purchase gas cost issue. While we deem it advisable to provide some flexibility in the two phases of this proceeding, it is not our intent that the service of evidence and hearing on the issue covered by Gas Company's motion be begun after termination of trial of the other issues.

The schedule hereinafter set out provides for filing of the evidence in this second phase at such times as will enable cross-examination on the affiliated purchase gas cost issue shortly after filing of reply briefs in the first phase. Additionally, although the aforementioned issue is to be tried separate and apart from the other issues in this proceeding, the test period to be used in the trial of the affiliated supplier issue is to be the same test period that is utilized in the trial of the other issues since the costs for the affiliated gas purchases are to coincide with the proper rate determination for Gas Company's sales for the period herein involved.

The Commission orders:

(A) The motion filed by Gas Company on July 27, 1964, requesting a separate proceeding on the issue of allowance in its cost of service for gas purchased from its affiliated suppliers is hereby granted.

(B) Pending the determination of the issue stated in paragraph (A) above, the cost of gas purchased by Gas Company from its affiliated suppliers will be reflected in Gas Company's cost of service at the filed rates subject to the conditions set forth in the order issued herein on July 10, 1964, and agreed to by Gas Company in its motion filed on July 27, 1964.

(C) The procedures set forth in paragraphs (A) and (B) of our order of July 10, 1964, relating to the aforementioned issue, are hereby vacated.

(D) Gas Company, the Commission staff, and all interveners proposing to present evidence on the issue involved in paragraph (A) above shall serve their testimony and exhibits upon the Presiding Examiner and all parties as follows: Gas Company, on or before October 19, 1964; Staff on or before December 7, 1964; Interveners, on or before December 21, 1964.

(E) Pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure, a prehearing conference before the Presiding Examiner shall commence at 10:00 a.m. (EST), on January 19, 1965, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., for the purpose of reaching such agreements as will expedite the determination of the issue stated in paragraph (A) above, including, but not limited to, stipulation of facts, narrowing and defining of issues, and establishment of dates for the service of rebuttal testimony and for the cross-examination of all testimony.

(F) The cross-examination, when commenced, shall be continuous unless the Presiding Examiner finds that extraordinary circumstances preclude such procedure.

(G) Presiding Examiner Robert Weston, or any other officer designated by the Chief Examiner for that purpose (see Delegation of Authority, 18 CFR 3.5(d)), shall prescribe other relevant procedural matters not herein provided, shall preside at the prehearing conferences and at the hearings in this matter, and shall control this proceeding until the completed record is certified to the Commission, pursuant to the Commission's Rules of Practice and Procedure.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP64-305

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 10, 1964)

On June 22, 1964, Cities Service Gas Company (Applicant) filed in Docket No. CP64-305 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to sell natural gas to The Gas Service Company (Gas Service) under Applicant's Gas Rate Schedules F-2, C-2 and I-2 for resale in and near Fort Crowder, Missouri, through Applicant's meter and regulatory facilities previously installed in connection with the sale of natural gas to the Corps of Engineers, Department of the Army, for use at Fort Crowder, Missouri, all as more fully set forth in the application.

Applicant has been delivering natural gas to the Corps of Engineers at Fort Crowder for various on-post facilities including housing units (U.S. Government owned), pursuant to a contract dated March 1, 1951. On termination of the contract by the Corps of Engineers on April 16, 1964, Gas Service advised the Applicant of its intention to lease or purchase the distribution facilities formerly operated by the Corps, and to continue service to Fort Crowder.

Peak day and annual requirements under this application for a three-year period commencing with the 1964-65 winter season are estimated to be: 268 Mcf and 18,490 Mcf, 280 Mcf and 19,850 Mcf and 310 Mcf and 21,200 Mcf, respectively.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 9, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application submitted in support of the authorization, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G-298 (4 FPC 471).

(2) The proposed sale and delivery of natural gas, as hereinbefore described and as more fully described in the application in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act.

and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Cities Service Gas Company authorizing the sale and delivery of natural gas as more fully described in the application in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant shall file pursuant to Part 154 of the Commission's Regulations an acceptable service agreement reflecting the terms and conditions of the sale and the delivery point.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. CP64-286

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT

(Issued September 10, 1964)

On June 2, 1964, Kansas-Nebraska Natural Gas Company, Inc., (Applicant) filed in Docket No. CP64-286 an application pursuant to Subsections (b) and (c) of Section 7 of the Natural Gas Act, for permission and approval to abandon a certain segment of its natural gas pipeline facilities consisting of approximately 10.5 miles of 6-inch pipeline lying south of Northport, Morrill County, Nebraska, and for a certificate of public convenience and necessity authorizing the construction and operation of approximately 2.2 miles of 6-inch pipeline paralleling its existing 4-inch Ovid, Colorado, lateral and to sell an additional volume of natural gas, all as more particularly described in the application above mentioned.

Applicant states that the facility to be abandoned has deteriorated until the leakage therefrom has rendered it uneconomical to operate and that the customers heretofore served with gas from it can and will be served by a 10-inch pipeline paralleling it and now owned by Applicant and operated as a part of its pipeline system. There will be no interruption or diminution of service to customers resulting from the proposed abandonment.

Applicant further states that the facility which it proposes to construct and operate near Ovid, Colorado, is for the purpose of transporting additional volumes of natural gas to its customer, The Great Western Sugar Company, to be used in a new pulp dryer plant of the sugar factory, located near Ovid, Colorado. The additional volumes of gas required to be delivered to said plant on an interruptible basis per day during the sugar factory's operation will be from 6,750 to 8,000 Mcf of gas at the rate of 25 cents per Mcf.

The estimated total cost of the proposed facility to be constructed is $26,000 and will be financed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 9, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Kansas-Nebraska Natural Gas Company, Inc., a Kansas corporation having its principal place of business in Phillipsburg, Kansas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–259 (3 FPC 966).

(2) The proposed facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sales of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) The facilities to be abandoned by Applicant are subject to the jurisdiction of the Commission and the abandonment as proposed is permitted by the public convenience and necessity and approval therefor should be granted as hereinafter ordered.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Kansas-Nebraska Natural Gas Company, Inc., to install and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

(D) Permission for and approval of the abandonment and removal of the pipeline facilities by Applicant hereinbefore described and as more fully described in the application in this proceeding, be and the same are hereby granted.

(E) This certificate issued hereby is granted on the express condition that the additional interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted

maximum delivery obligations of The Great Western Sugar Company for firm resale service to Applicant's customers.

(F) Applicant shall advise the Commission in writing the date of construction of the proposed facilities and of the date of removal of the abandoned facilities within ten days of such construction or removal.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE MANUFACTURERS LIGHT & HEAT COMPANY, DOCKET NO. CP64-256

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 10, 1964)

On April 29, 1964, The Manufacturers Light & Heat Company (Applicant) filed in Docket No. CP64-256, an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain pipeline facilities and requesting the issuance of a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline facilities, all as more fully set forth in the application.

Applicant proposes to construct and operate (a) 5.5 miles of 12-inch pipeline as a replacement for the same length of 8-inch line in Columbiana County, Ohio, and Lawrence County, Pennsylvania, and (b) 1.8 miles of 8-inch pipeline as a replacement for the same length of 4-inch line in Jefferson County, Ohio.

Applicant further proposes to abandon 6 miles of 6 and 8-inch pipelines in Greene and Washington Counties, Pennsylvania, which will not be replaced. The pipelines to be replaced are old and deteriorated. No abandonment of service is involved as Applicant has another 8-inch line in the area with interconnected lines.

Total cost of the facilities to be constructed and operated is estimated at $336,000.00 which will be financed as part of Applicant's 1964 construction program through the issuance and sale of 25-year installment promissory notes or common stock to its parent company, The Columbia Gas System, Inc.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 9, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorizations sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, The Manufacturers Light & Heat Company, a Pennsylvania corporation and a subsidiary of The Columbia Gas System, Inc., having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 29, 1944, in Docket No. G-593, *et al.* (4 FPC 821).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the abandonment thereof is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval therefor should be granted as hereinafter ordered.

(4) The proposed construction and operation of facilities and the transportation of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application and exhibits filed in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The aforesaid proposed construction and operation of facilities and the transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application in this proceeding, are hereby granted to Applicant, The Manufacturers Light & Heat Company.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

(C) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, The Manufacturers Light & Heat Company, authorizing the construction and operation of facilities and the transportation of natural gas in interstate commerce, as hereinbefore described, all as more fully described in the application and exhibits filed in this proceeding, upon the terms and conditions of this order.

(D) The certificate issued by paragraph (C) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(E) The facilities authorized by paragraph (C) above shall be completed and placed in operation within 12 months from the date of the issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP64-282

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 10, 1964)

On May 25, 1964, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP64-282 an application pursuant to Section 7(c) of the Natural

Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities to test a new storage area (Brookville Storage Area) in Ogle County, Illinois, all as more fully set forth in the application.

Applicant proposes to construct and operate (1) a side tap and connection on its exsiting Illinois lateral in Lee County, Illinois, (2) twenty miles of 8-inch pipeline from the tap in (1) above to the field, (3) five wells for injection and withdrawal, (4) ten observation wells, (5) a skid-mounted 880 Hp compressor, and auxiliary equipment. All of the foregoing will be used in the injection of up to 5,000,000 Mcf of natural gas into the Mount Simon Sand Reservoir, and in the making of injection and withdrawal tests.

The estimated cost of the proposed storage program is $2,476,700.00, which will be defrayed from Applicant's funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 9, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 7, 1958, in Docket No. G-9966 (20 FPC 694).

(2) The proposed construction and operation of facilities and transportation of natural gas by Applicant as hereinbefore described, and as more fully described in the application and exhibits in this proceedings, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities and transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the transportation of natural gas as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months of the date on which this order issues.

(D) The certificate issued by paragraph (A) above is conditioned upon Applicant limiting the volumes of natural gas to be injected into the proposed storage area to 5,000,000 Mcf.

(E) Applicant shall submit monthly reports giving the following information on the testing program: (Volumes shall be stated in Mcf at 14.73 psia and 60 degrees fahrenheit, and pressures in pounds per square inch absolute.)

1. Volumes of gas injected or withdrawn.
2. Volume of injected gas present in the reservoir.
3. Maximum daily injection and withdrawal rates.
4. Amount of leakage from the Mount Simon formation.
5. Shut-in wellhead pressures of observation and active wells.
6. Subsea water level in each well.
7. Location and extent of the gas bubble, or bubbles, plotted on a structure map of the reservoir.
8. Brief discussion of current operations.
9. A tabulation of wells drilled, cleaned, or recompleted with subsea elevations of formations and casing settings. Copies of any core analyses, gamma ray, neutron or other electric log surveys and back pressure tests conducted during the month.
10. Any other data which may aid the Commission in evaluating the Brookville Storage area.
11. Reports shall continue to be filed monthly until the storage maximum has reached 5,000,000 Mcf. Thereafter, reports shall continue on a semi-annual basis for two years. At the end of the two-year period, the filing of reports shall be discontinued unless otherwise ordered by the Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP64-236

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued September 10, 1964)

On April 13, 1964, as amended on June 4, 1964, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP64-236 an application pursuant to Sections 7 (c) and (b) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and for permission and approval to abandon, by sale, to the Central Illinois Light Company (CILCO), certain portions of its natural gas pipeline systems.

Applicant proposed to sell and transfer to CILCO approximately 10,393 feet of its North Springfield 10-inch OD transmission line and approximately 13,928 feet of its South Springfield 10-inch OD transmission line together with 2,777 feet of its Peoria lateral all of which facilities are located in Tazewell County, Illinois, for the consideration of a sum equal to the original cost less depreciation. The facilities above described are to remain in operation and to become parts of the gas distribution system of CILCO thus obviating the necessity for CILCO to construct new facilities in the same area to serve its customers. The result of the proposal by Applicant will be to decrease the costs of operations to Applicant and to lower costs of new facilities to CILCO without interruption of service to the Cities of Springfield and Peoria, Illinois.

Applicant proposes to construct and operate two new measuring and regulating stations on its North and South Springfield laterals at points where its parts of these respective facilities will join with the segments thereof being abandoned to CILCO's acquisitions.

The total cost of the said new facilities to be constructed is estimated to be $77,100 which cost is to be financed from funds on hand.

After due notice, no petition to intervene, notice of interventions or protest to the granting of the application has been filed.

At a hearing held on September 9, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sales of natural gas by Applicant by means of the proposed facilities are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sales of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) The facilities to be abandoned by Applicant are subject to the jurisdiction of the Commission and the abandonment as proposed is permitted by the public convenience and necessity and approval therefor should be granted as hereinafter ordered.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Panhandle Eastern Pipe Line Company, to install and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in operation not later than six months from the date of this order, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations aforesaid.

(D) Permission for and approval of the abandonment by Applicant of the pipeline facilities hereinbefore described and as more fully described in the application, in this proceeding, be and the same are hereby granted.

(E) Applicant shall advise the Commission of the date of completion of the facilities proposed and the date of sale of the other facilities within 10 days of such completion and such sale, respectively.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP64-300

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 10, 1964)

On June 12, 1964, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP64-300 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity, authorizing the construction and operation of approximately 14.9 miles of 26-inch pipeline in Dearborn County, Indiana, and Hamilton County, Ohio, and approximately 8.46 miles of 26-inch pipeline in Lafayette Parish, Louisiana, all as more fully represented in the application in this proceeding.

The 26-inch pipeline to be constructed in Louisiana will result in two complete lines in this major supply area of Texas Gas from the Atchafalaya River to Eunice, Louisiana, thereby providing better dependability of this segment of the system, together with additional capacity at Eunice, all resulting in greater assurance of continuity of service north of Eunice in the event of interruption of supply from other principal gathering lines of Texas Gas' Southern Louisiana system. The 26-inch pipeline to be constructed in Indiana and Ohio will loop a single 26-inch pipeline presently utilized to make substantial deliveries of gas, thereby providing a safety factor in this important segment of Texas Gas' system and better assuring continuity of this service.

The estimated cost of the proposed 26-inch pipelines is $2,651,400 and will be financed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 9, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued March 30, 1949, in Docket No. G-859 (8 FPC 190).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Texas Gas Transmission Corporation, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized in paragraph (A) above shall be constructed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 9 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITY OF WASHINGTON, GEORGIA, DOCKET NO. CP64-304

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued September 10, 1964)

On June 19, 1964, the City of Washington, Georgia, (Applicant) filed in Docket No. CP64-304 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Transcontinental Gas Pipe Line Corporation (Transco) to establish physical connection of its transmission facilities with the proposed facilities of and to sell natural gas to Applicant for resale and distribution in Washington and the Town of Tignall, and environs all in Wilkes County, Georgia, all as more fully set forth in the application.

Applicant proposes to construct and operate approximately 45 miles of 4- and 6-inch transmission pipeline and associated facilities from Transco's transmission facilities to the communities of Tignall and Washington. Applicant will also construct and operate distribution facilities in order to render service in said communities.

The estimated third year peak day and annual natural gas requirements for Washington and Tignall are 1,643 Mcf and 187,500 Mcf, respectively.

The total estimated cost of Applicant's proposed project is $1,085,000, which cost will be financed through the sale of revenue certificates. Applicant states

that in the event there are no successful bidders, it is anticipated that the revenue certificates, in the full amount of $1,085,000, will be purchased by the Community Facilities Administration of the Housing and Home Finance Agency through the Public Facilities Loan Program.

On July 10, 1964, Transco filed an answer to the subject application stating that it had no objection to the requested order and to selling up to 1,643 Mcf of natural gas per day to Applicant.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on August 15, 1964 (29 F.R. 11732). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G–1143 (7 FPC 145).

(2) Applicant, the City of Washington, Georgia, is a municipal corporation incorporated under the laws of the State of Georgia and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas in said city and in the Town of Tignall.

(3) It is necessary and desirable in the public interest that Transco be directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 1,643 Mcf of natural gas per day to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to receive gas from Transco, as proposed, within one year from the date on which this order issues and upon the execution of a service agreement between Applicant and Transco in accordance with the Commission's Regulations under the Natural Gas Act.

(5) The requirement that Transco serve Applicant, as proposed will not place any undue burden upon Transco nor impair its ability to render adequate service to its existing customers.

(6) Applicant should, within 90 days of the date on which this order issues, submit to this Commission proof of its ability to obtain the funds necessary for this project as proposed herein.

The Commission orders:

(A) Transcontinental Gas Pipe Line Corporation be and it is hereby directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 1,643 Mcf of natural gas per day to Applicant, all as hereinbefore described and as set forth in the application.

(B) Transco shall report to the Commission in writing the date of commencement of service to Applicant.

(C) This order is conditioned upon Applicant being prepared to receive natural gas from Transco, as proposed, within one year from the date on which this order issues and upon the execution of a service agreement between Applicant and Transco in accordance with the Commission's Regulations under the Natural Gas Act.

(D) This order shall be of no force and effect unless within 90 days from the date of issue hereof, Applicant submits to this Commission proof of its ability to obtain the funds necessary for the project as proposed herein.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

WESTERN MASSACHUSETTS ELECTRIC COMPANY, PROJECT NO. 2334

ORDER MODIFYING ORDER ON REHEARING

(Issued September 10, 1964)

On August 13, 1964, Western Massachusetts Electric Company (Applicant) filed application for rehearing under Section 313(a) of the Federal Power Act of the Commission's order issued July 15, 1964, 32 FPC 129, in this proceeding issuing a license to Applicant for the constructed Gardners Falls Project No. 2334.

The application for rehearing questions the inclusion in the license order of certain transmission facilities as part of the project works: specifically, (1) a double circuit 13.8 kv transmission line extending from the Gardners Falls Project to the 115 kv Montague substation, and (2) the 4.8/13.8 kv substation, incorrectly described in the license order as a 2.3/13.8 kv substation.

Additional information respecting the afore-mentioned transmission facilities, which was submitted as a part of the application for rehearing, shows that such facilities are not part of Project No. 2334.

The Commission finds:

It is appropriate and in the public interest that the order issued July 15, 1964 be modified as hereinafter provided.

The Commission orders:

(A) Our order issued July 15, 1964 is hereby modified in the following respects:

PARAGRAPH I. Finding (5) of the order is modified to read as follows:

(5) The 2.3/4.8 substation and appurtenant electrical and mechanical facilities mentioned or referred to in paragraph (B) below, and which were included in the application, are parts of the project within the meaning of Section 3 (11) of the Act and should be included in the license for the project.

PARAGRAPH II. Finding (6) and Article 32 of the order are hereby eliminated from the order.

PARAGRAPH III. Item (4) of paragraph (B) (ii) of the order is hereby redescribed to read "(4) a 2.3/4.8 kv substation;"

(B) The afore-mentioned Commission order issued July 15, 1964, as modified by this order, shall be accepted for the licensee and returned to the Commission within 60 days from the date of issuance of this order, and the order issued July 15, 1964 shall not become effective without acceptance of the provisions of that order as modified by the provisions of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CENTRAL MAINE POWER COMPANY, PROJECT NO. 2335

ORDER DENYING APPLICATION FOR REHEARING

(Issued September 11, 1964)

On August 21, 1964, Central Maine Power Company (Applicant) filed application under Section 313(a) of the Federal Power Act for rehearing of the

Commission's license order issued July 24, 1964, 32 FPC 334, with respect to Applicant's constructed hydroelectric Project No. 2335, known as the Williams Project located on the Kennebec River in Somerset County, Maine.

The Commission's order of July 24, 1964 in Project No. 2335 would issue a license for a period of 50 years, effective as of January 1, 1938 and terminating December 31, 1987. Applicant requests that the effective date of the license be made July 24, 1964, or, at the earliest May 1, 1954.* In support of its request for a change in the effective date of the license, Applicant states:

> 1. The Williams site was first used for hydro-power more than one hundred years ago, pursuant to the Mill Act of the State of Maine. Construction of the new development in 1937–1939 was but a new step in the use of this site. Had the previous development remained in use, a license issued today would be effective no earlier than 1954. Merely because of the reconstruction, a date sixteen years earlier has been chosen.

Applicant acquired the Williams site in 1937, and thereafter in 1937 Applicant commenced construction of the existing Williams Project. It is true, as Applicant suggests, that had the previous development remained in use the effective date of the license would have been no earlier than May 1954. But such was not the case. The commencement of construction of the new project in the latter part of 1937, without having obtained a license therefor or a determination on a declaration of intention that a license was not required for the proposed construction, was prohibited by the provisions of Section 23(b) of the Federal Power Act (16 U.S.C. 817). It is for this reason that the license for Project No. 2335 is made effective as of January 1, 1938.

Applicant states that this effective date discriminates against it "solely because the Williams Project was constructed in 1937–1939." On the contrary, an effective date later than January 1, 1938 would discriminate against all other licensees which have obtained licenses for projects constructed in violation of Section 23(b) of the Act. The Commission sees no reason in this case to depart from its consistent policy.

The Commission further finds:

The assignments of error and grounds for rehearing set forth in the application for rehearing filed by Applicant on August 21, 1964 of the Commission's order issued herein on July 24, 1964, present no facts or principles of law which were not considered by the Commission when it issued its aforesaid order, or which having now been considered warrant any change or modification of the said order.

The Commission orders:

Central Maine Power Company's application filed on August 21, 1964 for rehearing of the Commission's order issued July 24, 1964 in Project No. 2335, is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EAST TENNESSEE NATURAL GAS COMPANY, DOCKET NO. CP64–21

ORDER DENYING APPLICATION FOR REHEARING

(Issued September 11, 1964)

On August 17, 1964, Atlantic Seaboard Corporation (Seaboard) filed an application for rehearing of the Commission's Opinion No. 435 and accompanying

*The Commission found the Kennebec River to be navigable in May of 1954 (13 FPC 1076).

order issued herein on July 17, 1964, 32 FPC 158, granting a certificate of public convenience and necessity to East Tennessee Natural Gas Company (East Tennessee), authorizing it, among other things, to serve Roanoke Gas Company, a Seaboard customer. Seaboard contends that a certificate authorizing East Tennessee's project is not required by the public convenience and necessity unless it be conditioned to require in effect that Roanoke Gas Company shall comply with Seaboard's CDS–PR (Partial Requirements) Rate Schedule.

As stated in our opinion, Roanoke Gas Company made it clear on the record that it would purchase the minimum monthly and minimum annual volumes prescribed by the said rate schedule, or any superseding rate schedule approved by the Commission. Under these circumstances we held and here reiterate that consideration of the appropriateness of the condition requested was not necessary.

The Commission finds:

The assignments of error and grounds for rehearing set forth in Seaboard's application for rehearing present no new facts or principles of law which were not considered by the Commission when it issued its Opinion No. 435 and accompanying order on July 17, 1964, or which, having now been considered, warrant any change or modification of the said opinion and order.

The Commission orders:

The application for rehearing filed by Atlantic Seaboard Corporation on August 17, 1964, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP64–316

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 11, 1964)

On May 5, 1964, Natural Gas Pipeline Company of America (Applicant) filed an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities for the purchase and receipt of natural gas to be produced in the Baretta, Candelaria Area, El Paistle, South May, Mifflin, West Rita, Rita, Santa Rosa and Sarita Fields in Kenedy County, Texas, all as more fully set forth in said application.

Applicant proposes to construct and operate approximately 25.7 miles of 16-inch lateral supply pipeline extending from a point in the Sarita Field in Kenedy County, Texas, to a point of connection with Applicant's existing 26-inch main transmission system in Kleberg County, Texas, a dual 10-inch meter station, side tap and other miscellaneous appurtenant facilities.

The construction and operation of the lateral supply pipeline and appurtenant meter and side-tap facilities will enable Applicant to take from the aforesaid fields natural gas which it proposes to purchase from Humble Oil & Refining Company.

The total estimated cost of construction as herein proposed is $1,029,000 and is to be financed from funds on hand.

Due notice of the subject application was published in the Federal Register on August 4, 1964 (29 F.R. 11200). No petition to intervene, notice of intervention or protest to the granting of the application has been received.

At a hearing held on September 9, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including

the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G-235 (3 FPC 830).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued to Applicant and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Natural Gas Pipeline Company of America authorizing the construction and operation of facilities to take natural gas which will be purchased from Humble Oil & Refining Company as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation by Applicant, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months of the date on which this order issues.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

ARIZONA POWER AUTHORITY, PROJECT NO. 2248; CITY OF LOS ANGELES AND ITS DEPARTMENT OF WATER AND POWER, PROJECT NO. 2272

ORDER PURSUANT TO PUBLIC LAW NO. 88-491

(Issued September 14, 1964)

On August 27, 1964, the President signed into law Public Law No. 88-491, 88th Cong., 2d Sess. (78 Stat. 607). This law provides as follows:

That no licenses or permits shall be issued under the Federal Power Act (16 U.S.C. 791a–823) nor any applications for such licenses or permits be accepted for filing for the reach of the Colorado River between Glen Canyon Dam and Lake Mead during the period ending December 31, 1966; *Provided*, That nothing herein shall change or affect for the purposes of any action which may be taken subsequent to such date the present status, equities, position, rights, or priorities of any parties to applications pending on the date of the enactment of this Act.

The Commission finds:

(1) Public Law No. 88–491 suspends the Commission's authority to issue any license or accept for filing any applications for licenses or permits for the reach of the Colorado River between Glen Canyon Dam and Lake Mead until after December 31, 1966.

(2) It is appropriate, in view of this legislation, that the Commission should suspend further consideration of the applications for licenses in Project No. 2248 and Project No. 2272 until after December 31, 1966.

The Commission orders:

(A) The proceedings in Project No. 2248 and Project No. 2272 are hereby suspended, together with any further consideration of the applications for licenses filed therein, until after December 31, 1966.

(B) No new applications for licenses or permits for the reach of the Colorado River between Glen Canyon Dam and Lake Mead shall be accepted for filing until after December 31, 1966.

OPINION NO. 441

MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP64–109

OPINION AND ORDER MODIFYING AND ADOPTING INITIAL DECISION OF PRESIDING EXAMINER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND DENYING MOTION FOR ORAL ARGUMENT

(Issued September 14, 1964)*

Syllabus

1. While this is a close case, Commission, weighing considerations presented, *concludes* that pipeline has made a positive showing justifying certification of facilities and deliveries of gas to power plant. P. 740.
2. Commission leaves to State Commission the responsibility of distributing benefits of fuel savings [resulting from sales of gas to Weston Generating Station for boiler fuel] between Public Service's gas and electric customers. P. 740.
3. By virtue of power plant service, pipeline's customers will receive immediate and direct benefit of rate reduction agreed to by company in recent rate proceeding. P. 740.
4. Authorization of Weston service, by providing flexibility among other things, should contribute to efficient and economic operation of Michigan Wisconsin's system. P. 740.
5. Although Commission has traditionally opposed service involving use of gas for generation of steam for electric power generation, it has authorized such service when substantially justified, as here. P. 740.

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* Initial decision appears on p. 742.

6. In granting certificate for Weston service, Commission relies upon public interest considerations only—not on argument that pipeline might deliver gas to distributor for boiler fuel by previously certificated facilities and so avoid Commission passing on propriety of such service. P. 741.
7. Certificate conditioned to provide that service be curtailed or interrupted whenever required by pipeline for maintaining adequate underground gas storage balances and for serving firm segment of its resale customers for domestic and commercial use. P. 741.
8. Commission *issues* certificate of public convenience and necessity authorizing service to distributor for use as boiler fuel in power plant.

Charles V. Shannon and *Louis Flax* for Michigan Wisconsin Pipe Line Company.

Glen H. Bell for Wisconsin Fuel & Light Company.

William J. Froelich and *Seymour Tabin* for Wisconsin Public Service Corporation.

Eugene O. Gehl for Wisconsin Power & Light Company.

Willard S. Stafford for Madison Gas and Electric Company.

John F. Zimmermann for Wisconsin Natural Gas Company and Wisconsin Michigan Power Company.

Richard C. Steffey for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

O'CONNOR, *Commissioner:*

In this case, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) seeks, under Section 7(e) of the Natural Gas Act (Act), a certificate of public convenience and necessity authorizing it to construct and operate a 2,700-foot, 8-inch tap line and a sales meter costing some $48,655, and to deliver some 6.8 million Mcf of natural gas (estimated 1964–65 volume) to the Weston station of the Wisconsin Public Service Corporation (Public Service) for use as boiler fuel in generating electricity. The case comes before us on exceptions filed by the Commission's Staff on June 8, 1964, to the Presiding Examiner's initial decision issued May 7, 1964, granting the certificate requested.[1] The question presented is whether Michigan Wisconsin has positively shown that the benefits to the public and other considerations supporting the proposed boiler fuel service sufficiently outweight its detriments as to justify granting the requested authorization.

Michigan Wisconsin actually installed the facilities covered by its present application in 1960, in the mistaken belief that the requisite delivery point had been authorized by the Commission opinion reported in 24 FPC 177, and rendered the service in question for about three years. In conformity with a Commission order notifying it that the facilities had not been authorized, Michigan Wisconsin ceased deliveries and filed its instant certificate application.

The Presiding Examiner would issue a certificate authorizing Michigan Wisconsin to render the proposed service, relying basically on four grounds.

First, the Examiner found that the Weston service would materially benefit the parties and the public. He found that the use of gas rather than coal at the Weston station would produce fuel savings for Public Service of some $400,000 annually, and would produce revenues for Michigan Wisconsin exceeding the cost of the service by at least some $239,000 a year and probably more, with resulting rate benefits to the consumer.

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[1] Replies to Staff's exceptions were filed by Michigan Wisconsin and Public Service on June 26, 1964, and by the Public Service Commission of Wisconsin on June 25, 1964.

Second, he held that the detriments of the Weston service alleged by Staff do not warrant its denial. He found that it would provide a market for Michigan Wisconsin's excess gas, and that Staff's objections such as the possibility that it would jeopardize Michigan Wisconsin's ability to meet its firm service obligations are not established by the record.

Third, he held that the issuance of a certificate on the present showing of benefits is justified by Commission decisions such as *Northern Natural Gas Co.*, 29 FPC 1025, and *Transcontinental Gas Pipe Line Corp.*, 11 FPC 615, and 21 FPC 138.

And fourth, he held that if a certificate were not issued, Public Service could still obtain boiler fuel service from Michigan Wisconsin by means of delivery points we have previously authorized, although at reduced benefits because additional expensive facilities would have to be constructed.

The Commission's Staff is the only party which opposes granting Michigan Wisconsin a certificate;[2] various large distributing company customers of Michigan Wisconsin and also the Public Service Commission of Wisconsin support the certificate. Staff excepts to the Examiner's ground of decision summarized above as follows.

First, Staff contends that the benefits of the Weston service found by the Examiner are not sufficient to justify this extensive use of gas for boiler fuel, in light of certain past Commission decisions (which Staff says the Examiner ignored) stating that a positive showing must be made to justify boiler fuel sales. Also, Staff contends that Public Service's electric customers would receive all the benefit of the $400,000 fuel saving through rate reductions, but that its gas customers should also benefit from some of this saving and that, contrary to the Examiner, the distribution of this saving between gas and electric customers is the concern of this Commission and should not be left exclusively to the Wisconsin Public Service Commission. Additionally, Staff contends in its brief that Michigan Wisconsin would benefit by a mere $117,598 of additional operating income from the Weston service for the contract year 1964–5, rather than the $239,000 and more found by the Examiner.

Second, Staff contends that the detriments of the Weston service outweigh its benefits. Staff argues that the Weston service involves an inferior usage of gas for boiler fuel, whereas it should be conserved by storage or otherwise made available for superior usages. Also, Staff contends that this service is undesirable from the standpoint of sound operations. Staff argues that although this service purportedly involves the interruptible use of excess gas, in practical effect it amounts to a firm industrial service because historically Weston deliveries have been interrupted only in emergencies when Michigan Wisconsin has had insufficient storage to meet its customers' firm requirements under its demand-commodity, ACQ (Annual Contract Quantity) Rate Schedule. Moreover, Staff contends that the Weston service exhausts Public Service's entitlement of firm ACQ gas prior to the end of the contract year, with the possibility that there would be insufficient volumes of gas in storage to meet the needs of firm residential and commercial customers if the winter is severe.

Third, Staff contends that under the Commission decisions cited above, the Weston service should be denied, for the benefits claimed here are even less substantial than those claimed in the *Northern Natural* case, which we characterized as "marginal"; and that the pre-emption of storage for boiler fuel involved in this case is in essence similar to the pre-emption of pipeline capacity which we condemned in the *Transco* case in 21 FPC 138.

[2] The National Coal Association and others representing coal interests originally opposed certificating the Weston service but they have withdrawn their opposition.

Fourth, Staff contends that it is extremely improbable that Public Service would actually obtain equivalent boiler fuel service from Michigan Wisconsin by means of other delivery points since the available alternatives are economically unfavorable, have never been seriously considered, and would not in fact be undertaken. Staff contends that we should not be influenced by this kind of argument, which implies that even though we find that a requested authorization is not in the public interest, the applicant will nevertheless obtain the same result without our approval and thus circumvent the Act's requirements.

This is a close case but, weighing the considerations presented, we conclude that Michigan Wisconsin has made a positive showing which justifies certificating the facilities and deliveries of gas in question.

As to benefits, it is undisputed that Public Service will benefit by a fuel saving of some $400,000 annually resulting from the Weston service. Staff is correct that this benefit is passed on exclusively to electric customers in the form of reduced rates. We leave to the Wisconsin Public Service Commission the responsibility of distributing the benefits of this fuel saving between Public Service's gas and electric customers. Although Michigan Wisconsin will not benefit by any large additional profit from the Weston service, that service will recoup revenues exceeding costs in the range indicated above. Moreover, Michigan Wisconsin's gas customers will directly benefit from the Weston service in a manner unknown to Staff and the Examiner when the Examiner's decision was issued. As set forth in the Commission's order issued June 23, 1964, 31 FPC 1579, in Docket No. G–18419, *et al.*, Michigan Wisconsin has agreed to reduce its presently effective rates by $310,000 should we authorize the Weston service. Thus, by virtue of the Western service, Michigan Wisconsin's customers will receive the immediate and direct benefit of this rate reduction.

The record also discloses other circumstances that favor granting the Weston service. It is clear that there is on Michigan Wisconsin's system this considerable volume of gas which, if it were not used for the Weston service, might not be sold at all. Also, nearly one-third of the total estimated 1964–65 Weston deliveries would consist of ACQ gas on which the demand charge would already have been paid and it would be anomalous to deny the right to resell such gas. Further, we note that Michigan Wisconsin makes no large, direct industrial sales as do many other pipelines, and that comparatively little of the gas sold on its system is destined for boiler fuel usage for generating electricity. Also, it appears that the Weston service may help relieve take-or-pay and prepayment problems on Michigan Wisconsin's system. In sum, authorization of the Weston service, by providing flexibility and in other ways, should contribute to the efficient and economic operation of Michigan Wisconsin's system.

Second, the detriments of the Weston service urged by Staff do not, in our opinion, warrant denying it. Although we have traditionally opposed service involving the use of gas for the generation of steam for electric power generation, we have authorized such service when substantially justified, as the Weston service is. However, Staff is properly concerned with the possibility that the Weston service might exhaust Public Service's ACQ entitlement early in the heating season and thereby require the curtailment of firm service on Michigan Wisconsin's system, with the effect of preferring the Weston service over such firm service.[3] Michigan Wisconsin contends that its revised procedures for authorizing and billing overrun gas will avoid any such possibility in the future.

[3] As Staff points out, in the 1962–63 heating season, Michigan Wisconsin had to interrupt Weston deliveries to Public Service for 20 days at a time when Michigan Wisconsin had drawn down its storage to a point where it was forced to limit its customers to 70 percent of their contract entitlements.

However, in our view, the importance of preventing such an occurrence justifies attaching to Michigan Wisconsin's certificate a condition aimed at precluding this possibility, as more fully set forth in paragraph (B) (ii) and (iii) of the order hereto. In addition, further consideration will be given to this problem in the Commission's pending investigation of Michigan Wisconsin's rates in Docket No. RP65-2, *et al.*, where we shall consider the issues enumerated in our order issued August 31, 1964, 32 FPC 676, instituting that investigation, which include the same tariff questions that caused Staff concern in this proceeding.

Third, in the light of the considerations described hereinabove, and the grounds for distinguishing the *Northern Natural* and *Transco* decisions discussed by the Examiner, those cases do not require denial of the Weston service.

Finally, in granting a certificate for the Weston service, we rely only upon the above public interest considerations, and not upon the argument that the company might deliver gas to Public Service for boiler fuel by facilities previously authorized and so avoid our passing on the propriety of such service.

Oral argument is not necessary and Michigan Wisconsin's motion for the same should be denied.

The Commission further finds:

(1) Michigan Wisconsin, applicant herein, is a "natural-gas company" within the meaning of the Act, and is subject to the jurisdiction of the Commission. Likewise, applicant's facilities for the Weston service, which will be used for the transportation of natural gas in interstate commerce, are subject to the jurisdiction of the Commission, and the construction and operation thereof by applicant are subject to the requirements of subsections (c) and (e) of Section 7 of the Act.

(2) Applicant's facilities for the Weston service and the transportation and delivery of natural gas thereby, as described hereinabove and in its application, are required by the public convenience and necessity. Likewise, applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules and regulations of the Commission thereunder.

(3) The public convenience and necessity require that the certificate hereby issued be made subject to the conditions hereinafter prescribed, including the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of the Commission's Regulations under the Act.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued authorizing Michigan Wisconsin Pipe Line Company to construct and operate the facilities and engage in the transportation of natural gas in interstate commerce described hereinabove and in the company's application, upon the terms and conditions of this order.

(B) The following conditions shall attach to the certificate hereby issued and to the exercise of the rights thereunder:

(i) Michigan Wisconsin shall comply with paragraphs (a) and (e) of Section 157.20 of the Commission's Regulations under the Act.

(ii) The service hereby authorized shall be curtailed or interrupted whenever the existing or future capacity or supply requirements of Michigan Wisconsin for maintaining adequate underground gas storage balances and service to the firm segment of its resale customers for domestic and commercial use so require.

(iii) Michigan Wisconsin shall report to the Commission as of June 1 of each year the number of days on which service to the Weston Plant was

curtailed or interrupted during the preceding 12 months, together with the date and the estimated volume in Mcf of each such curtailment or interruption. Said report shall be filed by June 30 of each year, subject to further order of the Commission.

(C) The Presiding Examiner's initial decision issued herein on May 7, 1964, is modified as hereinabove set forth and as so modified is, to the extent consistent herewith, adopted as of the date of this opinion and order, to comprise herewith the Commission's decision in this case.

(D) Except to the extent herein granted, exceptions to the Examiner's decision are denied.

(E) Michigan Wisconsin's motion for oral argument is denied.

INITIAL DECISION
OF THE PRESIDING EXAMINER ON ISSUANCE OF CERTIFICATE

(Issued May 7, 1964)

FRIEDOURG, *Presiding Examiner:* The facilities for which Michigan Wisconsin Pipe Line Company is here seeking authorization consist of a sales meter and approximately three-quarters of a mile of eight-inch pipe from the meter to a tap on the company's pipeline, so as to provide a delivery point to Wisconsin Public Service Corporation ("Public Service"). The facilities would make gas available to Public Service's Weston station, an electric generating station where the gas would be used as boiler fuel.

The facilities are already in existence, having been built in 1960 at a cost of $48,655 and service having commenced in December of that year. In September, 1961, certain coal interests [1] petitioned the Commission for an order directing Michigan Wisconsin to show cause why it should not be required to apply under Section 7 of the Natural Gas Act for a certificate authorizing the construction. For over two more years no action was taken. On October 30, 1963, 30 FPC 1138, the Commission issued an order (in Docket No. CP62-57) directing the pipeline to show cause why it should not be required to make such an application and prohibiting the use of the facilities until further order. Deliveries to Weston stopped and have not been resumed.

The pipeline did not contest the merits of the show-cause order, but instead filed an application for authorization of the facilities, which application is the subject of the present proceeding. Several distribution companies in addition to Public Service intervened, as did the Public Service Commission of Wisconsin. The coal interests were granted intervention, but withdrew before the hearings commenced. The only opposition to the application came from the Commission staff.

The attempts to show that the proposal is or will be required by the public convenience and necessity relate to their effects on the proposed consumer, that is, Public Service, and on the proposed supplier, Michigan Wisconsin.

I. Effects On Wisconsin Public Service.

In 1960 Public Service, which is one of Michigan Wisconsin's larger customers, constructed at a cost of $116,523 two and one-half miles of pipeline from the Weston plant to connect with the facilities built by Michigan Wisconsin which are the subject of this application. The purpose was to use in a new unit in its

[1] Fuels Research Council, Inc., National Coal Association, United Mine Workers of America and Midwest Coal Producers Institute, Inc.

Weston electric generating plant some of the gas available to it from Michigan Wisconsin.[2]

Public Service has available to it other methods of using the gas it proposes to use at Weston. The alternative methods do not require a certificate from this Commission.

One of the alternatives is to use, in its Pulliam station, gas received at its Green Bay, Wisconsin, delivery point. Coal destined for Pulliam is water-borne from ports on Lake Michigan or Lake Erie, while that for Weston comes overland. The former is less expensive than the latter. Consequently, the savings available to Public Service by burning gas instead of coal at Weston are greater than by doing so at Pulliam. The savings from burning gas instead of coal at Weston are about 5.6 cents per Mcf. At Pulliam they would be about 1.63 cents per Mcf. Moreover, to install the requisite equipment at Pulliam would require the expenditure of approximately $360,000, compared with the $116,523 investment at Weston.

Another alternative would be for Public Service to build a line from Stevens Point, Wisconsin to the Weston plant. It is already receiving gas at Stevens Point, so no further authority would be needed—the delivery point is already authorized. However, to bring the gas from Stevens Point to Weston it would be necessary to install a 23-mile line, the cost of which would approximate one million dollars.

The staff of the Commission nevertheless opposes issuance of the certificate for several reasons having to do with Public Service, aside from those relating to Michigan-Wisconsin, which are discussed in the succeeding section of this decision. Indeed, staff claims that Public Service has shown more reason for the denial of the certificate than for its approval.

It urges first that Public Service's gas customers are not receiving the benefit of the economies realized at Weston, because these gas customers are paying all the demand charges on the gas used there, with the result that most of Public Service's electric rate reductions in the past year and a half are attributable to the reduced price of gas, while the much smaller reductions which have taken place in gas rates are totally unrelated to the use of gas at Weston.

The examiner makes no decision as to the validity of this claim. Staff does not contest the statement of Public Service's witness, supported by an exhibit, that the use of gas at Weston has produced savings of over $400,000 per year for Public Service. The company-wide unit cost of gas was 40.3 cents per Mcf while purchasing gas for Weston, compared to 44.3 cents when not doing so. It is not the amount of the benefit that is disputed, but the propriety of the company's handling of that benefit, *i.e.*, the distribution of the saving among its customers.

That apportionment is under the jurisdiction not of this Commission but of the Wisconsin Public Service Commission. The latter agency is keenly aware of its responsibilities in that regard, as is shown not only in its brief but in a letter dated January 13, 1964, to the Secretary of this Commission. The letter,

[2] Under Michigan Wisconsin's tariff each customer is entitled to a maximum daily quantity of gas (MDQ) and also to an annual contract quantity (ACQ) equal to 190 times the MDQ. The contract year runs from September 1 through August 31. The customer may take his full MDQ on any day from November through February, 85 percent of his MDQ during the first 15 days of March and 75 percent of his MDQ from March 16 through October 31. In addition to these daily and annual volumes, Michigan Wisconsin's rate schedule OS–1 provides for the authorization by the pipeline of overrun gas on either a daily or annual basis. That is, a customer may be authorized to exceed his contract demand on any day or his ACQ in any year.

signed by the chief counsel of the State commission, reads in pertinent part as follows:

> Although we do not plan to have representation at the hearing, we are writing so that it would not be assumed therefrom that the Public Service Commission of Wisconsin is not interested in the matters to be considered.
>
> Under the Wisconsin Statutes which are administered by the Wisconsin Commission every public utility is required to provide reasonably adequate utility service at just and reasonable rates. The instant case involves not only the availability of natural gas but has a bearing upon not only the rate for natural gas service but also affects the rates of Wisconsin Public Service Corporation for electric energy since the use of natural gas for generation of electric energy at the Weston Plant affects the cost of electric service as well as the natural gas rate.

The agency's brief, furthermore, correctly states that

> The regulation of the retail gas and electric rates and service provided by Wisconsin Public Service Corporation is a matter for the Wisconsin Commission.

It is entirely proper for the Federal Power Commission to take note of the amount of savings that a proposed project will generate for the distribution companies served by a pipeline. How these savings are distributed among the distribution companies' customers is plainly the concern of the agency having jurisdiction over the distribution companies' rates and service. This Commission has so held, *Transcontinental Gas Pipe Line Corporation*, 11 FPC 605, 611; *Midwestern Gas Transmission Company*, 21 FPC 653, 661, and the contrary interpretation would violate the whole scheme of the Natural Gas Act. The point raised by staff is not properly for this Commission at all.

Staff's next objection, as regards the effect of the proposal on Public Service, is that Public Service can sell its unused ACQ gas without having to use it as boiler fuel at Weston. Staff urges that Public Service sell any excess ACQ to interruptible customers and points to four potential customers with total estimated requirements of 8.6 MMcf annually to whom it might be sold. However, staff concedes that it would take "some time" to sell this gas to these customers, and the record is bare of any evidence as to the price at which it could be sold to them. Obviously, if Public Service were desperate to sell its excess ACQ quickly, it could cut its interruptible rate to the point where the potential customers would become actual customers. If it did this, it would necessarily lose revenue from presently existing interruptible customers. The record gives no basis for calculating the amount of any such loss. Neither does it indicate that Public Service has been remiss in its search for interruptible customers at present prices, or that contracts can be negotiated at these prices at this time. The company's witness, on whose testimony staff relies in this respect, was hopeful that sales of some of this gas could be made, but could not say when. Consequently the record provides no basis for the conclusion that the Weston connection should be denied because of likelihood that the gas could be sold elsewhere.

Staff's third objection relating to Public Service is that the use of gas at Weston during the coldest months "may present problems" in the event that all of the ACQ gas available for Weston may be used up before Michigan Wisconsin makes overrun gas available under its recently-adopted procedure. Because Public Service contracts for an MDQ sufficient to serve its estimated firm peak-day requirements, and because its ACQ is fixed thereby, as noted earlier herein, its ACQ is not exactly geared to the amount of its customers' firm annual requirements but in fact exceeds those requirements. The ACQ is used first to

cover the firm requirements of Public Service's customers and then to cover the needs of interruptible customers. The balance of the ACQ, plus overrun received from Michigan Wisconsin, would be used at Weston. It is estimated that this balance of the ACQ will amount to 2,131,500 Mcf in the 1964–5 heating season, and that 4,669,000 Mcf of overrun will be available, making a total of 6,800,500 Mcf.

The fear that difficulties may arise from possible unavailability of ACQ gas at a time of year when the pipeline has not yet authorized any overrun does not appear to have substantial basis. The record shows that the pipeline has available to it some 5.9 MMcf of firm supplies of gas which it is obligated to sell to firm customers, but which those customers may be expected not to take because their MDQ requirements cause them to contract for more gas than they can use on an annual basis. Some of this excess will be supplied to Public Service on an overrun basis. In addition, the pipeline has available to it substantial volumes of overrun gas that it can buy from its suppliers and resell as overrun.

In any event, the possibility that gas deliveries to Weston may be interrupted with the result that coal may have to be used, is not a serious objection to the grant of a certificate. Should this occur, as it did during the 1962–3 season, neither Public Service nor its customers would be any worse off than if no connection were established, and as long as it does not occur they would benefit.

Staff's final objection with respect to the effect of the proposal on Public Service relates to the use of the gas at Weston as boiler fuel. In support of its position it relies principally on the Commission's Opinion No. 388 in *Northern Natural Gas Co.*, 29 FPC 1025, on *Transcontinental Gas Pipe Line Corporation*, 11 FPC 615 and *Transcontinental Gas Pipe Line Corporation*, 21 FPC 138, affirmed *F.P.C.* v. *Transcontinental Gas Pipe Line Corporation*, 365 U.S. 1.

Its reliance is misplaced. In the *Northern Natural* case the benefits to the customer company were found to be insignificant. The increase in its *gross* revenues would be only $40,000, whereas in the instant case there is an undisputed *saving* of $400,000.[3] It concluded that the $40,000 increase in gross was not so substantial a benefit as to justify the sale. This conclusion can hardly govern a situation where the saving is ten times as large as the gross revenue increase was there. But of even greater interest are the fact that the Commission did grant the certificate in *Northern Natural* and its reasons for doing so. The application was for authority to deliver gas to Minneapolis Gas Co., which would resell it to Northern States Power Co. on an interruptible basis for use as boiler fuel. The Commission said (29 FPC at 1027):

> * * * Northern is requesting authority simply to establish a new delivery point to an existing customer. Were it not for the geographical situation existing here, Minneapolis could make this sale to Northern States without filing any application or even notification with this Commission. * * *

The same is true in the present case. The alternatives of using the gas at Pulliam or of building a line from Stevens Point would need no certification from this Commission. Despite staff's effort to distinguish *Northern Natural* as involving merely the question of whether the Commission should authorize the same facilities to be used for making a jurisdictional instead of a nonjurisdictional sale, the fact remains that in the instant case Public Service will obtain this gas one way or another and will use it for boiler fuel, so that the distinction is a shadowy one. The basic question here is whether the most economical method of using the gas shall be permitted or whether the company shall be relegated to more expensive procedures.

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[3] Public Service's 1962 annual report to stockholders, which forms part of the record, shows net income of $8,054,457 for the year.

In *Transcontinental Gas Pipe Line Corporation*, 11 FPC 615-6, the Commission inserted into the examiner's order a provision requiring that the transportation and delivery which it authorized be made subject to the storage requirements of other customers of the pipeline which had a shortage of storage facilities. No customer of Michigan Wisconsin has suggested any parallel provision here. Those customers who have appeared support the proposal. At most, the *Transco* provision would become effective only in a future contingency. There was no denial of a certificate in the *Transco* case and there is no showing that any like provision would be appropriate here.

The other *Transco* case relied on by the staff, 21 FPC 138, rested on different considerations. There the proposed transportation of gas for sale as boiler-fuel would have preempted pipeline capacity "* * * which would otherwise be available to meet more urgent and widely beneficial public needs * * *", 21 FPC at p. 141, and the case further involved broad questions of regulatory policy and statutory interpretation. There is no question in the present case of any preemption of pipeline capacity. Delivery of the gas on an interruptible basis, whether at Weston, at Pulliam or through Stevens Point, would not affect Michigan Wisconsin's ability to make other sales. Nor are there present here the broad policy questions that were present in the *Transco* case.

It may furthermore be noted that staff's apparent opposition to boiler-fuel sales is inconsistent with its argument that the development of potential interruptible customers over a period of years would be preferable to issuing the requested certificate. The potential customers whom staff would prefer would also use the gas as boiler fuel.

II. Effects on Michigan Wisconsin Pipe Line.

Michigan Wisconsin has several sources for the gas proposed to be sold at Weston. First, gas is allotted to each new market on the basis of estimated third-year requirements, so that for the first two years the allotment may be expected to exceed the actual take, thus creating an excess supply on Michigan Wisconsin's line. Second, some of its customers (including Public Service) do not use their full ACQ because, as noted earlier in this decision, they must nominate an MDQ sufficient to cover their maximum daily firm requirements, which gives them an ACQ in excess of what they can sell. Third, the pipeline has had gas supply deficiencies and prepayments requiring additional deliveries to it as make-ups. Fourth, its suppliers from time to time have excess gas available above their contractual commitments to the pipeline.

During the three years when deliveries were being made to the Weston Plant (*i.e.*, before the present application was submitted) they amounted to about 6,300,000 Mcf in each year. It is probable that they will approximate 6,800,000 Mcf in the future. The first of the sources of overrun gas mentioned in the preceding paragraph—the inability of new markets to use their third-year requirements in the first and second years—accounted for 18,400,000 Mcf becoming available in the 1960-61 contract year, 12,200,000 Mcf in 1961-62 and 9,600,000 Mcf in 1962-63.

With respect to the second source of surplus gas, staff spent considerable effort to show that Michigan Wisconsin is buying firm gas so as to be able to sell overrun gas at Weston. Michigan Wisconsin contracts with its suppliers on a firm daily basis for amounts which are tied in to its customers' ACQ, which represent its firm obligations to sell. To the extent that some of its purchase commitments are available because its customers requirements are less than their ACQ, a portion of that unused ACQ becomes available to other customers as overrun without the incurrence by Michigan Wisconsin of additional demand charges from its suppliers.

As to the third source, the deficiencies in Michigan Wisconsin's takes were 11,600,000 Mcf in 1960–61, 17,200,000 Mcf in 1961–62, and 19,200,000 Mcf in 1962–63. Without the sales at Weston these amounts would have been higher. Some of these deficiencies must be paid for and if not made up in the next several years are lost. Other contracts allow a two-year make-up period after which all deficiencies must be paid for. A decline in Michigan Wisconsin's sales because of a warm winter, or because of smaller industrial business, cannot be fully covered by a cut in its purchases. It is desirable from the pipeline's viewpoint that such loads as the Weston load be available to it.

The fourth source of gas for Weston—interruptible gas from its suppliers—will also be substantial in amount. The volume in the case of Midwestern Gas Transmission Company alone may be expected to approximate 8,000,000 to 10,000,000 Mcf annually. Thus, it would appear that the supply will be more than adequate to take care of the demand from the Weston plant.

It appears also that the sales will prove profitable to Michigan Wisconsin. It is undisputed that they have been so in the past—the dispute relates only to the amount. The pipeline claims that in the three years during which the Weston project was in operation there was an excess of $1,189,912 of revenues over cost of service, which includes a negligible amount ($4,488) attributable to the Federal income taxes associated with a net return of 6½ percent on the net investment in the project. The staff would consider as part of the cost of service attributable to the project $618,754 (52 percent of $1,189,912) for Federal income taxes on the earnings produced by the project.

Even staff's calculation would show a three-year profit of $579,464 (after an adjustment of $8,286) on the pipeline's $48,655 investment. In deciding the economic feasibility of the project it makes no difference which method is accepted. The project is clearly feasible. This conclusion is reinforced by the fact that staff's estimate of taxes is high because of its use of a now out-of-date tax rate, and by the further fact that probable earnings for the 1964–65 contract year are substantially in excess of the average for the past three years of actual operations.

In judging the benefit to the public, however, the staff's method is erroneous and the company's correct. The purpose of a feasibility study is to determine the extent to which a project can pay its own way and, hopefully, help defray existing system costs. If it be assumed that the company is earning a maximum fair return on its entire rate base, any excess above a fair rate of return on the project rate base will constitute earnings which should be offset by rate reductions. To relate excess project earnings to indicated system rate reductions, it is necessary that the project tax allowance be computed in the same way as would the system tax allowance in a general rate proceeding, that is, by computing taxes on the permitted return on the rate base that produced the earnings. Only in that way can the economic benefit of the project to the public be measured.

Staff raises a more serious objection in its challenge to the pipeline's method of calculating the cost of the gas that would be used at Weston. The pipeline's forecast of a $537,358 margin of revenues over cost of service for the year 1964–65 is based on an estimated cost of $1,368,000 for gas. The estimate is arrived at by multiplying the volumes of gas to be taken from each source of supply by the commodity rate for gas from that source. This gives a total commodity charge of $65,267,000 for the 324,332,000 Mcf which the pipeline will take, or an average commodity charge of 20.12 cents per Mcf. This, applied to 6,801,000 Mcf of Weston sales, gives a total estimated cost of gas of $1,368,000 associated with sales to the Weston plant.

Staff argues that the commodity charge is not the true measure of cost. Arguing that demand charges should be taken into account, it points out that Michigan Wisconsin's average cost of gas approximates 24.5 cents per Mcf, and that use of this figure would result in a total gas cost of $1,666,000 for Weston sales instead of the $1,368,000 claimed by the company.

Even on the basis of staff's cost-of-gas figures there would be a margin of $239,358 in revenues over cost of service. The staff's method is, however, of dubious validity. To the extent that gas is made available at Weston by reason of the fact that certain customers are unable to take all of their ACQ, demand charges should not be added in to the cost of Weston sales. Demand charges have already been paid by those customers and on the gas they do not take the pipeline would have to recover only its commodity charges, not its demand charges. It seems clear that the pipeline will have an excess of revenues over costs well in excess of the $239,358 figure just mentioned. If such a return on an investment of $48,655 is marginal, as staff attempts to show, it is hard to see how such an investment could ever be justified.

FINDINGS AND CONCLUSIONS

The examiner finds and concludes, in addition to the findings and conclusions hereinbefore stated:

(1) Michigan Wisconsin Pipe Line Company, applicant herein, is a "natural-gas company" within the meaning of the Natural Gas Act, and is subject to the jurisdiction of this Commission.

(2) The applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules and regulations of the Commission thereunder.

(3) The proposed facilities and service are and will be required by the public convenience and necessity.

ORDER

WHEREFORE, IT IS ORDERED, in accordance with Section 7(e) of the Natural Gas Act that a certificate for the facilities and service herein applied for be and it hereby is granted to the applicant.

ARTHUR H. FRIBOURG,
Presiding Examiner.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

CERTIFICATE OF SERVICE, DOCKET NO. R-267

ORDER NO. 287

AMENDING §§ 1.17(e), 131.1, 250.1 OF, AND ADDING § 1.51 TO, THE COMMISSION'S REGULATIONS

(Issued September 14, 1964)*

Section 1.17(e) of the Commission's Rules of Practice and Procedure requires that a certificate of service be attached to the original of each pleading, docu-

*Published in the Federal Register on September 19, 1964 (29 F.R. 13101).

ment or other paper filed with the Commission. Such certificate is to be in the form prescribed by §§ 131.1 and 250.1 of the Regulations under the Federal Power and Natural Gas Acts, respectively. It has been suggested, and the Commission agrees, that the existing form which requires the listing by name and address of all the persons certified to have been served is both uneconomical and superfluous. We are, therefore, here providing for a certificate in general terms in lieu of the one heretofore prescribed. For convenience, we are including the form in the Rules of Practice (§ 1.51) in addition to the two sections of the Regulations where it is now set out.

The Commission finds:

(1) Since the amendments adopted herein involve matters of Commission practice and procedure, the notice, hearing and effective date requirements of section 4 of the Administrative Procedure Act are not applicable.

(2) The adoption of these amendments are necessary and appropriate to carry out the provisions of the Federal Power Act and the Natural Gas Act.

The Commission, acting pursuant to authority granted by the Federal Power Act, particularly sections 308 and 309 thereof (49 Stat. 858, 16 U.S.C. 825g, 825h) and the Natural Gas Act, particularly sections 15 and 16 thereof (52 Stat. 829, 830, 15 U.S.C. 717n, 717o), *orders:*

(A) Section 131.1 of Subchapter B and section 250.1 of Subchapter G, Chapter I, Title 18 of the Code of Federal Regulations are amended by deleting the present text and inserting in lieu thereof the following:

"§ 131.1 [§ 250.1] Certificate of service.[1]

(See § 1.17 of this chapter.)

"I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of § 1.17 of the Rules of Practice and Procedure.

Dated at _____ this ___ day of _____, 19___.

_____

(Signature)

Of counsel for

_____"

(B) Part 1, Subchapter A, Chapter I, Title 18 of the Code of Federal Regulations is amended as follows:

1. Section 1.17(e) is amended by inserting "§ 1.51" therein. As so amended, the paragraph will read as follows:

"(e) *Certificate of service.* There shall accompany and be attached to the original of each pleading, document, or other paper filed with the Commission, when service is required to be made by the parties, a certificate of service in the form prescribed by §§ 1.51, 131.1 and 250.1 of this chapter. All other copies filed shall be fully conformed thereto."

2. Add a new § 1.51 to read as set out in ordering clause (A) hereof.

[Secs. 308, 309, 49 Stat. 858, 16 U.S.C. 825g, 825h; secs. 15, 16, 52 Stat. 829, 830, 15 U.S.C. 717n, 717o.]

(C) The amendments herein adopted shall become effective upon the issuance of this order.

(D) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

[1] To be shown on the original when tendered for filing with the Commission of every paper as specified in § 1.17(b) of this chapter.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRIBUNE OIL CORPORATION, DOCKET NO. G-17709

ORDER ACCEPTING OFFER OF SETTLEMENT AND TERMINATING PROCEEDINGS

(Issued September 14, 1964)

On June 26, 1964, Tribune Oil Corporation (Tribune) submitted an offer of settlement in this proceeding pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure.[1] The offer involves a proposed increased rate for sales of natural gas made to Texas Gas Transmission Corporation (Texas Gas) by Tribune. The increased rate reflected in Supplement No. 4 to Tribune's FPC Gas Rate Schedule No. 8 was suspended due to a dispute as to the proper amount of tax reimbursement contractually authorized as a part of the increased rate. In its offer of settlement, Tribune proposes to refund the disputed tax reimbursement amounts, with interest. The estimated total refund approximates $1,120, exclusive of interest. The proposed settlement is in the public interest and should be accepted.

Our action herein should not be construed as constituting approval of any future rate increase that may be filed under the subject rate schedule, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Tribune's rate and rate schedule.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Tribune on June 26, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Tribune on June 26, 1964, is hereby approved in accordance with the provisions of this order.

(B) Tribune shall refund to Texas Gas the difference between the rates collected under the rate schedule herein and the settlement rate for sales made from December 1, 1958, through December 31, 1961, together with interest at 6% per annum until the date of payment, and shall report to the Commission, in writing, within 30 days from the date of issuance of this order, the amount of such refund, showing separately the amount of principal and interest, and the bases used for such determination, together with a release from Texas Gas.

(C) Upon notification by the Secretary of the Commission that Tribune has complied with the terms and conditions of the order, specified in its offer of settlement, the above designated proceeding shall be terminated.

(D) The acceptance by the Commission of Tribune's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Tribune's, including area rate or other similar proceedings.

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[1] The offer of settlement was tendered by Maracaibo Oil Exploration Corporation, but pursuant to Tribune's request it was, on July 21, 1964, substituted for Maracaibo as respondent in this proceeding and accepted all of Maracaibo's refund obligations therein.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

WISCONSIN MICHIGAN POWER COMPANY AND KINGSFORD COMPANY, PROJECT NO. 2131

ORDER DETERMINING ACTUAL LEGITIMATE ORIGINAL PROJECT COST, NET CHANGE THEREIN, ACCRUED DEPRECIATION, NET CHANGE IN ACCRUED DEPRECIATION AND PRESCRIBING ACCOUNTING THEREFOR

(Issued September 14, 1964)

Wisconsin Michigan Power Company and Kinsgford Company, licensees for Project No. 2131, filed initial statements pursuant to Section 4.20 of the Commission's Regulations under the Federal Power Act, claiming an actual legitimate original project cost as of November 1, 1953, in the amount of $1,901,635.33 and accrued depreciation as of that date of $665,463.65.

A license was issued on October 23, 1953, 12 FPC 1325, for a period effective from January 1, 1938 and terminating June 30, 1974, jointly to Wisconsin Michigan Power Company (Wisconsin-Michigan) and Kingsford Chemical Company, (now Kingsford Company), for the operation and maintenance of the project. The project consists of the Kingsford Hydroelectric Plant, located on the Menominee River, in Florence County, Wisconsin, and Dickinson County, Michigan. It includes a dam, powerhouse, and appurtenant facilities. The license provides for the subsequent addition to existing project facilities of necessary transmission facilities to connect the project works to Wisconsin-Michigan's system.

The project was constructed by the Ford Motor Company and its subsidiary, Ford Hydro-Electric Company, and was placed in operation in 1924. In December, 1951, the plant and the capital stock of Ford Hydro-Electric Company were sold, along with other property of Ford Motor Company to the Kingsford Chemical Company. In Docket No. E-6491, *Wisconsin Michigan Power Company* 12 FPC 1318 (1953) Wisconsin Michigan Power Company was authorized pursuant to Section 203 of the Federal Power Act to acquire the project from Kingsford Company through a purchase agreement dated February 26, 1953 which provided for a total payment of $1,522,000, consisting of an initial amount and a series of annual payments based upon an agreed amount per kwh of annual output of the plant (with a minimum annual guarantee) for a period of 12 years from March 1, 1953. Of the total payment, $1,253,280 was regarded as principal and the balance was regarded as interest. The license, issued simultaneously with the above order in Docket No. E-6491, provided for a subsequent application for transfer to Wisconsin-Michigan of all interests in the license granted upon due performance of all the terms and conditions of the purchase agreement by that Company and the Kingsford Company.

Wisconsin Michigan's application for acquisition of the hydro-electric facilities, proposed that any excess of original cost of the facilities to be acquired over the principal consideration of $1,253,280 to be paid be credited to a reserve for depreciation. The claimed provision for accrued depreciation as of November 1, 1953, includes $651,305.33 attributable to such excess and $14,158.32 accrued from March 1, 1953 to November 1, 1953.

The Commission staff conducted field studies of the books and records of Licensees and of the Ford Motor Company for the purpose of ascertaining the correctness of the claimed project costs and accrued depreciation as of November

1, 1953, and the project actual legitimate original cost and accrued depreciation as of January 1, 1938, the effective date of the license.

Following those studies tentative agreement, subject to Commission approval, was reached between the staff and Licensees' representatives with respect to certain proposed adjustments in the amounts as of November 1, 1953, indicated below:

	Claimed	Staff adjustments	Adjusted
Project cost	$1,901,635.33	$30,907.96	$1,932,543.29
Cost of nonproject property acquired	2,950.00	11,093.95	14,043.95
Total property acquired	1,904,585.33	42,001.91	1,946,587.24
Purchase cost	1,253,280.00		1,253,280.00

ACCRUED DEPRECIATION

	Claimed	Staff adjustments	Adjusted
Excess property acquired over purchase cost	$651,305.33	$42,001.91	$693,307.24
Accrued from 3/1/53–11/1/53	14,158.32		14,158.32
Accrued depreciation	665,463.65	42,001.91	707,465.56

These adjustments, and the resulting costs and depreciation as of November 1, 1953, concurred in by Wisconsin-Michigan by letter of July 14, 1961, Kingsford Company by letter of November 6, 1961, the Michigan Public Service Commission by letter of July 13, 1964, and the Wisconsin Public Service Commission by letter of July 1, 1964, are detailed in the attached Schedules 1, 2 and 3 and the accounting disposition of the adjustments as of November 1, 1953, with correcting journal entries are shown in attached Schedule 4.

The Commission finds:

(1) Licensees by their acceptance of the proposed adjustments, including the accounting dispositions and resulting respective project costs, project reserves for depreciation and project net investments, and the Michigan and Wisconsin Public Service Commissions, by their concurrence in the staff recommendations herein, have obviated the necessity for the notice and opportunity to protest, provided by Sections 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act.

(2) The foregoing adjustments, including the accounting dispositions, are reasonable and appropriate for the purposes of the Federal Power Act and therefore should be approved and directed as hereinafter provided.

(3) The actual legitimate original project cost as of November 1, 1953 is $1,932,543.29 and accrued depreciation as of that date is $707,465.56, classified by primary plant accounts as shown in Schedule 1.

(4) The actual legitimate original project cost as of January 1, 1938, the effective date of the license, is $1,932,428.16 classified by primary plant accounts and accrued provision for depreciation as of that date is $272,653.15 as shown in Schedule 1.

(5) The net increase or change in project cost for the period January 1, 1938 to November 1, 1953 is $115.13 and the net increase or change in accrued provision for depreciation is $434,812.41.

The Commission orders:

(A) The provisions of Sections 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act are hereby waived for the purpose of this order.

(B) The adjustments and accounting dispositions proposed by the staff and agreed to by the Licensees are hereby approved and directed to be made by Licensees.

(C) Licensee Wisconsin-Michigan to the extent that it has not already done so shall establish and maintain control and detailed project plant accounts, for Project No. 2131 showing (1) the initial debit balance as of January 1, 1938 of $1,932,428.16 as the actual legitimate original project cost; (2) the credit balance as of that date in accrued provision for depreciation of $272,653.15; (3) the net increase or change in project cost for the period January 1, 1938 to November 1, 1953 in the net debit amount of $115.13 and the increase or change in accrued provision for depreciation for that period in the credit amount of $434,812.41; and (4) the actual legitimate original project cost as of November 1, 1953 in the debit amount of $1,932,543.29 and accrued depreciation as of that date in the credit amount of $707,465.56 all as shown more specifically in the attached Schedule 1.

(D) Licensee Wisconsin-Michigan shall, within 90 days from the issuance of Commission's order, file with the Commission three certified copies of Licensee's FPC Form No. 7 and adjusting journal entries showing compliance with this order.

SCHEDULE 1

Actual legitimate original cost and accrued depreciation as of January 1, 1938, net additions to November 1, 1953, and balance as of November 1, 1953

[Project No. 2131, (Kingsford) Wisconsin Michigan Power Co. and Kingsford Chemical Company, Licensees

Account			Changes January 1, 1938 to November 1, 1953, Ford Motor Co. Records [2]				
No.	Title	Original cost January 1, 1938 [2]	Gross Additions	Gross Retirements	Retained by Kingsford Chemical Co.	Net change	Original cost as of November 1, 1953 [1]
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
330	Land and Land Rights	$249,329.45	$1,884.34	($404.50)	($103.09)	$1,376.75	$250,706.20
331	Structures and Improvements	230,327.67	1,300.00	(2,125.51)	----------	(825.42)	229,502.25
332	Reservoirs, Dams and Waterways	994,021.34	5,316.79	(78.11)	----------	5,238.68	1,000,160.02
333	Water Wheels, Turbines and Generators	324,643.34	5,434.86	(3,500.00)	----------	1,934.86	326,578.22
334	Accessory Electric Equipment	111,530.22	----------	----------	7,948.31	(7,948.31)	103,581.91
335	Miscellaneous Power Plant Equipment	21,676.14	338.55	----------	----------	338.55	22,014.69
	Total Costs	1,932,428.16	14,274.65	(6,108.12)	(8,051.40)	115.13	1,932,543.29
	Project Accrued Depreciation, Production Plant	(272,653.15)	----------	----------	----------	(434,812.41)	[3] (707,465.56)

[1] See Schedule 2 Column (10).
[2] At this date the property was owned by Ford Motor Company.
[3] Consists of:

Excess of Original Cost of property acquired over principal amount (Sch 2 Col. 6)	$693,307.24
Plus depreciation accrued from 3/1/53 to 11/1/53	14,158.32
Total	707,465.56

( ) Denotes Credit.

SCHEDULE 2

Actual legitimate original cost as of November 1, 1953, the cost of all properties acquired from Kingsford Chemical Company and the excess of the original cost of such properties over purchase cost

[Project No. 2131 (Kingsford), Wisconsin Michigan Power Company and Kingsford Chemical Company, Licensees]

ACCOUNT		As claimed	Adjustments to Claimed Cost			Allocation of Indirect and Overhead Construction Costs			Original cost after allocation
No.	Title		Reclassification	Adjustments	Adjusted Original Cost	Indirects	Subtotal	Overheads	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
	Direct Costs								
320	Land and Land Rights	$274,899.25		($24,193.05)	$250,706.20		$250,706.20		$250,706.20
321	Structures and Improvements	384,402.46	($204,885.23)	2,200.71	181,717.94	$24,192.70	205,910.64	$23,591.61	229,502.25
322	Reservoirs, Dams and Waterways	511,596.18	204,885.23	75,436.85	791,918.26	105,430.65	897,348.91	102,811.11	1,000,160.02
323	Water Wheels, Turbines and Generators	258,581.88			258,581.88	34,425.84	293,007.72	33,570.50	326,578.22
324	Accessory Electric Equipment	82,015.28			82,015.28	10,918.96	92,934.24	10,647.67	103,581.91
325	Miscellaneous Power Plant Equipment	17,431.05			17,431.05	2,320.65	19,751.70	2,262.99	22,014.69
	Total Direct Costs	1,528,926.10		53,444.51	1,582,370.61	177,288.80	1,759,659.41	172,883.88	1,932,543.29
	Indirect Construction Costs								
61	Temporary Construction Facilities	202,443.96	(23,475.75)	(44,319.44)	134,648.77	(134,648.77)			
62	Construction Equipment	18,943.96			18,943.98	(18,943.98)			
63	Camp and Commissary	15,885.33			15,885.33	(15,885.33)			
66	Insurance, Injuries and Damages	7,810.72			7,810.72	(7,810.72)			
	Total Indirect Construction Costs	245,083.99	(23,475.75)	(44,319.44)	177,288.80	(177,288.80)			
	Overhead Construction Costs								
71	Engineering	127,625.24		21,782.89	149,408.13			(149,408.13)	
76	Administrative and General Expenses		23,475.75		23,475.75			(23,475.75)	
	Total Overhead Construction Costs	127,625.24	23,475.75	21,782.89	172,883.88			(172,883.88)	
	Total Indirect and Overhead Costs	372,709.23		(22,536.55)	350,172.68				
	Total Original Cost of Project Property	1,901,635.33		30,907.96	1,932,543.29				

110	Original cost of Nonproject Property	2,950.00		11,093.95	14,043.95				
	Total Original Cost of all Property Acquired in Purchase Contract of February 26, 1953	1,904,585.33		42,001.91	1,946,587.24				
	Purchase Cost	1,253,280.00			1,253,280.00				
	Excess of Actual Legitimate Original Cost of all Properties Acquired over Purchase Cost	651,305.33		42,001.91	693,307.24				

( ) Denotes Credit.

SCHEDULE 3

Summary of adjustments to claimed and recorded project costs and accounting disposition thereof as of November 1, 1953

[Project No. 2131 (Kingsford) Wisconsin Michigan Power Company and Kingsford Company, Licensees]

Adjustments			To Project Accounts						Accounting Dispositions		
No.	Description	Total	320 Land and land rights	321 Structures	322 Reservoirs, dams, and waterways	61 Temporary construction facilities	71 Engineering	76 Administrative and general expenses	Total	110 Other physical property	250.1 Project reserve for depreciation
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
1	Reconcile recorded cost to claimed cost	($2,950.00)	($2,950.00)						$2,950.00	$2,950.00	
	Adjustments to claimed cost										
2	Reclassifications within project accounts			($204,885.23)	$204,885.23	($23,475.75)		$23,475.75			
3	Correct claimed cost of project lands	(24,193.05)	(24,193.05)						24,193.05	11,093.95	$13,099.10
4	Adjust claimed cost to cost found in the books of original entry maintained by Ford Motor Company	55,101.01		2,200.71	75,436.85	(44,319.44)	$21,782.89		(55,101.01)		(55,101.01)
	Subtotal adjustments to claimed cost	30,907.96	(24,193.05)	(202,684.52)	280,322.08	(67,795.19)	21,782.89	23,475.75	(30,907.96)	11,093.95	(42,001.91)
	Total adjustments to recorded cost	27,957.96	(21,243.05)	(202,684.52)	280,322.08	(67,795.19)	21,782.89	23,475.75	(27,957.96)	14,043.99	(42,001.91)

( ) Denotes Credit.

SCHEDULE 4

Adjustments to claimed and recorded project cost as of November 1, 1953, and correcting journal entries

[Project No. 2131 (Kingsford) Wisconsin-Michigan Power Company and Kingsford Company, Licensees]

Account No. (1)	Particulars (2)	Debit (3)	Credit (4)
	Adjustment No. 1 Reconciled Recorded Cost to Claimed Cost		
110	Other Physical Property	$2,950.00	
320	Land and Land Rights		$2,950.00
	To properly classify in the books of account the cost of nonproject land and conform the books to the initial statement.		
	Adjustment No. 2 Reclassifications within Project Accounts		
322	Reservoirs, Dams and Waterways	204,885.23	
321	Structures and Improvements		204,885.23
76	Administrative and General Expenses	23,475.75	
61	Temporary Construction Facilities		23,475.75
	To reclassify the cost of the Powerhouse Substructure which is integral with the dam from Account No. 321 to 322 and Administrative and General Expenses improperly included in Account No. 61, Temporary Construction Facilities.		
	Adjustment No. 3 Correct Claimed and Recorded Cost of Project and Nonproject Lands		
320	Land and Land Rights		24,193.05
110	Other Physical Property	11,093.95	
250.1	Reserve for Depreciation	13,099.10	
	To adjust the claimed cost of lands and land rights to actual cost and to price the nonproject portion of such lands at the fair market value at time of acquisition.		

* * * * * * *

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

AREA RATE PROCEEDING, ET AL., DOCKET NO. AR64-1, ET AL.; BRIGHT & SCHIFF, DOCKET NOS. RI64-180 AND RI64-344

ORDER DENYING MOTIONS FOR CLARIFICATION AND TO SET ASIDE ORDER OF JULY 17, 1964

(Issued September 15, 1964)

There is presently before us for consideration motions filed on August 6, 1964, by Bright & Schiff, *et al.*, to clarify and to set aside the Commission's "Order Updating The Appendices To The Order Instituting Area Rate Proceedings," (32 FPC 141), issued July 17, 1964. That order added and deleted respondents and Section 4(e) rate proceedings to the consolidated Hugoton-Anadarko area rate proceeding and thereby supplemented our earlier order of November 27, 1963, which instituted the proceeding (30 FPC 1354).

Bright & Schiff seek to have their rate proceedings severed from the area rate proceeding and heard separately; their motions raise two reasons for setting aside the July 17 order:

(1) Docket Nos. RI64-180 and RI64-344 were consolidated with Docket No. AR64-1 without first affording Bright & Schiff notice of our order to consolidate and an opportunity to be heard concerning the consolidation, and

(2) Movants are opposed to consolidation because they "will be forced to serve copies of filings upon all other interested producers and interveners" and

that their cost of participation in the area rate proceedings will exceed the "small amount of rate increase requested in these dockets."[1] "Accordingly", they argue, our July 17, 1964 order, "amounts to nothing more than the taking of Bright & Schiff's property without compensation and without due process of law."

Movant's arguments will be discussed seriatim.

Commission records reveal that the increased rate filings involve natural gas sold in Texas Railroad Commission District No. 10 and that the proposed increased rates of 16.5¢ and 17.5¢ per Mcf exceed the area guideline rate of 11¢ per Mcf for increased rate promulgated by the Commission's Statement of General Policy No. 61–1. Moreover, the increased rate of 17.5¢ exceeds the guideline initial service rate of 17.0¢ per Mcf. Movants presently collect the increases (1¢ per Mcf in each docket) subject to refund and together they total approximately $770.00 annually.

Movant's first contention goes to the form and not the substance of Commission procedure. Both courts and administrative agencies normally reserve the right to consolidate proceedings presenting like matters where administrative convenience requires, without notice or hearing. Thus Section 1.20(b) of our rules provides: "The Commission *upon its own* motion[2] or upon motion by a party or staff counsel may order proceedings involving a common question of law or fact to be consolidated for hearing of any or all matters in issue in such proceeding."

Area rate proceedings were instituted because we found prior methods of producer regulations were virtually impossible to administer. The Commission, faced with the task of implementing a system of regulation to replace methods which have proven to be unworkable, now seeks to establish, by precedent, a new system in the structure of producer regulation.

Our objective has been clear from the outset—we are convinced that the area rate proceeding will result in genuine protection for the consumer and fair, expeditious regulation for the producers and processors of natural gas. The announced purpose of this area rate proceeding is to establish a just and reasonable rate or rates, under Section 5(a) of the Natural Gas Act, for all natural gas sold for resale in interstate commerce from the Hugoton-Anadarko area. Since this same "just and reasonable" statutory standard is equally applicable, as is the entire area rate concept, to *all* pending Section 4(e) rate increase proceedings, common sense and administrative feasibility compelled us to consolidate the instant proceedings for hearing and decision.

The only remaining question of importance to the Section 4(e) proceedings, once a just and reasonable area rate determination has been made, will be the amount of monies, if any, required to be refunded which were collected by the movants, and other Section 4(e) respondents subject to refund. Failure to consolidate could well create an intolerable administrative burden which, in turn, would be detrimental to the natural gas industry and the consumers it serves.

Addressing ourselves to movant's second argument relating to the merits of holding consolidated area rate proceedings we point out initially that the

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[1] Only pleadings and evidence relating to the area rate proceeding need be served on the parties. Copies of routine reports such as the monthly or quarterly statements concerning the increase in rates required by the Regulations Under The Natural Gas Act, Section 154.102(c), need not, of course, be served on all parties. Moreover, the service list distribution by the Secretary on August 10, 1964 (which superseded the one issued March 12, 1964) contains the names of parties specifically requesting copies of pleadings made in these proceedings. Other parties need not be served.

[2] Emphasis supplied throughout this order unless otherwise noted.

Supreme Court of the United States has encouraged the Commission in proceeding in this manner. *Wisconsin v. F.P.C.*, 88 S.C. 1266 (1963). Bright & Schiff have already been designated as Section 5(a) respondents in the Hugoton-Anadarko proceeding by virtue of our November 27, 1963 order. Present consolidation of their Section 4(e) applications, therefore, is a matter that works no additional hardship on movants. In discussing the powers granted under Section 5(a) of the Natural Gas Act, the Supreme Court in *United Gas Pipe Line Co. v. Mobile Gas and Service Corp.*, 350 U.S. 332 (1956) stated at page 341:

> Section 5(a) would of its own force apply to all the rates of a natural gas company, whether long-established or newly changed, but in the latter case the power is further implemented by Section 4(e). All that Section 4(e) does, however, is to add to this basic power, in the case of a newly changed rate or contract (except "industrial" rates), the further powers (1) to preserve the status quo pending review of the new rate by suspending its operation for a limited period, and (2) thereafter to make its order retroactive, by means of the refund procedure, to the date the change became effective. The scope and purpose of the Commission's review remains the same—to determine whether the rate fixed by the natural gas company is lawful.

In short, since movants have been designated as Section 5(a) respondents in the Hugoton-Anadarko proceeding, mere severance of their Section 4(e) proceedings could not possibly accomplish any useful or valid purpose.

One fact is obvious; if we set down movant's Section 4(e) proceedings for separate hearings, their cost for preparation of requisite support for the higher rates they seek would be substantially increased as would the litigating costs of interveners and the United States Government. Indeed, the cost of separate proceedings in each Section 4(e) docket might well exceed the increased amounts in issue. Thus the consolidation effected by our July 17, 1964 order actually leads to substantial savings on behalf of the participants and the government. In addition, the area approach encourages parties to group their efforts towards building one comprehensive record which will be fully consonant with the essentially legislative character of rate regulation.

The problems confronting small independent producers (including the issue of exemption of small producers) are among the central issues in the pending Permian Basin case; the first area rate proceeding. Although the problem of perfecting realistic and workable guidelines for fixing just and reasonable rates for producers on an area basis is not susceptible to a quick or easy solution, the Permian Basin proceeding should lend itself toward establishing just and equitable standards which will enable us to render prompt determination of the major questions involved herein. Moreover, we are confident that we can perfect our procedures and expedite subsequent area proceedings as we gain experience in Permian and AR61–2.

We have given careful consideration to the arguments advanced by the movants, however, in view of the foregoing, their motions must be denied.

The Commission orders:

The motions for clarification and to set aside our order dated July 17, 1964, filed by Bright & Schiff, *et al.*, in the above-entitled area rate proceeding on August 6, 1964, are hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

AREA RATE PROCEEDINGS, ET AL. (TEXAS GULF COAST AREA), DOCKET NO. AR64-2, ET AL.; BRIGHT & SCHIFF, DOCKET NO. RI64-678

ORDER DENYING MOTIONS FOR CLARIFICATION AND TO SET ASIDE ORDER OF JULY 17, 1964

(Issued September 15, 1964)

On August 6, 1964, Bright & Schiff, *et al.*, filed motions to clarify and to set aside the Commission's "Order Updating The Appendices To The Order Instituting Area Rate Proceedings," (32 FPC 141), issued July 17, 1964. This order added and deleted respondents and Section 4(e) rate proceedings to the consolidated Texas Gulf Coast area rate proceeding and thereby supplemented our earlier order of November 27, 1963, which instituted the proceeding (30 FPC 1354).

The Commission orders:

The motions for clarification and to set aside the Commission's order of July 17, 1964, filed herein on August 6, 1964, are identical[1] to those filed on the same date, and denied by order issued contemporaneously herewith, in *Area Rate Proceedings, et al.* (Hugoton-Anadarko Area), Docket No. AR64-1, *et al.* Accordingly, the instant motions are denied for the same reasons set forth therein.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

IDAHO POWER COMPANY, PROJECT NO. 1971

ORDER AMENDING LICENSE

(Issued September 15, 1964)

This order, amending Article 39 of the license for the Idaho Power Company's Project No. 1971 on the Snake River in Idaho and Oregon, makes clear that the Licensee may share in benefits from any coordination of its project with other power systems.

On October 4, 1963, the Licensee applied for amendment or clarification of Article 39, reading:

> The Licensee shall operate the project and its system in coordination with the Northwest Power Pool, and shall arrange for such transmission facilities as may be required for such operation.

The application stated that the Bonneville Power Administration interprets this language as requiring the Licensee to coordinate with other power systems without entitling the Licensee to share in the resulting benefits. According

[1] Only the rate increase docket number is different. The gas involved is sold in Texas Railroad Commission District No. 4 for 15.5¢ per Mcf which is 1¢ higher than the last effective rate. The annual amount of the increase is estimated to be $1,000.

to the Licensee, this interpretation in effect excludes it from benefits to which it would be entitled as a participant in the Northwest Power Pool. It consequently sought to modify its license to insert a new Article 39 reading as follows:

> The Licensee shall operate the project and its system in coordination with the Northwest Power Pool, so as to achieve maximum coordination benefits which shall be shared equitably by the participants in such coordination. In the event the participants cannot agree thereon, the Commission shall equitably apportion the benefits after notice and opportunity for hearing upon the Commission's own motion or upon motion of any party.

The Secretary of the Interior on March 13, 1964, filed comments and petition to intervene.[1] The Secretary's position is summarized at pages 10 and 11 of his comments and petition:

> [T]he purpose of the Company's present petition is to obtain payment for headwater benefits that it provides to United States Federal projects downstream. The Company having failed to accomplish this in direct negotiations with Bonneville Power Administration now seeks to obtain payment by becoming a party to the Pacific Northwest Coordination Agreement. Under Section 13(a) of that Agreement * * * there is a sharing of benefits so that downstream generation projects allow credit to upstream non-Federal projects for the benefits that they confer on the Federal plant. The difficulty is, however, that the Idaho Power Company license contains a unique provision. Article 39 places that Company in a different position than other licensees in the Northwest. Article 39 requires coordination without sharing of benefits by the downstream Federal plant. The United States cannot be required to pay for something which it is already entitled to receive without payment.

Article 39 of the license for Project No. 1971 is an early version of a license condition which was designed to require the licensee to coordinate if it did not achieve adequate voluntary coordination. The subsequent evolution of this article may be observed in Article 39 of the license for Project No. 2149, issued on July 12, 1962,[2] in Article 14 of the license for Project No. 2315, issued on November 21, 1963,[3] and in Article 14 of the license for Project No. 2243 issued on February 5, 1964, as modified on April 30, 1964.[4] The opinion issuing license for Project No. 2315 said with respect to the coordination article *supra*, p. 1339:

> Article 15 requires electrical and hydraulic coordination of the operation of the project with other power systems. The article contemplates that coordination will result in net benefits to be shared by all parties involved, including the licensee.

And in Opinion No. 418-A, in rejecting a similar argument by Interior, we said:

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[1] As comments, the document was timely filed; as a petition to intervene, it was not filed within the period prescribed.

[2] *Public Utility District No. 1 of Douglas County, Washington*, 28 FPC 128, 133 (1962).

[3] *South Carolina Electric and Gas Company*, Opinion No. 411, 30 FPC 1333 (November 21, 1963). [See Form L-3, 30 FPC 1660.]

[4] *Pacific Northwest Power Co.*, Opinion No. 418-A, 31 FPC 1051 at 1054 and 1061 (April 30, 1964).

*** * * we do not believe that the Article proposed by Interior, insofar as it refuses to recognize an equitable sharing of benefits in the context of a mixed system of plants in a common basin, will result in the maximum economic benefit to the region.[5] Only by recognizing the contributions of each system in providing for an equitable sharing of benefits will the optimum development of our resources envisioned by the framers of the Water Power Act become a reality.**

[5] This is not to say, as Interior alleges, that Article 14 requires the federal government to pay for headwater benefits—a payment precluded by Section 10(f) of the Act. As we have earlier stated, Article 14 does not require 10(f) payments. *P.U.D. No. 1 of Douglas County*, Project No. 2149, 28 FPC 128.

We find nothing in the Commission's decision in issuing the license for Project No. 1971 which leads us to believe that the licensee in being required to coordinate was not to share in the benefits from coordinated operation to any extent consistent with the Federal Power Act.[6] The Commission was well aware of the fact that the various participants in the Northwest Power Pool in coordinating the operations of the several projects on the Columbia River and its tributaries did so on the basis of sharing benefits, and in inserting the Article to insure that Idaho Power would join in the coordination efforts we did not purport to require it to participate on a less favorable basis than the other members.

We find no basis for the assumption of the Secretary that "the purpose of the company's petition is to obtain payment for headwater benefits that it provides to United States Federal Projects downstream," but, in any event, adoption of a modified Article 39, consistent with the article included in the license for Project No. 2243, will not have this result. We are, of course, aware that Section 10 (f) of the Act requires the Commission to determine payments for headwater benefits provided to non-Federal projects by upstream reservoirs of the United States and that it has been established that this subsection does not authorize the Commission to assess payments against the United States for headwater benefits received from a non-Federal project.[8] Moreover, we have held that even where a coordination agreement makes provision for credit against the United States for headwater benefits our subsection 10(f) determination may ignore such credit.[7] Consistent with what we believe is the purport of Section 10(f) of the Act, we would not condition any coordination determination pursuant to the modified language of Article 39 set forth below to compensate the Licensee for headwater benefits it provides to downstream Federal projects. But this does not mean that the Licensee should not share in benefits resulting from electrical coordination or from hydroelectric coordination other than headwater benefits.

[6] *Idaho Power Company*, 14 FPC 55 (1955).

[8] *Grand River Dam Authority* v. *F.P.C.*, 246 F. 2d 453 (1957). Bills to amend the Federal Power Act to permit such payment were pending in Congress between 1954 and 1960, *i.e.*, through seven Congressional sessions, but none was enacted. See S. Rep. No. 1865, 84th Cong., 2d Sess. (1956); S. Rep. No. 1414, 86th Cong., 2d Sess. (1960); Hearings on S. 3434 Before a Subcommittee of the Senate Committee on Interstate and Foreign Commerce 83rd Cong., 2d Sess. (1954); Hearings on S. 1574 Before the Subcommittee on Irrigation and Reclamation of the Senate Committee on Interior and Insular Affairs, 84th Cong., 1st Sess. (1955); Hearings on H.R. 5309, H.R. 7201, and H.R. 7494 Before a Subcommittee of the House Committee on Interstate and Foreign Commerce, 86th Cong., 2d Sess. (1959); Hearings on S. 1782, S. 2262, S. 2263, S. 2264, S. 2265, and S. 2266 Before the Senate Committee on Interstate and Foreign Commerce, 86th Cong., 1st Sess. (1959).

[7] See *Columbia River Basin Headwater Benefit Investigation*, 29 FPC 238 (1963). Through the first and second Pacific Northwest Coordination Agreements, to which Bonneville was party, took account of headwater benefits, the Commission under subsection 10(f) determined headwater benefits payments to the United States for the period covered by these agreements.

We agree with the Secretary that the Licensee's obligations to arrange for such transmission facilities as may be required for proper coordination should not be eliminated from any amended article. As in the case of our action in Opinion No. 418-A, *supra*, the amended Article we are adopting expressly refers to the Licensee's obligations to make available "the additional transmission facilities," as directed by the Commission, to eliminate any doubt as to this matter. The amended article also makes clear that the Licensee is not barred from participating in the benefits of coordination other than headwater benefits to the projects of the United States.

The Commission finds:

It is appropriate and in the public interest in administering Part I of the Federal Power Act that the following amendment be made in Article 39 of the license issued on August 4, 1955, 14 FPC 55, to the Idaho Power Company for Project No. 1971 on the Snake River, Idaho and Oregon.

The Commission orders:

(A) Article 39 of the license issued on August 4, 1955, for Project No. 1971 on the Snake River, Idaho and Oregon, is amended to read:

Article 39. The licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner including the construction of additional transmission facilities as the Commission may direct in the interest of maximizing power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the licensee as the Commission may order.

(B) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

IDAHO POWER COMPANY, PROJECT NO. 1971

ORDER DENYING REHEARING

(Issued September 15, 1964)*

Idaho Power Company, licensee for Project No. 1971 on the Snake River in Idaho and Oregon, filed an application on September 26, 1963, to amend its license to authorize two 230 kv double-circuit transmission lines, designated Nos. 3 and 4, from the Brownlee switchyard to the Boise Bench substation. On July 24, 1964, 32 FPC 342, the Commission issued an order amending the license for Project No. 1971 to authorize these transmission lines. As a condition of this authorization, the licensee was required to wheel power for use of the United States or for sale to preference customers under Federal power marketing policies on the excess capacity of all transmission lines under license for Project No. 1971 and to increase the capacity of such lines at the expense of the United States. The licensee on August 20, 1964, filed an application for rehearing.

*Affirmed, *Idaho Power Co.* v. *F.P.C.* 346 F. 2d 956 (CA9-1965); cert. denied, 382 U.S. 957 (1965).

Previously, on August 18, 1964, it had by letter requested permission immediately to begin construction on at least one of the two new transmission lines. Because of the relationship of this request to the application for rehearing, we shall deal with it in this order.

The application for rehearing requests "that Applicant be granted the opportunity to be heard by the Commission * * *". By letter of September 10, 1964, however, the licensee made clear that it was not its intention "to present additional factual evidence at this time." Since nothing in the application itself suggests that any facts are in dispute, it appears that an evidentiary hearing is not necessary or appropriate.

The licensee's primary contention in its application for rehearing is that the condition upon which the authorization for the proposed transmission lines was granted contravenes Section 6 of the Federal Power Act (16 U.S.C. 799), providing in pertinent part: "Licenses * * * may be altered * * * only upon mutual agreement between the licensee and the Commission * * *." A further contention is that the condition violates the due process and *ex post facto* clauses of the Constitution.

F.P.C. v. *Idaho Power Co.*, 344 U.S. 17 (1952), holds that the Commission is entitled to grant authorizations for hydroelectric project works subject to reasonable conditions. (See also Section 10(g) of the Act.) This authority applies equally in passing upon applications for the original issuance of a license or for an amendment thereof. See *The Montana Power Company* v. *F.P.C.*, 298 F. 2d 335, 339 (CADC, 1962), recognizing that issuance of new licenses and amendment of licenses are merely different means of granting new authorizations. The Commission cannot, of course, require the licensee to construct the new facilities if it does not wish to accept the new conditions we have prescribed in granting the authorizations therefor. The licensee's remedy to contest the reasonableness of the condition is by way of court review. Constitutional and statutory prohibitions on the Commission's unilateral alteration of licenses do not apply to the situation where the licensee seeks an amendment which the Commission grants upon condition.

F.P.C. v. *Idaho Power Company, supra*, expressly held that wheeling provisions similar to those provided herein were a reasonable condition upon the authorization granted there. Since the licensee's proposed lines and its presently licensed lines are segments of a single transmission system, the authorization of wheeling rights for the United States across all of the primary lines of the project is an appropriate condition upon the grant of the proposed licensed amendment which, in our judgment, will best serve to adapt the licensee's plans to a comprehensive plan for improving the waterway for the use or benefit of interstate or foreign commerce and for the improvement and utilization of water power development.

The question remains whether Idaho can proceed immediately to construct one or both of lines 3 or 4 herein authorized. We believe it clear that the only way in which Idaho can secure authorization for such construction is by its acceptance of the proffered licensed amendment. We do not believe, however, that in the circumstances of this case where lines 3 and 4 are presently urgently needed and would in any event be essential for comprehensive development of the previously authorized project, it would be contrary to the public interest for such acceptance to be accompanied by a reservation on the part of the licensee to object, upon timely court review of the Commission's order, to the lawfulness of the wheeling condition.

The Commission finds:

It is appropriate and in the public interest in administrating Part 1 of the Federal Power Act (16 U.S.C. 791–823), particularly Sections 3(11), 3(12), 4(e), 10(a), and 10(g) (16 U.S.C. 796, 798(e), 803(a), and 803(g)), that the Idaho Power Company's application for rehearing, filed on August 18, 1964, of the order, issued on July 24, 1964, amending the license for Project No. 1971, to authorize the Brownlee-Boise Bench Transmission Lines Nos. 3 and 4 be denied.

The Commission orders:

The aforesaid application for rehearing of the order issued on July 24, 1964, is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

KANSAS POWER AND LIGHT COMPANY

ORDER ACCEPTING RATE SCHEDULES FOR FILING AND TERMINATING PROCEEDING

(Issued September 15, 1964)

Kansas Power and Light Company (Kansas Power) of Topeka, Kansas, on July 31, 1964, submitted for filing, pursuant to Section 205 of the Federal Power Act and Commission Order No. 282, eight contracts providing chiefly for additions or discontinuances of delivery points for wholesale electric service to rural electric cooperatives served under Kansas Power's Schedule RC–3; twenty-eight contracts for wholesale electric service to municipalities served under Kansas Power's Schedule MWH–63 and one contract for a change in delivery point to a municipality; ten contracts providing principally for interchange, firm power, economy energy, or emergency service rendered to a municipality and a light and telephone utility under other rates; and one contract adding eight delivery points for service to the utility. The attached Appendix A sets forth in detail Kansas Power's proffered rate schedules as designated in the files of the Commission.

Schedule MWH–63, applicable to service to municipalities, in lieu of the previous Rate MWH–2 evidences the principal change which has been made in Kansas Power's rates to its wholesale customers. That rate includes a demand charge of $2.15 per kw for the first 400 kw of billing demand and $1.60/kw for excess over 400 kw, as well as an energy charge of .55¢/kwh with a fuel adjustment factor based on actual system heat rate of the most recent month. Twenty-four of the twenty-eight municipalities filing to utilize this newer rate will receive rate reductions resulting from the change from Rate MWH–2 to MWH–63. The MWH–63 rate is an initial rate filing for service to three municipalities and replaces a rate schedule on file for emergency service to the remaining municipality.

In addition, pursuant to the new filing, Kansas Power is for the first time making available to the D.S. & O. Rural Electric Cooperative Association at its Solomon delivery point service at its lower RC–3 rate, rather than the MWH–2 and MWH–63 rates it previously charged the cooperative at this point. This change which is in accord with the request made in the cooperative's previous

protest to this Commission will, it is estimated, result in annual savings of about $6,000 or 25 percent in the rates being paid by the cooperative for deliveries at Solomon.

This proceeding was initiated by the Commission's order issued May 15, 1963 (29 FPC 926) accepting certain rate schedules of Kansas Power for filing, directing the submission of cost data, and directing a staff investigation of Kansas Power's rates and charges subject to Commission jurisdiction under the Federal Power Act. Thereafter Kansas Power raised the issue of this Commission's jurisdiction over the wholesale rate schedules in question, and the Commission granted rehearing by its order issued July 16, 1963. [Unreported]

Subsequent to the Commission's order of July 16, 1963, a number of conferences were held among representatives of the Company, the Kansas State Corporation Commission (which filed a notice of intervention herein), and the Commission staff. Based upon cost data supplied by the Company and a staff cost of service study, it appears that Kansas Power's rates and charges for service to municipalities and other wholesale customers, as modified by the filings referred to herein, are not unreasonable.

Kansas Power now requests that the Commission's orders of May 15 and July 16, 1963, be vacated, and the proceedings thereunder be terminated. The Kansas State Corporation Commission, by letter dated August 4, 1964, concurred in the Company's request for termination of the proceedings under the two aforesaid orders.

The Company takes the position that this Commission does not have jurisdiction at this time over the rates for wholesale sales covered by rate schedules accepted for filing by the Commission by its order issued May 15, 1963, or the rate schedule filings considered herein, and has made these filings subject to a reservation of the jurisdictional issue. However, Kansas Power concedes that the Commission will have jurisdiction over most of its wholesale power sales when certain interchange agreements, to which it is a party and which are now on file with this Commission, become operative on June 1, 1965. Under these circumstances we see no point in pursuing the jurisdictional issue at this time.

The Commission finds:

(1) It is necessary and appropriate for purposes of the Federal Power Act that the rate schedules as identified and designated in the attached Appendix A be accepted for filing.

(2) It is necessary and appropriate for purposes of the Federal Power Act that this proceeding be terminated as hereinafter ordered.

The Commission orders:

(A) The rate schedules identified and designated in the attached Appendix A are hereby accepted for filing, to become effective on August 31, 1964.

(B) The above-entitled proceeding initiated by order of the Commission issued May 15, 1963, is hereby terminated.

(C) Nothing contained in this order shall be construed as constituting approval by this Commission of any service, rate, charge, classification, or any rule, regulation, contract or practice affecting such service or rate, provided for in the above rate schedules; and this order is without prejudice to any findings or orders which have been or hereafter may be made by the Commission in any proceeding by or against Kansas Power.

APPENDIX A

THE KANSAS POWER AND LIGHT COMPANY

Filed: July 31, 1964

Effective: August 31, 1964 (30 days after filing)

Rate Schedule Designation	Other Party	Description	Instrument Date
Supplement No. 1 to Rate Schedule FPC No. 10.	Ark Valley Electric Cooperative Assoc., Inc.	Letter Agreement Increases capability at Hudson Del. Pt.	6/11/63
Supplement No. 2 to Rate Schedule FPC No. 10.	....do....	Letter Agreement Increases capability at 3 del. pts. Establishes Silica Del. Pt.	4/ 8/64
Supplement No. 2 to Rate Schedule FPC No. 11.	Brown-Atchinson Electric Cooperative Association, Inc.	Letter Agreement Addition of Hiawatha Del. Pt.	7/17/63
Supplement No. 1 to Rate Schedule FPC No. 15.	Coffey County Rural Electric Cooperative Association, Inc.	Letter Agreement Redelivery of energy.	10/21/63
Supplement No. 1 to Rate Schedule FPC No. 17 (Supersedes FPC No. 47).	D.S. & O. Rural Electric Cooperative Assoc., Inc.	Letter Agreement Addition of Solomon Del. Pt.	5/ 1/64
Supplement No. 1 to Rate Schedule FPC No. 19.	Flint Hills Rural Electric Cooperative Assoc., Inc.	Letter Agreement Discontinues "White City" Del. Pt. Adds "Alta Vista" increase in kv and kw at Lehigh.	9/27/63
Supplement No. 1 to Rate Schedule FPC No. 22.	The Lyon County Electric Cooperative, Inc.	Letter Agreement Adds new Hartford, discontinues old Hartford Del. Pt.	1/ 8/64
Supplement No. 1 to Rate Schedule FPC No. 25.	PR&W. Electric Cooperative Association, Inc.	Letter Agreement Adds Onaga Del. Pt.	10/ 8/63
Supplement No. 1 to Rate Schedule FPC No. 29.	City of Altamont	Schedule MWH-63	3/15/63
Supplement No. 1 to Rate Schedule FPC No. 30.	City of Axtell	....do....	3/15/63
Supplement No. 1 to Rate Schedule FPC No. 32.	City of Chapman	....do....	3/15/63
Supplement No. 1 to Rate Schedule FPC No. 33.	City of DeSoto	....do....	3/15/63
Supplement No. 1 to Rate Schedule FPC No. 34.	City of Elwood	....do....	3/15/63
Supplement No. 1 to Rate Schedule FPC No. 35.	City of Enterprise	....do....	3/15/63
Supplement No. 1 to Rate Schedule FPC No. 36.	City of Eudora	....do....	3/15/63
Supplement No. 1 to Rate Schedule FPC No. 37.	City of Goff	....do....	3/15/63
Supplement No. 1 to Rate Schedule FPC No. 38.	City of Muscotah	....do....	3/15/63
Supplement No. 1 to Rate Schedule FPC No. 39.	City of Netawaka	....do....	3/15/63
Supplement No. 1 to Rate Schedule FPC No. 40.	City of Oswego	....do....	3/15/63
Supplement No. 1 to Rate Schedule FPC No. 41.	City of Reserve	....do....	3/15/63
Supplement No. 1 to Rate Schedule FPC No. 42.	City of Robinson	....do....	3/15/63
Supplement No. 1 to Rate Schedule FPC No. 45.	City of Seneca	....do....	3/15/63
Supplement No. 1 to Rate Schedule FPC No. 46.	City of Severence	....do....	3/15/63
Supplement No. 1 to Rate Schedule FPC No. 48.	City of Toronto	....do....	3/15/63
Supplement No. 1 to Rate Schedule FPC No. 59.	City of Alma	....do....	3/15/63
Supplement No. 1 to Rate Schedule FPC No. 60.	City of Vermillion	....do....	3/15/63
Rate Schedule FPC No. 61 (Supersedes FPC No. 31).	City of Centralia	Service Agreement Schedule MWH-63	5/ 1/63 3/15/63
Rate Schedule FPC No. 62 (Supersedes FPC No. 43).	City of St. Marys	Service Agreement Schedule MWH-62 Schedule MWH-63	10/15/62 12/15/51 3/15/63
Rate Schedule FPC No. 63 (Supersedes FPC No. 44).	City of Scranton	Service Agreement Schedule MWH-63	5/ 7/63 3/15/63
Rate Schedule FPC No. 64 (Supersedes FPC No. 49).	City of Troy	Service Agreement Schedule MWH-63	7/ 2/63 3/15/63

APPENDIX A—continued

THE KANSAS POWER AND LIGHT COMPANY—Continued

Rate Schedule Designation	Other Party	Description	Instrument Date
Rate Schedule FPC No. 65 (Supersedes FPC No. 51).	City of Waterville	Service Agreement	6/24/63
		Schedule MWH-63	3/15/63
Rate Schedule FPC No. 66 (Supersedes FPC No. 52).	City of Wathena	Service Agreement	4/16/63
		Schedule MWH-63	3/15/63
Rate Schedule FPC No. 67 (Supersedes FPC No. 57).	City of Larned	Service Agreement	12/18/63
		Schedule MWH-63	3/15/63
Supplement No. 1 to Rate Schedule FPC No. 67.	City of Larned	Letter Agreement Change in Delivery Point.	3/26/64
Rate Schedule FPC No. 68	City of St. John	Service Agreement	3/21/63
		Schedule MWH-63	3/15/63
Rate Schedule FPC No. 69	City of Hillsboro	Service Agreement	1/21/64
		Schedule MWH-63	3/15/63
Rate Schedule FPC No. 70	City of Marion	Service Agreement	5/25/64
		Schedule MWH-63	3/15/63
Rate Schedule FPC No. 71	City of McPherson	Interconnection Agreement	12/ 2/63
Supplement No. 1 to Rate Schedule FPC No. 71.	do	Service Schedule A (firm power).	12/ 2/63
Supplement No. 2 to Rate Schedule FPC No. 71.	do	Service Schedule B (emergency service).	12/ 2/63
Supplement No. 3 to Rate Schedule FPC No. 71.	do	Service Schedule C (economy energy service).	12/ 2/63
Supplement No. 4 to Rate Schedule FPC No. 71.	do	Service Schedule D (excess capacity).	12/ 2/63
Rate Schedule FPC No. 72 (Supersedes FPC No. 53).	Western Light & Telephone Company, Inc.	Interconnection Agreement	3/ 2/64
Supplement No. 1 to Rate Schedule FPC No. 72.	do	Service Schedule A (firm power).	6/ 1/64
Supplement No. 2 to Rate Schedule FPC No. 72.	do	Service Schedule B (emergency service).	3/ 2/64
Supplement No. 3 to Rate Schedule FPC No. 72.	do	Service Schedule C (economy energy service).	3/ 2/64
Supplement No. 4 to Rate Schedule FPC No. 72.	do	Service Schedule D (Interchange service).	3/ 2/64
Supplement No. 5 to Rate Schedule FPC No. 72.	do	Supplement No. 1 (adds 8 Del. Points).	3/ 2/64

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

PACIFIC POWER & LIGHT COMPANY, DOCKET NO. E-7176

ORDER AUTHORIZING THE ISSUANCE OF FIRST MORTGAGE BONDS

(Issued September 15, 1964)

Pacific Power & Light Company (Applicant), a corporation organized under the laws of the State of Maine and doing business in the States of Oregon, Washington, Wyoming, California, Montana and Idaho, with its principal business office at Portland, Oregon, filed an application on August 14, 1964, for authorization pursuant to Section 204 of the Federal Power Act to issue and sell at competitive bidding, $30,000,000 principal amount of First Mortgage Bonds, —%, series, due 1994.

Applicant proposes to issue the Bonds under its Indenture of Mortgage and Deed of Trust, dated as of July 1, 1947, to Guaranty Trust Company of New York (now Morgan Trust Company of New York) and Oliver R. Brooks (Wesley L. Baker, successor) as Trustees, as heretofore supplemented and as to be further supplemented by a proposed Seventeenth Supplemental Indenture to be dated as of October 1, 1964.

Applicant further proposes on or about September 17, 1964, to invite sealed, written bids for the purchase of the proposed Bonds by newspaper publication

and distribution of a Form of Bid, together with a statement of the terms and conditions relating thereto and a recital of the terms of purchase.

Each bid, whether made by a single bidder or a group of bidders, must be for the purchase of all the Bonds and must be in writing on the Form of Bid provided by the Applicant and each counterpart must be signed by the bidder, or by the representative in the case of a group of bidders. Each bid must specify: (1) the coupon rate to be borne by the Bonds which rate shall be a multiple of ⅛ of 1%; (2) the price exclusive of accrued interest to be paid to Applicant for the Bonds, which price shall be expressed as a percentage of the principal amount of the Bonds and shall not be less than 98½% nor more than 102¾% thereof; and (3) that Applicant shall be paid the amount of accrued interest on the Bonds from October 1, 1964, to the date of payment therefor and delivery thereof. Each bid must be accompanied by a certified or official bank check or checks in the aggregate amount of $900,000.

Unless postponed, all bids for the purchase of proposed Bonds must be received by Applicant before 11:00 a.m., New York time, on September 28, 1964 at Room 2033, Two Rector Street, New York, New York. Unless Applicant rejects all bids for the proposed issuance of Bonds (which it reserves the right to do) or excludes a bid or bids for reasons specified in the statement of the terms and conditions, it will accept the bid which will provide it with the lowest annual cost of money. The net proceeds from the proposed issuance of $30,000,000 principal amount of New First Mortgage Bonds, together with funds from the Applicant's treasury will be applied to and issued for (a) the payment of all Promissory Notes which are expected to total $16,000,000 at the time of the consummation of the issuance and sale of the Bonds; (b) payment of $2,250,000 serial notes outstanding under a 1956 credit agreement; and (c) finance, in part, Applicant's 1964 and 1965 construction program.

The expenditures for Applicant's 1964 and 1965 construction program are estimated to be approximately $41,660,000 for 1964 and $44,750,000 for 1965. The principal items of expenditures for those years are described as follows: $6,400,000 for completion of the third unit at the Dave Johnston Steam Plant in 1964; $2,250,000 in 1964 and $1,000,000 in 1965 for the completion of additional transportation and mining facilities at the Dave Johnston Steam Plant; $2,200,000 toward the construction of the first unit at the Cherokee, Wyoming steam plant 24 miles west of Rawlings (total cost estimated at $33,750,000); $200,000 in 1965 toward the construction of a coal mine for the Cherokee Steam Plant (total cost estimated at $3,640,000); $100,000 in 1964 and $1,500,000 in 1965 for the completion of the 230/500 kv transmission line from Stephens Butte, California to Keno, Oregon; $1,900,000 in 1964 for completion of a 230 kv transmission line from Oregon Basin, Wyoming to Thermopolis, Wyoming (to be operated initially at 115 kv); $815,000 in 1965 for a 230 kv transmission line from Sinclair, Wyoming to Cherokee Steam Plant (also to be operated initially at 115 kv); $935,000 in 1964 for a 230 kv transmission line from Medford, Oregon to Grant's Pass, Oregon; $465,000 in 1964 and $5,650,000 in 1965 for new substations and conversions and additions to existing substations; $17,661,000 in 1964 and $19,100,000 in 1965 for additional distribution facilities; $2,217,000 in 1964 and $2,400,000 in 1965 for additions to steam heating, water and telephone utility systems; and $4,657,000 in 1964 and $4,890,000 in 1965 for other plant facilities, surveys, and investigations.

Written notice of the application has been given to the Public Utilities Commissioner of Oregon, the Wyoming Public Service Commission, the Washington Utilities and Transportation Commission, the Public Utilities Commission of

the State of California, the Public Service Commission of Montana and the Idaho Public Utilities Commission and to the Governor of each of those States. Notice has also been given by publication in the Federal Register on August 26, 1964 (29 F.R. 12151), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before September 11, 1964, with the Federal Power Commission, Washington, D.C., 20426. No protest or petition or request to be heard in opposition to the granting of the application has been received.

The Montana Public Utilities Commission by order dated August 19, 1964, the Wyoming Public Utilities Commission by order dated August 19, 1964, the Oregon Public Utilities Commissioner by order dated August 31, 1964, the Idaho Public Utilities Commission by order dated September 2, 1964, the California Public Utilities Commission by order dated September 4, 1964, and the Washington Public Utilities Commission by order dated September 8, 1964, approved the proposed issuance and sale of Bonds in the manner and for the purposes set forth above.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore determined and set forth in the Commission's order issued March 28, 1962, *Pacific Power & Light Company*, in Docket No. E-7025, 27 FPC 620.

(2) The proposed issuance and sale of Bonds, as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue herein involved is regulated by a State commission within the meaning of Section 204(f) of the Act; and the proposed issuance of Bonds is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

The Commission orders:

(A) The proposed issuance and sale of Bonds, upon the terms and conditions and for the purposes specified in the application, as described above, are hereby authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further orders, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

(C) This authorization shall expire unless the transaction hereby authorized is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any securities to which this order relates.

OPINION NO. 442

UNION CARBIDE CORPORATION, PROJECT NO. 1856

OPINION ON AN ORDER TO SHOW CAUSE WHY UNION CARBIDE SHOULD NOT APPLY FOR AND SECURE A LICENSE PURSUANT TO SECTION 4(e) OF THE FEDERAL POWER ACT

(September 15, 1964)*

Syllabus

1. By any standard the New and the Kanawha comprise a major river system; it is a system which has been improved for much of its length with Federal funds and consistently dealt with by Congress as a navigable stream of the United States. P. 772.
2. Two tests of Commission licensing jurisdiction under the Federal Power Act are whether a development is located on "navigable waters of the United States" within the meaning of Section 3(8) of the Act, and whether, even though not so located, a development's operations will affect downstream navigable capacity thereby affecting interests of interstate or foreign commerce—if either test is met, development is subject to licensing under Section 4(e) of the Act, which may be enforced under Sections 4(g) and 23(b). P. 772.
3. "Navigable waters" as defined in Section 3(8) include not only those actually used for navigation but also those suitable for navigation in their natural or improved condition. P. 773.
4. For purposes of Commission jurisdiction, a finding of navigability is not precluded by interruptions between navigable reaches by falls or rapids that compel portages and waters found navigable may include the interrupting sectors. P. 773.
5. "Navigable waters" under Section 3(8) may include other parts of streams authorized by Congress for improvement or recommended to Congress for improvement after an authorized investigation. P. 773.
6. Commission *finds* that river mileage from Hinton, West Virginia on New River to head of improved navigation on Kanawha constitutes navigable waters of United States within meaning of the Act. P. 773.
7. Presence of falls or of rapids and shoals such as are found in the Hinton-Gauley reach of New River do not preclude a finding of navigability. P. 773.
8. Evidence of lumbering and rafting alone is sufficient to satisfy log-driving test of navigability followed by Commission for over two decades with judicial approval. P. 773.
9. Record sustains and even requires a finding that even if Respondent's developments were not as a matter of law located on navigable waters,

* Initial decision appears on p. 776. Order denying rehearing and providing for stay issued November 12, 1964, 32 FPC 1298.

they should be licensed because of their effect upon interests of interstate commerce—*i.e.* their effect upon navigable capacity of Kanawha River below Glen Ferris Dam. PP. 773, 774.

10. Respondent's claim for exemption under Section 23 found groundless since only permit shown was one covering different development than exists today. P. 774.

11. In a proceeding initiated under Part I of the Federal Power Act, Commission *orders* Respondents to apply for and secure a license under Section 4 (e) of the Act.

Homer A. Holt, Albert J. Snook, John W. Drye, Jr., William J. Carter, Patrick G. Sullivan and *William T. O'Ferrell* for Union Carbide Corporation.

C. Ronald Robertson and *Howard Sommerville, Jr.* for the State of West Virginia.

John D. Lane and *R. E. Hagenlock* for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SWIDLER, *Chairman:*

In this case, we are to decide whether two constructed hydroelectric developments owned by Union Carbide Corporation ("Carbide") are subject to our licensing jurisdiction. The two projects are the Hawks Nest and Glen Ferris Dams located respectively, on the New and Kanawha Rivers in the State of West Virginia.

In 1927 a predecessor of Carbide filed a declaration of intent under Section 23 of the Federal Water Power Act to construct Hawks Nest development. The Commission then composed of three Cabinet officers initially found that the New River was not navigable but that the interests of interstate commerce would be affected. Five years later, after the institution of the independent full-time commissioners, the Commission reversed the finding of non-navigability. When the Company nonetheless began to build without a license, suits were brought to enjoin construction, first in the District Court and later as an original action in the Supreme Court against the State of West Virginia, but because of a misapprehension of the Commission's remedies these suits were dismissed on procedural grounds.

Following the 1940 Supreme Court decision in the *New River*[1] case, a license application was again filed by another Carbide predecessor and license was actually issued containing a recital of navigability. However, the Company objected to various conditions and at length in 1950 attempted to withdraw its application and to eradicate the finding of navigability. In 1952 Carbide was ordered to show cause why it should not obtain a license for the continued operation and maintenance of Hawks Nest development. Following Carbide's answer to the show cause order a hiatus of 10 years ensued, after which in 1962 the Commission pressed the action and amended its show cause order to add the Glen Ferris development. The case is before us now following an Examiner's decision in favor of licensing jurisdiction.

The two developments involved here, Hawks Nest Dam and Glen Ferris Dam, are part of an overall project which furnishes electric power for Carbide's nearby electric furnace at Alloy.[2] Hawks Nest is located on the New River 6.8 miles above the junction of the New and Gauley Rivers where the main stream changes

[1] *United States* v. *Appalachian Electric Power Company*, 311 U.S. 377.

[2] See finding number (9) in Presiding Examiner's initial decision issued April 20, 1964, *infra*, p. 800.

its name to Kanawha River. Glen Ferris is downstream on the Kanawha at Kanawha Falls, only 1.3 miles below the junction of the New and the Gauley. (See map in Appendix A of Presiding Examiner's initial decision.)

Below Glen Ferris the Kanawha flows another 95.7 miles to the Ohio River. For 90.5 miles of this length it is developed and used for present day commercial navigation by a series of locks and dams that provide an improved 9-foot channel. Glen Ferris pool, a 2250 acre feet impoundment, extends upriver 2½ miles to the foot of Hawks Nest powerhouse, which in turn is connected with Hawks Nest Dam by a 5 mile long diversion tunnel that carries the normal stream-flow and largely dewaters the intervening stream bed.

Above Hawks Nest the New River reaches 250 miles to its source in northwest North Carolina near the Virginia border. Hawks Nest pool, a 7300 acre feet impoundment, is 3 to 4 miles long. Immediately upstream is a stretch extending almost 60 miles to Hinton, West Virginia which presents a series of pools interspersed by ledges and rapids and includes an area commonly referred to as the "gorge." From Hinton to Radford (Mile 145) and beyond, the river moves more slowly through a broader valley.

Upstream from Hawks Nest there are other developments including the Corps of Engineers Bluestone Dam at mile 65 just above Hinton, a flood control project with a 36 mile long reservoir; Appalachian Electric Power Company's Clayton Dam at mile 151.2, with a 15 mile long reservoir; and several lesser power projects. The Gauley River, a tributary of the New and the Elk River, a tributary of the Kanawha are also controlled by large Corps of Engineers impoundments.

By any standard the New and the Kanawha comprise a major river system. For most of its length the Kanawha is a heavy duty artery of water-borne commerce. Stream flows average over 12,500 cfs at Kanawha Falls (near the point where the Kanawha originates) and over 10,000 cfs at the mouth of the New, flows comparable to the Potomac River just above the District of Columbia. A century and a half ago the New and the Kanawha Rivers were viewed as a potential water route from the Atlantic seaboard to Ohio via the James River. In time the dream of an uninterrupted waterway along this route faded in the face of more efficient overland transportation but not without leaving its mark. River improvements made by the Federal government in the exercise of the commerce control and costing well over $100 million have brought to the region a 9-foot navigation channel in the Kanawha; basin-wide flow regulation to protect against floods and to augment low flows; and the acquisition of 200,000 acres of upstream watersheds in the interests of watershed protection. The net result, if not an improved waterway for the length of the river, is at least a river system which has been improved for much of its length with Federal funds and consistently dealt with by Congress as a navigable stream of the United States.

Two tests of our licensing jurisdiction under the Federal Power Act are whether a development is located on "navigable waters of the United States" within the meaning of Section 3(8) of the Act, and whether even though not located on navigable waters a development in its operation will affect downstream navigable capacity, thereby affecting the interests of interstate or foreign commerce. If either test is met the development is subject to licensing under Section 4(e) of the Act, which may be enforced under Sections 4(g) and 23(b). Both heads of jurisdiction are at issue in this case.

The Presiding Examiner found that Hawks Nest and Glen Ferris developments, individually and as parts of a unified system, should be licensed under both the "navigation" test and the "effects" test. We are in agreement with his

decision, which contains a thorough review of the facts and a well-reasoned discussion of the applicable legal principles.

The question of navigability in this case involves specifically 69 miles out of the 349-mile combined length of the New and Kanawha Rivers, consisting of 7 miles at the headwaters of the Kanawha and the adjacent 62 miles of the New. Below this Kanawha segment is the improved navigable 9-foot channel in the London pool, and above this segment of the New is the reach of river from Hinton, West Virginia to Allisonia, Virginia which was held to be navigable by the Supreme Court in the *New River* case.

"Navigable waters" as defined in Section 3(8) include not only those actually used for navigation but also those suitable for navigation in their natural or improved condition. Also, for purposes of our jurisdiction, under the statute a finding of navigability is not precluded by interruptions between navigable reaches by falls or rapids that compel portages, and the waters found to be navigable may include the interrupting sectors. Finally, navigable waters under Section 3(8) may include other parts of streams authorized by Congress for improvement or recommended to Congress for improvement after an authorized investigation.

Based on the record before us, we find that the river mileage from Hinton, West Virginia on the New River to the head of improved navigation on the Kanawha constitutes navigable waters of the United States within the meaning of the Federal Power Act. There was ample proof of actual historical navigation in interstate commerce on this reach of river, notably in the evidence of commercial log floating operations for a half century by a company which sold lumber through multi-state retail outlets, and in the evidence of navigation surveys conducted by boat by Chief Justice Marshall and others in the earlier 1800's. This, together with more recent showing of pleasure boating, ferry operation, and other present-day usage of this reach of river for navigation, is indicative that this reach is suitable for navigation. Its improvability is also apparent from the record. Of course, the presence of falls such as Kanawha Falls or of rapids and shoals such as are found in the Hinton-Gauley reach of the New River do not preclude a finding of navigability. The statutory definition of "navigable waters" so provides and it only incorporates the long-established teaching of the cases. *E.g.*, *United States* v. *Appalachian Power Co.*, 311 U.S. 377 (1940); *The Montello*, 20 Wall 430 (1874); *Montana Power Co.* v. *F.P.C.*, 185 F. 2d 491 (CADC, 1950).

The evidence here of lumbering and rafting alone is sufficient to satisfy the log-driving test of navigability we have followed for over two decades[3] with the approval of the courts. Altogether, this proceeding is indistinguishable from the Tomahawk River case where, in the words of the 7th Circuit Court of Appeals:

> * * * the evidence as shown by this record establishes a long, regular and commercially successful use of the stream for the transportation of logs and rafts, and forms a reasonable basis in law for conclusion that the Wisconsin River was and is a navigable water of the United States [*Wisconsin Public Service Corp.* v. *F.P.C.*, 147 F. 2d 743, 748 (C.A.7, 1945); cert. den. 325 U.S. 880 (1945)].

The record also sustains and indeed requires a finding that even if Carbide's developments were not as a matter of law located on navigable waters, they should be licensed because of their effect upon the interests of interstate commerce—*i.e.*, their effect upon the navigable capacity of the Kanawha River

[3] See *Public Service Co. of New Hampshire*, FPC Opinion No. 357, April 1962, 27 FPC 830.

below Glen Ferris Dam. It was shown that Hawks Nest Dam can virtually terminate the entire flow of New River for several hours. Actual changes in river elevations on the Kanawha River resulting from ordinary operation of Carbide's developments and ranging up to one and a half feet were also proven. Hawks Nest's capability of affecting navigation was also indicated in evidence concerning the grounding of a barge in or near the improved channel of the Kanawha River. The standard to be applied in these matters was stated some five years ago by Judge Learned Hand in a case involving the Clyde River, and his words are equally pertinent here:

> * * * it is apparent that the evidence was enough to prove that the petitioner's dams without change and at the will of the petitioner, are capable of "affecting" temporarily the flow of water in the [navigable part of the river] and, indeed, that they do so in the ordinary operation of the petitioner's business. *Citizens Utilities Co.* v. *F.P.C.*, 279 F. 2d 1, 3 (CA-2, 1960).

Carbide contends that it possesses a valid permit issued by the War Department in 1899 covering the Glen Ferris development which under the grandfather clause of Section 23 of the Power Act eliminates the need for an FPC license for this dam. The only permit shown, however, was one covering a different development than exists today. The dam built under the War Department permit was a wood crib structure that was later relocated and replaced by the present concrete dam at Glen Ferris. Accordingly, and for the further reasons stated in the Examiner's decision, we find Carbide's claim for exemption under Section 23 to be groundless.

Carbide's remaining contentions are fully answered in the Examiner's decision. We are adopting the Examiner's decision and proposed findings in full, so far as consistent with our opinion and order, with the exception of the last sentence in the Examiner's decision, immediately preceding his findings and conclusions. This sentence is not necessary and would require clarification if adopted.

In accordance with our order Carbide must apply for and obtain a license covering Glen Ferris and Hawks Nest. We trust that these proceedings which have so long delayed the proper application of the Federal Power Act to Carbide's development will now be brought to an orderly close.

The Commission finds:

(1) The Respondent, Union Carbide Corporation, is a corporation organized and existing under the laws of the State of New York.

(2) The Respondent, insofar as it is pertinent to this proceeding, is the successor in interest to the Union Carbide and Carbon Corporation, the Electro Metallurgical Company, the New-Kanawha Power Company, and the Willson Aluminum Company.

(3) The Respondent, owns, operates, and maintains the Glen Ferris hydroelectric development located at the Kanawha Falls on the Kanawha River in West Virginia about 95.7 miles above its mouth on the Ohio River at Point Pleasant, West Virginia.

(4) The Respondent owns, operates, and maintains the Hawks Nest hydroelectric development located on the New River, West Virginia, the powerhouse being located at about mile 1.5 and the dam at about mile 6.8, or some 98.5 and 103.8 miles, respectively, upstream from Point Pleasant.

(5) The New River rises in North Carolina and flows first in a northeasterly direction, then northwesterly through Virginia and West Virginia for approximately 250 miles until it is joined by the Gauley River at which point it changes

its name and is known as the Kanawha River; the Kanawha flows into the Ohio some 97 miles below the mouth of the New and its juncture by the Gauley.

(6) In 1899 the War Department granted a permit to the Willson Aluminum Company for the construction of a timber dam at the Kanawha Falls, but on application by its successor the Electro Metallurgical Company in 1919 to replace the wooden dam with a concrete dam, to build a new powerhouse, to install two additional generators and related facilities, the Department declined to grant a new permit, which installations constitute a part of the present Glen Ferris development now owned, operated and maintained by the Respondent.

(7) The Respondent does not have a permit or valid existing right-of-way granted prior to June 10, 1920, or a license granted pursuant to the Federal Power Act for the operation and maintenance of its project works constituting the Glen Ferris development referred to herein in findings (3) and (6).

(8) The Respondent does not have a permit or valid existing right-of-way granted prior to June 10, 1920, or a license granted pursuant to the Federal Power Act for the operation, and maintenance of its project works constituting the Hawks Nest development referred to herein in finding (4).

(9) The existing Glen Ferris hydroelectric development with an installed capacity of 4680 kw, and the Hawks Nest development with an installed capacity of 102,000 kw, are part of a unified system which supplies electric energy for the Respondent's metallurgical operations.

(10) Congress has exercised jurisdiction over the New and the Kanawha Rivers by appropriating millions of dollars for use in protecting the watershed of these rivers, building Federal dams for flood control, river improvement, navigation, and other purposes.

(11) The Kanawha River is a navigable river of the United States. By means of the Winfield, Marmet, and London dams constructed on the river in 1937 a minimum depth of 9 feet is provided for navigation extending from the river's mouth upstream for about 90 miles. The present-day commerce on the Kanawha amounts to more than 10,000,000 tons annually, much of which is interstate in character. The remaining 7 miles of the Kanawha (including the site of the respondent's Glen Ferris development) is unimproved for modern navigation. This reach of the river, however, was used extensively for the rafting of logs during the last century, is readily susceptible of improvement for commercial navigation and accordingly is a navigable water of the United States.

(12) The New River for some 111 miles (miles 62 to 173) and above the Hinton-Gauley reach has been held to be a navigable water of the United States in, *United States* v. *Appalachian Power Co.*, 311 U.S. 377, 410, 418 (1940). The Hinton-Gauley section of the river (miles 0 to 62), the area in which the Respondent's Hawks Nest development is located, was navigated downstream by means of bateaux by Chief Justice Marshall and his party in 1812 and by the surveyors Moore and Briggs in 1819. This section was used for many years particularly following 1865 for the boating of loose logs to mills along the river and millions of boardfeet of lumber were cut from the logs and shipped in interstate commerce. Pools in this section of the river presently are capable of sustaining pleasure craft navigation, and in addition the entire section is susceptible of improvement for commercial navigation. The New River from its mouth to Hinton is a navigable water of the United States.

(13) The maintenance and operation by the Respondent, the Union Carbide Corporation, of the Glen Ferris and Hawks Nest hydroelectric facilities referred to in findings (3) and (4) above, are capable of affecting and have affected navigation in the New and Kanawha Rivers and the interests of interstate and foreign commerce.

(14) It is appropriate and in the public interest to issue an order to conserve and fully utilize the navigation and water resources of the New-Kanawha river basin occupied by the Respondent, Union Carbide Corporation's project works referred to in findings (3) and (4) above, for the use and benefit of interstate and foreign commerce, for the improvement and utilization of water power development, and for other beneficial public uses, including recreational purposes, in accordance with Section 10(a) and other provisions of the Act.

The Commission orders:

(A) The Union Carbide Corporation shall file an application for and shall obtain a license under the Federal Power Act for the continued operation and maintenance of its projects consisting of the Glen Ferris and Hawks Nest hydroelectric developments referred to in findings (3) and (4) above.

(B) Such application shall be filed in accordance with the Commission's Regulations under the Federal Power Act within 90 days from the date of issuance of this order.

(C) The exceptions to the initial decision of the Presiding Examiner are hereby denied.

INITIAL DECISION

OF THE PRESIDING EXAMINER OF AN ORDER TO SHOW CAUSE WHY UNION CARBIDE CORPORATION SHOULD NOT APPLY FOR AND SECURE A LICENSE PURSUANT TO SECTION 4(e) OF THE FEDERAL POWER ACT

(Issued April 20, 1964)

SHEIVER, *Presiding Examiner:* This is a proceeding on an order to show cause why the Respondent, the Union Carbide Corporation, should not apply for and secure a license from the Federal Power Commission for its two previously constructed hydroelectric projects, namely, the Glen Ferris and the Hawks Nest developments located on the Kanawha and the New Rivers, respectively, in Fayette County, West Virginia pursuant to Sections 4(e), 4(g), 23, and 308 of the Federal Power Act. 16 U.S.C. 797(e), 797(g), 816, 825(g). The Hawks Nest project was constructed between 1933 and 1936 and began full operation in 1937. The Glen Ferris project was constructed in 1898 and rebuilt in 1919.

On May 19, 1941, an application was filed with the Commission for a license to authorize the construction, operation and maintenance of a hydroelectric project on the New River near Hawks Nest, West Virginia, and by order dated May 26, 1942, the Commission authorized the issuance of a license. A license was accordingly tendered to the applicant on May 6, 1944. Thereafter, the applicant (then the Electro Metallurgical Company of Glen Ferris, West Virginia, a wholly owned subsidiary of the Union Carbide and Carbon Corporation, the predecessor of the present Respondent) protested some of the provisions of the license and petitioned to have them changed. One of the disputed provisions consisted of a recital of a finding contained in the Commission's order of May 26, 1942, that the New River on which the Hawks Nest project was located was a navigable water of the United States. After numerous exchanges of correspondence between representatives of the Commission and of the applicant, conferences, and other actions following 1944 failed to resolve the differences, the Respondent on May 18, 1950 filed a notice of withdrawal of its original application stating among its reasons that the New River where the Hawks Nest project is located did not constitute navigable waters of the United States and that the Commission therefore, was without jurisdiction.

Prior to the application made by the Electro Metallurgical Company, namely, on May 10, 1927 its predecessor in interest, the New Kanawha Power Company

of Glen Ferris, West Virginia, filed a Declaration of Intention (DI–102, West Virginia) under Section 23 of the Federal Water Power Act, (Act of June 10, 1920, Ch. 285, 41 Stat. 1063, 1075; 16 U.S.C. 817) to construct the Hawks Nest project (14th Annual Report, FPC p. 158) and the Commission found that the interests of interstate commerce would be affected by such construction. But neither the Declarant nor Electro secured a license for the Hawks Nest project. Thereafter, the Commission through the Attorney General of the United States sought to enjoin its construction but because of a misapprehension of the law applicable to the enforcement of the Commission's rights, the suits filed for this purpose were not heard on their merits, but were dismissed on jurisdictional grounds. A suit in the United States District Court for West Virginia had been dismissed on the motion of the United States and at the same time a suit was filed in the Supreme Court of United States endeavoring to invoke its original jurisdiction since the State of West Virginia had intervened in the suit in the lower court. The Supreme Court dismissed the complaint for want of original jurisdiction. *United States* v. *West Virginia*, 295 U.S. 463 (1935); 11 FPC 837, 839.

On February 26, 1952, 11 FPC 837, the Commission issued an order to show cause why the Union Carbide and Carbon Corporation should not apply for and secure a license under Section 4(e) of the Act for its Hawks Nest project effective as of July 1, 1934, 11 FPC 837, 840. The Commission's long drawn out efforts to require the licensing of the Respondent's Hawks Nest project are set forth in this order.

Since the Respondent's Glen Ferris project had never been licensed, action was taken in respect to this project by the Commission in 1962 as well as the one at Hawks Nest. Accordingly, by order of August 2, 1962, 28 FPC 271, the Commission supplemented or amended its 1952 order so as to include the Glen Ferris hydroelectric development which is located on the Kanawha River. By the 1962 order the Respondent would be accorded a full hearing which it claimed had previously been denied to it. On October 1, 1962, the Respondent filed an answer to the Commission's order of August 2, 1962 denying that the stretch of the Kanawha River where the Glen Ferris project is located, or that the New River where the Hawks Nest project is located are navigable waters of the United States. In its answer the Respondent further contended that its projects are incapable of affecting navigation or the interests of interstate commerce and that the Commission is wihout jurisdiction over its projects. Thereafter, the matter came on for hearing and testimony was taken and evidence was adduced in Washington, D.C., on September 23, October 14, 15, 16, and November 13, 14, 1963, and in Charleston, West Virginia on October 22, 23, 24, 1963.[1] An oral argument was held before the Examiner on March 3, 1964.

The New and Kanawha Rivers—Navigability of the Kanawha. The New River has its origin in the northwestern part of North Carolina and may be said to assume its character as such at the mouth of Wilson Creek near the North Carolina-Virginia line. (See Appendix A.) From this point it flows first in a northeasterly and later in a northwesterly direction for approximately 250 miles to the mouth of the Gauley River where it changes its name and becomes the Kanawha River. The Kanawha flows past Charleston and some 97 miles below its beginning at the mouth of the Gauley, it joins the Ohio River at Point Pleasant. The New and Kanawha Rivers are in effect one continuous interstate stream. The New River is joined by numerous tributaries, the largest of which are the Greenbrier and the Gauley. The Elk River is the largest tributary of

[1] By order of December 10, 1963, the State of West Virginia was permitted to intervene as of November 13, 1963, and thereafter filed briefs.

the Kanawha. In its course to the Ohio the New River passes several villages and towns including Radford, Virginia, and Hinton, West Virginia. Much of the territory traversed by the New is rugged and mountainous. The river's valley is comparatively narrow. Its low water channel is sometimes narrow being from 150 feet or more, to 1000 feet more or less. At many places in the mountains its banks are almost sheer bluffs rising from the river's edge. At flood time (and more particularly before the construction of the control dams), it often became a raging torrent. It is also a river of singular scenic beauty.

The elevation of the New River above sea level at Wilson Creek is about 2440 feet, at its mouth at the Gauley 652, and the elevation of the Kanawha where it empties into the Ohio is about 514 feet. The fall in the New River from Wilson Creek to its mouth, in a distance of 252 river miles is about 7 feet per mile. The fall in the Kanawha, over a distance of 97 miles is about 1.42 feet per mile. The fall in the lower portion of the New, between Hinton and the Gauley, the area commonly referred to as the "gorge" is approximately 698 feet or 11.2 feet per mile. It is in this reach that the Respondent's Hawks Nest project is located. Between mile 90 and 97 of the Kanawha the fall is about 7 feet per mile. It is here namely, near mile 95.7 that the Respondent's Glen Ferris project is located.

The drainage area of the New and Kanawha Rivers at Kanawha Falls is 8,367 square miles. Due to the seasonal variations in rain fall there is a marked fluctuation in the flow of the New River. The maximum flow of the New and Kanawha Rivers immediately below the junction of the Gauley was 270,000 cubic feet per second on September 14, 1878, the minimum flow 640 cubic feet per second on August 15, 1930. The average flow of the New River at its mouth is in excess of 10,000 cfs; the average flow of the Gauley at its mouth is more than 2500 cfs; and the average flow of the Kanawha immediately below the junction of the New and Gauley, at Kanawha Falls, measured over a period of 84 years is 12,570 cfs. Aside from other conditions, it is quite clear that the New and the Kanawha Rivers contain an abundance of water to sustain extensive commercial navigation.

The Respondent's Glen Ferris project is located a little more than a mile below the junction of the Gauley and the New Rivers at the Kanawha Falls. In the last century a wooden dam and lumber mills were located at almost the same site. The wooden dam was replaced by a concrete dam in 1919. The present dam is from 6 to 12 feet in height. The Glen Ferris plant has a generating capacity of 4800 kw. The Hawks Nest plant consists of four generators which has an installed capacity of 102,000 kw. Both plants are operated essentially as a unit, the entire electrical output being utilized by the Respondent's arc furnaces at Alloy a few miles downstream on the Kanawha.

The sole issue in the present proceeding is whether the New River and the Kanawha River, where the Respondent's Hawks Nest and the Glen Ferris projects are respectively located, are navigable waters of the United States within the meaning of Section 3(8) of the Federal Power Act, and whether these projects are subject to the jurisdiction of the Commission in respect to licensing.

The New-Kanawha River basin has been the subject of large Federal expenditures in recent years. During these years more than 200,000 acres of forest lands have been acquired by the Federal Government in the New, Gauley, and the Greenbrier River watersheds at a cost of more than a half million dollars according to a report made to Congress by the National Forest Reservation Commission in 1960. *Sen. Doc. 74, 86th Cong., 2d Sess.* The Weeks Act as amended pursuant to which these lands were acquired authorized their pur-

chase for the purpose "of preserving the navigability of navigable streams" and for "the regulation of the flow of navigable streams or for the production of timber * * *" et cetera. (Act of May 1, 1911, ch. 186, 36 Stat. 961; Act of June 7, 1924, ch. 348, 43 Stat. 653).

In 1938 Congress authorized the completion of the Bluestone Dam and reservoir on the New River, near Hinton, West Virginia. (Act of June 28, 1938, ch. 795, 52 Stat. 1215). The Bluestone Dam is 180 feet in height and 2048 feet in over-all length. The reservoir is 36 miles in length and provides a storage of 631,000 acre feet of water. The project was designed and constructed for flood control purposes and in aid of navigation. (*United States* v. *West Virginia Power Co.*, 122 F. 2d 733, 734). It was constructed at a cost of about $28,000,000. A dam and reservoir at Sommersville, some 34 miles up the Gauley is now under construction (as of 1960) by the United States Corps of Engineers. The estimated cost of this project is $47,800,000. Another dam and reservoir have recently been constructed by the United States Corps of Engineers about 100 miles up the Elk River, a tributary of the Kanawha, near Sutton, West Virginia. In 1960 the cost of this project was estimated at $34,500,000. These dams provide a means of controlling the run-off in flood season and of increasing the low water discharge during the remainder of the year. The reduction of flash floods is an aid to sanitation and to navigation on the Kanawha and Ohio. Such reduction also decreases property losses which frequently accompany flash floods.

At various times covering a period of nearly a century the Federal Government has expended large sums of money to improve navigation on the New and the Kanawha Rivers or their tributaries. Congress appropriated funds rather regularly for this purpose between 1870 and 1888. (16 Stat. 223, 226; 17 Stat. 370, 376; 18 Stat. 237, 240, 243; 19 Stat. 132, 134; 20 Stat. 152, 155, 157, 161, 363, 364, 365; 21 Stat. 180, 185, 468, 470, 475; 22 Stat. 191, 199; 24 Stat. 310, 319, 334; 25 Stat. 400, 412). Most of these funds were spent on the Kanawha and on middle reaches of the New. Dams and locks were constructed on the Kanawha following 1875. Some 10 locks and dams constructed in 1898 afforded a six-foot channel for navigation. Between 1934 and 1937 these facilities were supplanted by three improved dams and locks now located at London, Marmet, and Winfield providing a nine-foot navigable depth extending more than 90 miles up the river from its mouth. The cost of the latter improvements including the dam at Gallipolis, Ohio, was approximately $22,000,000. *Annual Report * * * U.S. Army Engineers, H. Doc. No. 4, 87th Cong., 1st Sess. (1960).* The trade now carried on through these locks is extensive. The total annual cargo which moved on the Kanawha River in 1960 was in excess of 10 million tons.

At this point it should be observed that the New River between Hinton, West Virginia and Allisonia, Virginia (mile 62 to 173) (see Appendix B)* was held to be a navigable water of the United States by the Supreme Court in *United States* v. *Appalachian Electric Power Co.*, 311 U.S. 377, 419 (1940). The present proceedings involve the New River below this area, namely, the Hinton-Gauley reach (mile 0 to 62). It also involves the head waters on the Kanawha immediately below the mouth of the New and roughly between miles 91 and 97 of that river.

The meaning of navigable waters as defined by the Federal Power Act, in section 3(8), 16 U.S.C. 796, is as follows:

> (8) "Navigable waters" means those parts of streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several states, and which

*Appendix B has been reproduced from Appendix E of Staff's brief.

either in their natural or improved condition *notwithstanding interruption between the navigable parts of such streams or waters by falls, shallows, or rapids compelling land carriage, are used or suitable for use for the transportation of persons or property in interstate or foreign commerce, including therein all such interrupting falls, shallows, or rapids,* together with such other parts of streams as shall have been authorized by Congress for improvement by the United States or shall have been recommended to Congress for such improvement after investigation under its authority.

The Kanawha River generally has long been regarded as a navigable stream. It has been navigable in fact from early times. Chief Justice Marshall in his, *Report of the Commissioners* * * * to the State of Virginia in 1812 assumed that the Kanawha was navigable between the Gauley and the Ohio. In this report he stated:

> Immediately above the mouth of Gauley, the river opens and presents a beautiful sheet of deep smooth water, which is succeeded by the rocks over which it dashes, and forms the Great Falls of Kanhawa (Kanawha). The height of these falls is twenty feet four inches. With its name the river loses its wild and savage aspect * * * Below, quite to the rocks which have fallen from the brink over which the cataract rushes, is a deep smooth and beautiful basin. The river is so wide as to rise, in the greatest freshes, only six or seven feet * * * At the Great Falls of Kanawha there is, near Morris's mill, a very eligible place for locks (p. 20, 21, 24).

In the Fourth and Fifth Annual Reports of the Board of Public Works to the General Assembly of Virginia * * * 1821, Briggs and Moore (at page 32) describe the first few miles below the Kanawha Falls as follows (the Kanawha Falls is at mile 95.7):

> On the *2nd* of the *8th* month we commenced the examination, levelling and survey of the Kanawha river below the great falls. The following is the substance of the notes taken on the occasion. In the estimates for improvement it is calculated to give three feet depth of water at all times.
>
> 1st mile—About ¾ very deep and level to the head of long shoal; the last ¼ swift water, but tolerable navigation.
>
> 2nd mile—About ¾ the remainder of the long shoal; the water is sufficiently deep, but several detached rocks require removing; if the proper boats and apparatus be provided, the expense will not be great; (say)---------- $600
>
> Fall 9.54 f.
>
> 3rd mile—Excellent navigation the whole mile. Fall 0.78 f.
>
> 4th mile—Begins with a brisk current and for a short distance about 2½ feet deep; then deeper for some distance; after which some ledges of flat rock occur, over which there cannot be carried at this very low state of the water more than about 18 inches; then, deep strong water to the end; It is probable there might be expended on the ledges to advantage about---------- 250
>
> Fall 4.32 f.
>
> 5th mile—Begins with strong deep water; but the loop shoal soon commences; it is composed of gravel, and shows evident signs of shifting. In places there is at present not more than 15 inches water. To improve this shoal a sluice in a proper direction ought to be opened through several gravel beds; which, if rightly executed, would not

be liable to fill, except in extraordinary cases of ice, &c. With a good machine for the purpose this might probably be done for..... $800
Fall 6.61 f.

6th mile—Excellent navigation. Fall 0.44 f.

7th mile—The same. Fall 2.22 f.

8th mile—The same. Fall 1.22 f.

By Section 3(8) of the Act "navigable waters" include streams or parts of streams and falls and rapids, over which Congress has jurisdiction under its authority to regulate commerce among the several states which in their natural condition *are used or suitable for use* for the transportation of persons or property in interstate commerce.

There is evidence that for several years in the last century logs were floated down the New and the Gauley Rivers into the Kanawha and into the area where the Respondent's Glen Ferris project is located. A lumber mill existed near the Glen Ferris site, between the 1820's and the 1880's. The courts have held that logging and rafting is evidence of navigation. *The Montello*, 20 Wall. 430, 441. The United States Corps of Engineers recognized this fact when the Willson Aluminum Company, a predecessor in interest to the Respondent, in 1899 requested permission to construct a private dam (Glen Ferris) on the crest of the Kanawha Falls. Although the rafting of logs had ceased by then the War Department granted permission to build the dam on condition that in case of any future need by lumber interests Willson or its successor would build a lumber chute to facilitate the passage of logs.

As already noted, through improvements consisting of three dams and sets of locks the Kanawha now has a nine-foot navigable depth over its entire course except for approximately six miles in the upper reach where it becomes more shallow and where the Kanawha Falls are located. Although the London Dam provides a pool virtually to the foot of the falls the nine-foot navigation channel ends near mile 90.5. The Respondent contends that this reach including mile 95.7 where its Glen Ferris project is located does not constitute navigable waters of United States. The respondent presented evidence to show that there is no modern navigation in this reach and that the water depth is insufficient to accommodate nine-foot navigation. This clearly is not the test of navigability. Navigability under Section 3(8) of the Act cannot be equated with nine-foot navigation. But the respondent does not deny that this area of the river is susceptible of improvement and of being made navigable to commerical craft. The engineers Briggs and Moore, more than a century ago, were of the opinion that the falls here encountered might be bypassed by dams and locks. The relatively low falls certainly would present no insurmountable obstacle to modern engineering if there were a need to extend modern means of water transportation to this reach of the river.[3]

In its initial brief the Respondent admits that there is some slight evidence of navigability in respect to the upper reaches of the Kanawha. But it does

[3] It should be observed in passing, for example, that seven locks at the Welland Canal in Canada constructed in 1932 provide a lift of 323 feet and enable ships to by-pass the Niagara Falls; that two locks near Massena, New York, constructed in 1954–1958 provide a lift of nearly 90 feet, enabling ships to by-pass the Moses-Saunders Dam and the former falls in the 44-mile stretch of the International Rapids section of the St. Lawrence River; and that two locks at the Wilson Dam on the Tennessee River provide a total lift of 89 feet, and another lock constructed in 1935 at the Wheeler Dam, also on the Tennessee in Alabama, has a lift of 50 feet. See, *Saint Lawrence Seaway Development Corporation Annual Report for the Year Ending December 31, 1959*, pp. 6, 9; *Annual Report of the TVA*, 1934, H. Doc. 82, 74th Cong., 1st Sess., pp. 17, 18, 24; *Annual Report of the TVA*, 1935, pp. 3, 10.

not press the point of non-navigability. The Respondent rather falls back on legal arguments to support its contention that the Glen Ferris project is exempt and therefore need not be licensed. But it would be strange indeed, under present circumstances, to hold that a few miles of a great river on which there is more than 10,000,000 tons of commerce annually is not navigable when that reach of the river might be improved in the same fashion as other reaches of the river have been improved. The question is not whether modern commercial watercraft are using the Glen Ferris reach of the river but whether it is susceptible of improvement and use. As was said by the Supreme Court in *The Montello*, 20 Wall. 430, 44, "The capability of use by the public for purposes of transportation and comerce affords the true criterion of the navigability of a river, rather than the extent and manner of that use. If it is capable in its natural state of being used for purposes of commerce, no matter in what mode the commerce may be conducted, it is navigable in fact, and becomes in law a public river or highway." The evidence discloses that the upper reaches of the Kanawha have been navigated, have been used for the transportation of property, and the floating of logs. There is no question of the abundance of water for navigation, prior use, or capability of improvement. The fact that this reach of the river has not been used for many years and is not now used by commercial craft does not make it non-navigable under Section 3(8) of the Act. *Wisconsin Public Service Corporation* v. *Federal Power Commission*, 147 F. 2d 743, 748, cert. denied 325 U.S. 880. In fact these few miles of the Kanawha are similar to the rapids and shoals commonly flooded by dams and by-passed by locks in other rivers, and navigability in legal contemplation is not destroyed because a stream is interrupted by occasional natural obstructions or portages. *Montana Power Company* v. *Federal Power Commission*, 185 F. 2d 491, 494, cert. denied 340 U.S. 947. Indeed it may be said that Section 3(8) of the Act was specifically intended to cover cases such as this. We think it is clear that notwithstanding the fall in the Kanawha at the site of the Respondent's Glen Ferris project and that no commercial navigation presently exists in this reach of the river, it is a navigable water of the United States within the meaning of Section 3(8) of the Federal Power Act. *Economy Light & Power Co.* v. *United States*, 256 U.S. 113, 122, 123; *United States* v. *Utah*, 283 U.S. 64, 86; *United States* v. *Appalachian Power Company*, 311 U.S. 377, 409.

Navigability of the New River. We turn now to the area between the Gauley and the town of Hinton (miles 0 to 62), and a consideration of its navigability. The Respondent's Hawks Nest powerhouse is located at about mile 1.5 and its dam near mile 6.8. The Respondent claims that the Commission is without jurisdiction to require the licensing of its Hawks Nest project because the Hinton-Gauley stretch of the New River does not constitute navigable waters of the United States. The Respondent says that the river here "has never been, and is not now, navigable in fact, and is not suitable for navigation." As will be shown we think the Respondent's contention is erroneous and that this reach of the New River is also a navigable water of the United States within the meaning of the Federal Power Act, Sec. 3(8).

As previously intimated the New River is more than 250 miles in length. It has its beginning near the North Carolina-Tennessee line. The span of the river between Allisonia, Virginia and Hinton, West Virginia (miles 62 to 173) was held to be navigable by the United States Supreme Court in the Appalachian case in 1940. We are here concerned with the navigability of the span of the river between Hinton and its mouth (miles 0 to 62). At the hearing the parties put in evidence photographs of the Kanawha Falls, views of the New River before and after construction of the Hawks Nest development, and aerial photographs of the area between the Kanawha Falls and Hinton. The United States

Department of the Interior Geological Quadrangles of the Hinton Gauley reach of the New River were also introduced as well as early surveys.

The pool created by the Glen Ferris Dam extends upstream some two-and-a-half miles to the foot of the Hawks Nest Powerhouse. The powerhouse is connected with the Hawks Nest Dam some five miles further upstream and about 6.8 miles above the mouth of the New River by means of a tunnel which diverts the normal water flow from the intervening river bed.[3] Another pool is created by the Hawks Nest Dam and extends upstream some three or four miles depending upon the pool level maintained. In its natural state the gradient of the river is more pronounced for about the first twenty miles above its mouth. Thereafter for the remaining distance to Hinton, the fall in the river is less precipitous being about 8.6 feet per mile. Between the ledges and rapids the river presents a series of shorter and longer pools.

At the hearing the Respondent produced several elderly witnesses who testified as to their recollection of the use of the river. The witness Prince testified that logs were not rafted down the Hinton-Gauley reach of the New River for the reason that "it was too rough." The witness Martin testified that between 1898 and 1905 lumber and staves were unloaded from bateaux at Hinton and then loaded on railway cars but that he never knew of any boating or hauling downstream from Hinton. The witness Wilson testified that the Hinton-Gauley area of the river had not been used to transport persons or property except to cross by ferry. The witness Garvin testified to the same effect, as did the witness Bragg. The witness Holland testified that there was no rafting of logs on the river. Two other witnesses testified that they knew of no transportation up and down the New River below Hinton although one admitted rafting down the Greenbrier. The witness Allen testified that coal and lumber were shipped by rail but that there was no shipment by water on the New River including rafting of logs; and all the transportation that he had heard of in the gorge was by C&O Railway. The last of the elderly witnesses, Vawter, aged 70, a life-long resident of Ansted, West Virginia, near Hawks Nest, stated that there had been no industrial activity along the stretch of the New River from Hinton to the mouth of the Gauley, and that the coal industry and some timbering started with the completion of the C&O Railway in 1873, when coal and timber were moved only by the C&O Railroad.

The testimony of all of the Respondent's elderly witnesses was similar in character. They knew of no transportation of persons and property on the Hinton-Gauley reach of the river except across the river by ferry. Their testimony was necessarily limited in time, principally to the closing years of the last century and the beginning of the present. None evidenced any detailed familiarity with conditions or transportation in earlier years including the 1870's and 1880's. But there is creditable evidence to the effect that there was navigation and rafting of logs in the Hinton-Gauley area during the last century.

In the case of *United States* v. *Appalachian Electric Power Co.*, in the United States District Court in Virginia in 1939, the witness Paul L. James testified to considerable shipments and the floating of logs in the Hinton-Gauley area of the New River at an earlier period. (See Transcript of Record, Supreme Court of the United States, October Term, 1939, at pp. 310, 313, 316). His testimony was introduced at the hearing and reads in part as follows:

> I am 63 years old. My father was in the lumber and logging business-stave business. He had his saw mills and planing mills at Hinton and

[3] The diversion is virtually complete except for times when the flow of the river is above average (about 10,000 cfs).

converted timber into building material. I was connected with his lumber company in later years when I became old enough. I was bookkeeper and secretary and treasurer of the organization. From the time I was old enough to do any work at all I was brought up in the saw mills, planing mills, and offices of the company. At first it was a partnership between my father and his brothers. The firm name was William James & Sons. After a number of years it was incorporated under the name of William James Sons Company. * * *

* * * * * * *

Q. How many years did that cover?

A. Well, my father went to Hinton in 1870. I would say 45 to 55 years he was in there operating. * * *

Q. State whether or not your company ever purchased or gathered logs at what is known as Sandstone Falls on New River or near that vicinity?

A. *We had gathered our own logs and the logs of the St. Lawrence Boom Manufacturing Company at Sandstone [mile 54.6], Kanawha Falls and as far down the river as Charleston.*

* * * * * * *

Q. And what did you do with those logs which you got down there? How would you get them ashore?

A. They were generally picked up by different people along the river and rafted and we would sell them to some saw mill and ship the lumber or sell the logs.

Q. Where would you ship the lumber to?

A. After I went to keeping the books, my father went to Columbus, Ohio, and opened a retail lumber yard and we shipped practically all of the lumber we sawed that run through our planing mills to Columbus, Ohio, but we had business all along the river and we had business in Boston and Cincinnati. We shipped lumber wherever we could sell it.

Q. *And you gathered lumber, as I understand it, not only at Sandstone Falls but at other points down the river as far as Charleston?*

A. *Yes, Montgomery, Kanawha Falls, Sandstone, and Charleston were the four principal places that we could dispose of the stuff easy and that is where we could collect it.*

Q. And some of that, as I understand you, you shipped direct to Columbus, Ohio—some of these logs?

A. Not logs—the cut timber.

Q. How did you know that those logs which you floated down were your logs? * * * Q. Was there any way of your knowing?

A. Yes, whenever a log was taken up and measured in the woods or on the river bank, we had a "J&S" that was stamped on both ends of the logs.

Q. What did the J & S stand for?

A. James and Sons.

Q. Was that a custom with the other lumber companies?

A. Yes, every logging company that did any logging on the river had their own private marks * * *

Q. I think you testified that your company moved about from two-and-a-half to three-and-a-half million feet of lumber a year, is that right?

* * * * * * *

A. I would certainly think we handled a third of the business on the river. That would make somewhere between seven and ten million feet (board-feet) handled on the river.

Q. How many years would you figure there was such an amount of timber on the river?

A. We were in the business there forty-five or fifty years. * * *

The Respondent quotes from *Peters and Cardens, History of Fayette County, West Virginia* (1926) to the effect that:

> Some of the best yellow poplar, black walnut and other timber growing along the Great Kanawha and the Gauley Rivers was cut and rafted out about 60 years ago. [1866] The New River is too rapid for even the successful drifting of single logs and, as there was no other means of transportation then, the bulk of the timber in the interior remained until a later date.

This was before the appearance of the railroads in this area. But in the same History the authors state elsewhere (at p. 581):

> During the eighties, the Stockton Lumber Company operated a large water power saw mill, at the site of the Electro Metallurgical Company's plant at Glen Ferris. Saw logs were conveyed by water to Kanawha Falls and held in a large boom in the basin below the falls. * * *

In James H. Miller's *History of Summers County*, published in 1908 it is stated:

> A. E. Miller and W. N. McNeer lumbered extensively at one time on Lick Creek [mile 52]; also J. W. Alderson and W. B. Dean, and the Dean Lumber Company, which was composed of Dr. Fletcher Dean and William Ballard Dean, sons of George W. Dean.
>
> * * * The Wm. James Sons' Co. during the winter—the dry season—would prepare a large run of logs, containing many hundred thousands of feet; then, when the floods came, run them down to their boom, and finally to their mill. * * * If the boom broke, or it was an extraordinarily high flood, many logs would escape down the river, probably being caught in the Kanawha, or going on out into the Ohio * * *
>
> * * * *A. E. & C. L. Miller at one time did a considerable lumber business in the upper Lick Creek county.* * * *
>
> There has also been a large planing mill and lumber business done at New Richmond (mile 52.8) in the last ten years. [Emphasis supplied.]

Respondent admits that there was lumbering and rafting on the New River at or above Hinton, and on the Kanawha at the Kanawha Falls but claims there was none on the intervening stretch of the New River and if so it was purely of a local nature. In the light of the evidence this is incredulous, and contrary to fact. It is true that for geographical reasons lumbering and rafting was more extensive at Hinton and at the Kanawha Falls, but it is not necessary to prove that rafting existed mile by mile in the intervening stretch of the river. It is enough that there was rafting within the area of the river between Hinton and the Kanawha Falls and from one point to the other. The evidence discloses that there was rafting from the tributaries Greenbrier, Bluestone and Leatherwood to the New, and from the Gauley at the mouth of the New. The New River has several tributaries between Hinton and the Gauley such as the Laurel, Meadow, Glade, Piney and Dunlop Creeks. Lumber mills existed on the New below Hinton particularly at Sandstone and Lick Creek. We are also told that when the booms gave way during the Spring floods upstream the New or its tributaries the logs were picked up at the Kanawha Falls, or at Charleston.

It is urged by the Respondent that the Hinton-Gauley reach of the New River does not constitute navigable waters of United States because the Secretary

of War (now the Secretary of the Army) and officers of the Corps of Engineers, United States Army have reported this reach of the river as not navigable and as unsuited for improvement. In its brief Respondent quotes statements made by various officers of the Corps in support of this. A careful examination of these statements reveals, however, that they were made at particular times and for specific purposes and that they have little or no probative value under the present circumstances. For example, Respondent quotes a statement of Major F. W. Altstaetter dated November 21, 1912 that:

> * * * This whole section (Hinton-Gauley) is unfavorable for navigation, and the river above it could not be connected with navigation in the Kanawha by the expenditure of any reasonable amount. The navigation between Hinton and Radford must therefore be considered as having no outside river connection. The Chesapeake and Ohio Railroads parallel the river from Hinton to its mouth and continues on down the Kanawha River. *H. Doc. 1410 62d Cong. 3d Sess. p. 4.*

The foregoing statement of Major Altstaetter is taken from a five page memorandum entitled, "Preliminary Examinations of New River *from Radford, Virginia to Hinton, West Virginia.*". Major Altstaetter was then the District Officer of the Corps of Engineers at Wheeling, West Virginia. He was presenting his views and recommendations to his superiors. He was not dealing specifically with the Hinton-Gauley area but the reach above. *As to the reach above* he recommended that no survey be made and that no additional funds be spent on it because most of the lumber near the river had been cut, there was insufficient trade, no demand for improvement by the people in the area, and because the railroad which parallels the river had taken over much of the river commerce. His superior officers Colonel Rossell and General Bixby reiterated his views. Although these officers thought the Hinton-Gauley reach of the New River was unfavorable for navigation, they did not say it was non-navigable. Their chief concern was whether further funds should be requested of Congress and be spent then on improving navigation on the New.

The Respondent quotes further in its opening brief from a letter dated December 29, 1925 by Major General Harry Taylor, Chief of Engineers, in response to an inquiry from the Executive Secretary, Federal Power Commission in connection with a Declaration of Intention filed with the Commission by the New River Development Company. The occasion for the Secretary's request was a proposal to build a power development near Radford. The letter reads in part as follows:

> * * * I am of the opinion that the data and information disclosed in the Department's records and reports do not support the conclusion that the New River affords a channel for useful commerce or that it is navigable in fact. That section of the river between its mouth and the town of Hinton, having a fall of about 735 feet in a distance of less than 60 miles, may be dismissed from the discussion. This Department has reported *that the whole section is unfavorable for navigation and that it could not be connected with navigation in the Kanawha* by the expenditure of any reasonable amount.

There was a difference of opinion, however, among the engineers for in the same letter of December 29 it is also stated:

> The District and Division Engineers have reported that there is no commerce and that the river (New) is not navigable in fact, but assume that it is legally navigable for the reason that money has been expended on it for channel improvement by authority of Congress.

Only four months earlier the Chief of Engineers had advised the Commission differently than in his letter dated December 29, 1925. In a letter dated August 20, 1925 he stated:

> * * * while the navigable capacity of the stream is limited this office must report that no sufficient reason is seen why the Federal Power Commission should not exercise jurisdiction over the proposed project.

Notwithstanding the Respondent's intimations to the contrary, it is sufficient to say that under the circumstances it was not the prerogative of the Corps of Engineers to determine the navigability of the New River. It was the Corps' duty, however, among other things to advise and to make recommendations for improvements, and although the Corps previously had ceased recommending the expenditure of funds to improve navigation on the New River, as we have seen, the Supreme Court has held, notwithstanding the views of the officers expressed above, that 111 miles of the river above Hinton are navigable waters of the United States.

It is true as the Respondent points out that, "on June 1, 1927, the Commission made a finding *that the New River is not navigable waters* within the definition thereof of said act but that the interest of interstate and foreign commerce would be affected by such proposed construction." [Emphasis supplied.] *United States* v. *Appalachian Electric Power Co.*, 107 F. 2d 769, 776; Seventh Annual Report FPC, p. 114. This finding was made in respect to the Declaration of Intention referred to above and was predicated in part at least on the letter dated December 29, 1925 from General Taylor. At that time the Commission was composed of the Secretaries of War, Interior, and Agriculture, but by the Amendment of June 23, 1930, 46 Stat. 797, 16 USCA 792, the Commission's membership was changed to five commissioners. The Commission having become an independent agency, it subsequently sought a review of the question of navigability in the courts. (*Appalachian Electric Power Company*, 1 FPC 3, 4). This occurred and the Supreme Court of the United States reversed the lower courts, and in effect the earlier Commission action, holding as previously stated that the New River in the reach including Radford "is a navigable water of United States." 311 U.S. 377, 401, 419 (1940).

The Respondent asserts that the Hinton-Gauley reach of the New River is not navigable because it would be too expensive to improve. It argues that the gorge through which the river passes makes improvement practically impossible and that the expense would be astronomical. If the physical obstruction were not enough, it points out that "the Chesapeake and Ohio Railway has a double track on the left side of New River and the Great Kanawha upstream to the railroad bridge near Mill Creek, and a single track on each side of the river thence to Sewell (formerly Bowyer's Ferry), with a double track on the right-hand side of the river on up to Hinton; while on the left side of the River, the C & O Railway, not main line, extends upstream to and beyond Thurmond."

The railways are a manmade obstruction to the construction of canals and locks. The tracks are on the banks of the river above the flood line, and it might be said that the river's banks are preempted from use for navigational improvement without the removal of miles of trackage. The expense of acquiring this trackage and right-of-way, it is said, is prohibitory. This is on the assumption that improvement were scheduled for the near future. But a few generations are but a short time in the life of a nation, and it should be remembered that one form of transportation often succeeds another, the Conostoga Wagon, canals, railroads, and aeroplanes. Sometimes there is an abandonment of the existing form of transportation or a reversion to an earlier form. A nation should not

long be bound to one form of transportation to the exclusion of others. So here the presence of railroad trackage on the banks of the New should not be considered as preventing for all time the future development of the river in case of need.

The Respondent does not indicate what type of navigation is envisaged as impossible in the Hinton-Gauley area, but refers simply to slack water. Its cost figures for improvement vary considerably. It relies principally, however, on the testimony of two witnesses, Mr. Pett and Mr. Cooke. Pett, a consulting engineer, was asked how much it would cost to establish slack water navigation from Kanawha Falls to Hinton taking into consideration the Hutton Report, and he testified to a figure of $366 million as the present-day cost. He admitted, however, that this was a "ballpark figure" and not even a preliminary estimate. His estimate was unrealistic and must be rejected. This is quite evident because of the manner by which he arrived at his cost. Mr. Pett inquired of the Corps of Engineers what the cost was of the construction at London, Marmet and Winfield and obtained a total for the three dams of $10,580,000. He then trended these costs to the present, or 1963 using the Handy Whitman Index of Public Utility Construction cost and acquired a figure of $36,600,000. He then stated that the total lift provided by the three locks at these dams was 76 feet. Since the lift in the Kanawha Falls-Hinton reach was about 760 feet he multiplied by the ratio of the lift, so he said, to arrive at a figure of $366 million. He thought the range of cost was somewhere between $250 and $350 million. Although Mr. Pett evidenced a familiarity with engineering problems involved, he did not indicate what if any canals were necessary, how many dams and locks were needed, or their specifications, what depth channel would be provided or whether the dams would be built to accommodate generating plants. It is common knowledge that the Kanawha River is much wider than the New River in this reach but the length of the proposed dams apparently was not considered by Mr. Pett, only the total lift.

The witness Cooke in one respect at least was more realistic. He stated that only the very highest lift locks and dams can be constructed or should be constructed. But in making his estimate of the cost of improving navigation in the Hinton-Gauley area he fell back essentially on the old Hutton report of 1877. He testified that "Assuming that you had 25-foot lifts over the total fall there of almost 750 feet, it would be about 30 locks and dams which would certainly cost at least ten million dollars apiece at this time." He didn't say how he arrived at the cost figure for each dam and lock of $10 million. His estimate of 30 locks is almost the same number as in the Hutton report of 1877 (33 locks), but it is evident Mr. Cooke arrived at the number simply by dividing the differential in elevation of 750 by 25. His testimony in respect to cost left much to be desired. To say that canals should be built today based on a survey of 1877 would be similar to installing an 1890 steam reciprocating engine on a modern destroyer.

Although the witnesses Pett and Cooke evidenced concern as to the operational problems in navigating the locks if the New River were improved, both seem to have had in mind operating modern barges, perhaps in tandem, in a canal system of 1877 design. Their testimony discloses that they had little, if any, experience with ships or navigation.

The Respondent infers that since the Government took the position in its complaint filed in the *Appalachian* case in the United States District Court (107 F. 2d 769, 774) that the New River "throughout its whole course constitutes navigable water of United States" but abandoned "this extensive claim" in the Circuit Court of Appeals and the Supreme Court, and limited it to the stretch from Allisonia, Virginia to Hinton, West Virginia, the Government thereby rec-

ognized that it could not prove navigability throughout the river's course and that the other reaches, therefore, were non-navigable. This does not follow. The question in issue in the *Appalachian* case was the navigability of the river at or near Radford, Virginia where it was proposed that a dam and power plant be built. It was sufficient in that case to have a determination only in respect to the interstate stretch of the New which included the proposed dam site near Radford. On appeal the Government wisely confined its claim to what was needful.

As previously indicated the New River and the Kanawha have an abundance of water for navigation. The natural channel of the New has a depth of about 2 to 6 feet or more at average water level. The physical characteristics of the river for several miles below Hinton are not unlike areas above Hinton. The boats commonly used in the commerce which existed above Hinton in the last century and prior to World War I consisted of bateaux or keel boats having a length of from 50 to 70 feet, and were capable of carrying from 10 to 12 tons. (311 U.S. 377, 410–412). There is no question but that the commerce previously carried on the New River, as well as the present commerce on the Kanawha, is interstate in character. The lumber derived from the rafting in the last century was also shipped in interstate commerce.

That the New River, including the Hinton-Gauley span, was considered as navigable, was in fact navigated, and believed capable of improvement is evident from early government sources. Thus in a report made to the General Assembly of Virginia by the Board of Public Works in 1819 commonly identified as the Moore and Briggs report it is stated:

> This is truly a noble river. Notwithstanding it was represented to us as being remarkably low, yet it afforded a super-abundance of water for every purpose of internal navigation. The fall in this part of the river, considering the mountainous country it passes through, is comparatively moderate. The principal falls are, the Bull-falls, McDaniel's, Anderson's, Wiley's, Neilley's, and Peter's mountain falls: none of which has ever been improved in the least degree; yet we ascended them all with our boat; though in two or three instances, with considerable difficulty, after taking out our baggage, stores, &c. The breadth of the river from 2 to 300 yards, and the length of this section 55 miles 58 perches.

After ascending the New River for some 56 miles, as described above, Briggs and Moore descended from the Greenbrier to the Gauley in a craft 56 feet long and 7 feet wide. They described the river mile by mile, noting the falls, the "good navigation" and hazards. On one occasion they stated,

> We had again to unload and take down our cabin, and then get deep into the water behind a rock and hold the boat by a rope attached to the stern. * * *

In this span they recommended sluicing and tracking and the construction of four locks. Their estimate for improvements totaled $58,700.

In a *Report of the Commissioners Appointed to View Certain Rivers within the Commonwealth of Virginia* [Printed 1816] Chief Justice Marshall records his travels and survey of the head waters of the James River and the Great Kanawha Marshall and his party left Lynchburg, Virginia in the autumn of 1812 traveling upstream on the James to the mouth of Dunlap Creek, thence overland to the Greenbrier down the Greenbrier, and the New to the Kanawha. In making his report he stated in part:

> The difficulties encountered in descending this river (the New) were of a character essentially different from those which were experienced in the

Greenbrier. Uncommon as had been the drought, the supply of water was abundant. The boat sometimes, though rarely, rubbed upon a shoal; but in every such case it was apparent that a sufficient passage might be opened without much labor or expense. * * *

Here, for the first time, (Lick Creek Falls) the boat was taken out of the water and let down by skids.

The ground along which a canal may be carried around these falls, pursuing the course of Richmond's mill-race, was measured, and the elevation taken. The descent was found to be twenty-two feet nine inches, in one-hundred-and-eighty-one poles. * * *

The practicability of rendering the Greenbrier navigable has already been stated. The system which may be found best adapted for the improvement of James River, will be equally applicable to the Greenbrier, and will be equally successful * * * they are both capable of being brought into extensive use. Not only in descending, but in ascending also, these rivers may be navigated to great advantage.

With respect to New River, a judgment cannot be formed quite so decisively, nor pronounced so confidently. The difficulties are great, and deserve to be seriously considered.

The boat which conveyed your Commissioners, passed from the mouth of the Greenbrier, to the place where their expedition terminated, without being taken out of the water, except at the Great Falls of New River, and at the Great Falls of the Kanawha. It was navigated in the usual way through all the other difficult places which abound in New River, except two—both below Bowyer's Ferry. Through there it was conducted by ropes.

The boat was not laden, nor was it empty. In addition to the number of hands usually employed in navigation, it carried between two and three thousand weight. The greater part of this burden was taken not in the most difficult places; but in many of considerable magnitude, it remained in the boat. Where the vessel was guided by ropes, the necessity of resorting to this expedient was occasioned solely by the intervention of rocks, which can be removed. * * *

Having stated their view of this subject your Commissioners will only add their opinion, that the New River may be relied on with certainty, for the transportation of articles from East to West. * * *

Marshall and the Commissioners considered the James River, New, and Kanawha as one of the transportation routes from the Atlantic Seaboard to Ohio and Kentucky.

In his report he recommended the construction of sluices and locks to improve navigation in the New River, and the construction of a horseway along the bank, particularly between the Kanawha Falls and Bowyer's Ferry in aid of eastward navigation. He reported that whatever doubts may be entertained in respect to boats ascending the New River he and his Commissioners were entirely persuaded of the practicability of using it advantageously between the ferry and the mouth of the Greenbrier.

The Respondent minimizes the fact that John Marshall navigated the Hinton-Gauley stretch of the New River downstream in 1812 and that Moore and Briggs did the same in 1819. It characterizes these trips as mere exploratory ventures. To be sure their trips were slow and crude measured by modern standards. As a people today we perhaps do not value water transportation in the same manner as the Dutch or the Chinese. We are apt to forget that the state of Pennsylvania at one time had almost a thousand miles of canals. But it must not be forgotten that before the coming of the railroads armies were often moved

hundreds of miles in shallow watercraft. Portaging was common. At that time there was practically no means of transportation except by horse and wagon overland. To move a ton or two of goods and raw materials a hundred miles or more over unimproved roads in all seasons of the year was often a herculean task, whereas five or ten tons could often be moved by water more cheaply and advantageously. This was often true notwithstanding the necessity of portaging, one way traffic, or taking advantage of spring freshets.

The Respondent makes much of the great danger in navigating down the New River. Such a trip doubtless had its perils as did all river travel in early days. Curiously enough the Chief Justice of the United States although then in his late fifties did not shield himself of this danger.

One of the reasons for the failure to improve the navigation on the New in the time of Moore and Briggs is found in this statement contained in their report:

> * * * several small tracts of bottom land are found in the first 10 or 12 miles, but from thence to Bowyer's ferry, 10 acres of good land in a body rarely occurs. *About 5 or 6 small cabins are the only human habitations that are to be seen in 35 miles.* From the mouth of Man's creek ¼ below Bowyer's ferry to the mouth of Gauley River 18 miles, not a trace of human industry or art is anywhere to be seen, except a part of a small field which approaches the river at the mouth of Mill creek. Indeed for a large portion of that distance a spot of earth of sufficient dimensions for the ground plan of a moderate sized dwelling house is rarely to be seen.

When the Federal government first made funds available for river improvements in the 1870's the Corps of Engineers utilized such funds in the reaches of the New River where they would be most felt and where there were thriving industries, iron mining, and rail connections. With the construction of the rail lines serving the same and adjacent areas with rapid service to distant points, river traffic diminished and gradually vanished as it did in many other parts of the country where rail transportation was in competition with water.

It should be borne in mind that in making annual appropriations for the improvement of navigation on the New River Congress recognized it as a navigable water. Unlike numerous other streams or particular reaches of them, as found in 33 U.S.C. 21 *et seq.*, Congress never declared the New to be non-navigable. The fact that Congress dealt with the New as a navigable stream of the United States, while not conclusive, is a circumstance of considerable importance and is given great weight by the courts. *United States* v. *Brewer-Elliott Oil and Gas Co.*, 249 F. 2d 609, 618.

The Respondent suggests that navigation on the New River is put beyond recovery by the construction of the Bluestone and the Clayton dams upstream. If this contention were accepted then it follows that the artificial obstructions, such as the railroads and the construction of the Respondent's Glen Ferris and Hawks Nest projects forever preclude the development of the rivers for navigation or otherwise where these facilities are located. But it is common knowledge that such facilities sometimes may be removed or changed and some dams are built so that they can be modified to accommodate lift locks or be by-passed by canals or locks. Again, suppose navigation is not improved but power projects are built and licensed, does this make the stream non-navigable and beyond Federal control. The answer is clearly "No." In *Wisconsin Public Service Corporation*, 3 FPC 495, 507, it was held that if the Wisconsin River was navigable prior to the construction of dams for maintenance of which Federal authorization had not been obtained, the dams may be abated, and their presence in the streams does not in any way constitute a bar to a finding of navigability nor to an assertion of Federal jurisdiction. See also *Wisconsin*

Public Service Commission v. *F.P.C.*, 147 F. 2d 743, 749; *Economy Light and Power Co.* v. *United States*, 256 U.S. 113, 118 (1921); *Pennsylvania Water and Power Co.*, 2 FPC 61, 66.

As previously indicated, the Respondent's Hawks Nest dam is located upstream from its powerhouse and is connected by a tunnel so as to increase the head and generating capacity. At the time of construction the Respondent obviously utilized the latest improvements known to science to secure the maximum power capacity from the available water. It is therefore somewhat anomalous that the Respondent should now contend that it is impossible to make the New River navigable and that the physical features of the river prevent its improvement for navigation notwithstanding the scientific improvements in the last half century in the construction of canals and locks.

In addition to the evidence heretofore referred to as evidence of navigability, the staff also points to various ferry crossings in use in past years, the testing of Army floating equipment during World War II near Stretchers Neck, and the present use of pools in the Hinton-Gauley reach by pleasure craft. If this evidence alone is insufficient to determine navigability, it is certainly of significance when considered with others.

As has been indicated, extensive trade and navigation existed on the New River during the last century and the Supreme Court has held that 111 miles of the river above Hinton are navigable. (*United States* v. *Appalachian Power Co.*, 311 U.S. 377, 411, 418.) The river below Hinton has also been navigated and was used for several years for the rafting of logs. But even if the Hinton-Gauley section of the river were never navigated or if it is impossible of improvement for navigation, which we do not intimate, but which is contended for by the Respondent, this stretch is navigable within the meaning of section 3(8) of the Act notwithstanding that portaging may be necessary over this reach or connections made by road or rail between the river above and below. In this respect the Hinton-Gauley span of the New is similar to the Missouri near the Great Falls above Fort Benton. There by a series of rapids and falls the descent in the Missouri is about 520 feet in 17 miles or 30 feet per mile (the gradient is much more than the New), and although the stretch presents a natural barrier to navigation or to connecting navigation above and below, it was held to be a navigable water of the United States. *The Montana Power Co.*, 7 FPC 163, 174; *Montana Power Co.* v. *F.P.C.*, 185 F. 2d 491, 493 (1950).

The tests to be applied to determine the navigability of the Kanawha which have previously been referred to are equally applicable to the New. Actual navigation is one test under the Act. Authorization by Congress for improvement is another. A third test is whether the stream is suitable or susceptible of use or improvement for commercial purposes. As stated in *The Montello*, 20 Wall 430, 441:

> It would be a narrow rule to hold that in this country, unless a river was capable of being navigated by steam or sail vessels, it could not be treated as a public highway. The capability of use by the public for purposes of transportation and commerce affords the true criterion of the navigability of a river, rather than the extent and manner of that use. If it be capable, in its natural state of being used for purposes of commerce, no matter in what mode the commerce may be conducted, it is navigable in fact, and becomes in law a public river or highway. * * *

The fact that shoals and rapids exist in a river, making navigation difficult, is not conclusive of non-navigability. *Ibid.* As adverted to heretofore, many of our great rivers could not be navigated in the early days without a break or portaging, and they constituted a channel for useful commerce. If a river has

been used for purposes of commerce this establishes its navigability, notwithstanding the fact such use has long since been discontinued due to changed economic conditions, artificial obstructions, or improved methods of transportation. (*Economy Light and Power Company* v. *United States*, 256 U.S. 113, 123.)

There is no convincing evidence in this proceeding that the Hinton-Gauley section of the New River is unsuitable for use or improvement for commercial navigation in the event of need. In this regard, in its gradient, its flow, and other characteristics it is not unlike other rivers which have been held to be navigable waters of the United States. (A few examples in passing are of interest: the Rackette River, in *Central New York Power Corporation*, 8 FPC 390, 547; the Sacandaga River in *New York Power and Light Corporation*, 8 FPC 231; the Menominee River in *Wisconsin Michigan Power Company*, 3 FPC 449, 455; the Wisconsin River, in *Wisconsin Public Service Commission*, 3 FPC 495, 508; the Great Falls Section of the Missouri River, in *Montana Power Co.*, 7 FPC 163, 174; and the Clyde River, in *Citizens Utilities Company*, 21 FPC 233, 240.).

Considering the actual use of the Hinton-Gauley span of the New River, its suitability for use for the transportation of persons and property in interstate commerce and all the evidence of record, it is concluded that this portion of the river constitutes navigable waters of the United States within the meaning of the Federal Power Act.

Projects Affecting Navigation and Interstate Commerce. The Respondent contends that the Hawks Nest and Glen Ferris developments do not and will not affect navigation downstream on the Kanawha. At the hearing and in its briefs the Respondent went to great length to show that the operations of its projects in no wise impaired present day navigation in the Kanawha. One of its witnesses, Mr. Ours, testified that no complaints about the operation of its facilities had been received from the Corps of Engineers, and that its operations had no effect upon navigation in the London and the Marmet pools. Another witness, Mr. Bosworth, a boat captain, who had been engaged in the business of "river towing" and who navigates the Kanawha testified that the operation of the Respondent's dams caused no interference with navigation. Other witnesses testified similarly for the Respondent. The Respondent showed that the Kanawha Valley Power Company's hydroelectric installations at London and Marmet, licensed by the Federal Power Commission, especially the London installation, was permitted to engage in "peaking", *i.e.*, to draw down and utilize water in the London pool more rapidly for a number of hours each day and thereafter to cut off or curtail the flow through the generators permitting a buildup. It was indicated that when the river flow is about 9,000 cubic feet per second the plants are run at full load without any "peaking operations" and for flows between 9,000 cfs. and 3,410 cfs. the peaking capacities at London are used as prescribed in the Federal Power License; and that a draw down of three feet of the London pool is permitted from elevation 614 to 611. Respondent's witness Johnson testified that "insofar as the operations of the London plant are concerned we never have felt that they (the hydro plants upstream) in any way curtail or limit the operation of the London plant."

At the hearing the staff introduced several graphs to establish that at certain times when water was released at Hawks Nest there was an appreciable rise in the London pool elevation and that when it was withheld or the pool was being filled the London pool dropped. The purpose of this evidence was to demonstrate that the fluctuations affected navigation or navigable capacity. The Respondent in turn introduced graphs to minimize the variations and to show that there was no direct correlation between the release of water and the stage of the London pool. The Respondent's witness Pett testified that there was no consistent relationship between variations in release of water at Hawks Nest and variations in

the pool level at London. The Respondent contends that the Kanawha is navigable only to the head of 9-foot navigation (mile 90.57), that its Hawks Nest Dam is located some 13 miles upstream, that its projects are "run of the river", that their operation cannot affect navigation in the London pool or below, particularly in view of the control maintained under the licensed operations at London and Marmet. The Respondent further contends that "affect" means something material, appreciable, and of substantial effect.

It is quite clear that the Respondent's contentions are keyed to downstream navigation only and the existing 9-foot navigation in the Kanawha. The Respondent's arguments therefore, in part at least, are irrelevant. Certainly the Kanawha was navigable before the present dams were built at London, Marmet, and Winfield and before 9-foot navigation was provided. Assuming that the Respondent's Hawks Nest and Glen Ferris projects were non-existent but were proposed to be constructed it would be legitimate to inquire what effect their operation might have on navigation or the navigable capacity both of the New River and the Kanawha in their natural state and not merely on existing navigation on the Kanawha as improved. The location of the Glen Ferris project necessarily entered into the planning, improvements, and erection by the Federal government of the three dams on the Kanawha. As already noticed, the United States Corps of Engineers recognized that the navigability of the Kanawha would be affected by the erection of the original dam at Glen Ferris in 1899. The Corps accordingly reserved the right to require the construction of sluices for the floating of logs. The Respondent's Glen Ferris dam necessarily must be considered in any plans for further improvement of navigation on the Kanawha. Similarly, the diversion of the normal flow of the New River from five miles of its natural channel must always be considered in any future planning and development of the river whether it be flood control or navigation. *United States* v. *Rio Grande Dam and Irrigation Company*, 174 U.S. 690.

It is unnecessary to comment upon the numerous graphs and charts which were put in evidence by the parties. However, by the terms of its license the licensee of the hydroelectric facilities at London and Marmet is required in carrying on its operations to cease or curtail the use of water for power generation in such a fashion as to maintain minimum levels (611 in the London pool) for navigation and lock operations. Thus by reason of the pools that have been created by the dams the effect of the variation occasioned by the operation of the Respondent's projects is reduced. But it inevitably follows that in times of drought and when the flow of the river falls below normal, the withholding or release of water at Hawks Nest is of more importance in maintaining the required elevation in the London pool. And although the Respondent says that the Hawks Nest pool is only one-fourth the size of the London pool, a complete draw down or refilling of the former would most certainly affect the navigable capacity of the New and the Kanawha rivers in their natural state and, indeed, be of consequence in maintaining the elevation of the present London pool in times of low river flow.

The Respondent says that although a complete draw down is possible, it has never occurred, is theoretic, and is not a part of normal operations. The Respondent necessarily benefits by the controls imposed upstream, as well as by the licensed operations downstream. The Respondent argues that its hydroelectric facilities are operated in such a manner as not to affect existing navigation on the Kanawha. The staff says that as the "flow from Hinton decreases Hawks Nest's capacity to regulate London tends to become absolute". But it does not follow that the Respondent's voluntary cooperation will always be a fact or that the government should be dependent on such voluntary cooperation by the Respondent or its successor.

It is of significance that the Radford dam (at mile 145) was licensed by the Federal Power Commission, and that this dam and more particularly the Bluestone dam (at mile 65) are peculiarly important in the control of floods. In controlling floods navigation is also benefited. But flood control and power generations do not necessarily go hand in hand. The primary purpose of power dams is to save or pool water for generation purposes, whereas the purpose of flood control dams is to maintain a low level before the flood seasons so that water can be stored at flood time. Unless all the dams in a stream are subject to control, they are not obliged to operate as a unitary system.

In its brief the Staff argues that Hawks Nest has the capability, under certain conditions, of affecting tug and tow operations in the London pool. As an example of this Staff states that at 6:16 p.m. on December 4, 1961, the operator at Cabin Creek notified the Roanoke power dispatcher of Appalachian Power Company: "Barge on land at Morris Creek. Request to start filling pool." Morris Creek is located at mile 84.8 and the London dam at 82.8. There was no testimony concerning this incident. It is unknown from the record whether the barge was ladened or in ballast, whether it was tied up or in transit, or whether it was inside or outside the channel. The evidence necessarily is inconclusive whether the barge grounded as a result of the withholding of water at Hawks Nest, or the draw down at the London plant, but it must be admitted that Hawk's Nest has the capability of affecting navigation unless there is an offset by operations at London.

The Respondent does not deny that the volume of water flowing into the London pool normally is different when the Hawks Nest plant is in full operation as contrasted to times when there is no generation. The Staff's witness Mr. Coomes testified that this plant "not only is capable of affecting the stage and flow of the New-Kanawha River but actually does so." He testified that the Hawks Nest pool could be drawn down five feet within less than two hours and that filling the reservoir afterwards would cut off the river flow below the power plant for more than seven hours, thus lowering the tailwater elevation downstream from 656.3 to 650 or more than six feet. He indicated that the storage and release of water at Hawks Nest during some of the low flow periods affected the stream flow below and the stage at Kanawha Falls. He testified that on September 15, 1962, there was a release of water at Hawks Nest at a rate of 1500 cfs. resulting in a change in the forebay elevation of more than 3½ feet and a rise of more than a foot in the Kanawha River. Evidence was presented of other specific instances of net changes in elevation of 11", 7", 10" and 1 foot.

If the Respondent's argument were accepted that the operations at Hawks Nest have no practical effect on navigation in the London pool or below by reason of the minimum elevation which is maintained under the licenses of the dams downstream, then how much spilling and withholding is necessary to affect navigation, or at what point is navigation affected? We think the Respondent's contention is not well taken. Under the circumstances, it is not necessary to precisely measure the amount of variation necessary to justify when navigation downstream will be affected. The drainage area of the New and the Kanawha Rivers above Kanawha Falls is 8,367 square miles. There is approximately 1,200 acre-feet of water impounded at Hawks Nest between elevations 815 and 820. The average flow of the New River at its mouth is about 10,000 cfs. The Respondent can virtually terminate this flow at will and for several hours. This water is not so insignificant as to be beyond the reach of the Commission as contemplated by Congress in enacting Section 23 of the Federal Power Act. The stage and flow at London and Marmet must be controlled to maintain a minimum depth for navigation. This is implicit in the licenses. Accordingly,

unless the flow at the London dam is automated with the inflow at the mouth of the New (water from Hawks Nest and the Gauley) it necessarily follows that in times of normal or low flow of the river, the London pool will drop and navigation will be affected during the extended hours of build-up at Hawks Nest. It is concluded, therefore, that the evidence is sufficient to establish that the Hawks Nest and Glen Ferris dams are capable of affecting the flow of water in the New and Kanawha Rivers and of affecting navigation. *Citizens Utilities Company* v. *F.P.C.*, 279 F. 2d 1, 3.

Section 14 of the Federal Power Act. The Respondent says that under the Commission's orders (order of February 26, 1952, and order of August 2, 1962), it is required to show cause why it should not apply for and secure a license for its projects under Section 4(e) of the Federal Power Act, even though they may be located on non-navigable waters of the United States. The Respondent contends that if the Commission seeks to make the Act applicable to projects on non-navigable waters, then Section 14 is unconstitutional because it would deprive the Respondent of its property without the payment of just compensation as required by the Fifth Amendment to the Constitution of the United States. The Respondent says that if it were paid the net investment for its Hawks Nest and Glen Ferris projects as defined in Section 3(13) and in accordance with Section 14, the result could be absolutely nothing or an amount far below the amount which would be just compensation.

The Respondent's argument is based on the assumption that the Federal government will "take over" its projects upon the expiration of the period of any licenses that might hereafter be issued, and that the statutory formula for determination of the value of its projects necessarily would be unjust and result in an appropriation of its property without adequate compensation. The Respondent concedes the Commission's power to require licensing if the projects are located on navigable waters. It also concedes that if the "net investment" be less than the fair value of a project at the end of the license, this is the price which must be paid to secure the right to maintain a dam on navigable waters. *United States* v. *Appalachian Electric Power Co.*, 311 U.S. 317, 427.

But since we have decided that the Kanawha and the New rivers where the Respondent Glen Ferris and Hawks Nest projects are located are navigable waters of the United States within the meaning of the Act, there is no need to consider the questions which the Respondent has raised in respect to depreciation, amortization, and alleged confiscation on the termination of any license that may be issued. Moreover, in view of the record in this proceeding there is no basis for determining the value or residual value of the Respondent's project at some future time under the provisions of Section 14 of the Act, nor would it be appropriate under the circumstances to pass upon the constitutionality of this section. *Power Authority of the State of New York*, Project 2216, 16 FPC 74, 76; *Davies Warehouse Company* v. *Bowles*, 321 U.S. 144, 152–153.

Permit on the Glen Ferris Project. In 1899 the Secretary of War issued a permit to the Willson Aluminum Company, the Respondent's predecessor in interest, granting permission "to construct a dam on the crest of the Falls of the Great Kanawha River, West Virginia, to be used for storing water for manufacturing purposes," but subject to the condition that the company would at its own expense build and maintain a chute for the passage of logs in case of need. The permit was issued pursuant to the authority of Section 3 of the Rivers and Harbor Act of July 13, 1892, 27 Stat. 88, 119, and was made revocable at will by the Secretary of War.

In its petition for the permit dated November 12, 1898, Willson stated that "There is no present navigation for the dam to obstruct and if the Government

should decide to erect any further locks and dams, the dam which we will erect and the pool that would be above it could be utilized and would not be an obstruction."

In 1917 Wilson's successor, the Electro Metallurgical Company, began replacing the timber crib dam with a concrete dam. At the same time it built a new power house. When knowledge of this construction came to the attention of the United States Engineers at Wheeling, West Virginia, the company was informed that a permit was required, and further work was halted by Electro. On August 29, 1919 Electro requested a permit "to cover the rebuilding with concrete, as shown in the blueprints and tracings, of dam to replace the present timber dam and also the building and installation of two additional generating units to be used as spares and in the generation of current in high water".

Endorsements in the office of the Corps of Engineers indicate what disposition was made of Electro's request for a permit. In the third endorsement, namely from the Chief of Engineers to the District Engineer dated September 27, 1919, it is stated:

> The matter was recently discussed in this office with a representative of the applicant company and it was explained to him that the present policy of the Department was to withhold affirmative approval of *all power development projects, it being deemed undesirable to take such action until Congress has enacted pending and needed legislation on the subject.* He was told, however, that, in the circumstances of this case, the work of reconstructing the dam as proposed would not be interfered with, on the understanding that the Department reserves the right to require such changes in the structure, or in its mode of operation, as interests of the United States may hereafter demand. [Emphasis supplied.]

In the fourth and final endorsement the District Engineer reports to the Chief of Engineers on October 4, 1919 that:

> In view of the explanation made to the applicant company by the office of the Chief of Engineers, this office will take no further action and will make no objection to the company's proceeding with the work as described in its application.

Accordingly, no permit was ever issued by the War Department for the replacement of the wooden dam, the installation of additional generators, or for the present Glen Ferris project works, nor does the Respondent claim that such works were constructed or maintained pursuant to the consent of Congress, either prior to or subsequent to, the enactment of the Federal Water Power Act of June 10, 1920.

The Respondent, however, contends that it has a valid permit issued by the War Department on February 27, 1899, that the withholding of affirmative approval by the Corps of Engineers was pursuant to established policies of the Secretary of War (Chief of Engineers, Circular No. 8) thus excluding any requirement for a further permit covering the concrete structure and enlargement of the power plant, and that by the enactment of the Federal Power Act of June 10, 1920, Congress accorded it full protection and no further permit was needed.

We think this argument is fallacious. The Secretary of War simply sanctioned deferral and the action of the Corps of Engineers was in keeping with this policy. The explanation given by the Corps in the third endorsement for withholding affirmative approval refers to "*all* power development projects * * * until Con-

gress has enacted pending and needed legislation on the subject" *not merely those projects allegedly on non-navigable waters as the Respondent contends.*

The Respondent also relies on a statement of Lt. Colonel Kingman of the Corps of Engineers to support its contention that it possesses a valid permit on its Glen Ferris development. Colonel Kingman's statement is contained in a letter dated December 29, 1932, addressed to the Chairman, Federal Power Commission, and reads in part as follows: "The Electro-Metallurgical Company has been operating a plant at Kanawha Falls near the mouth of New River for number of years under a permit issued February 27, 1899, by the War Department." Colonel Kingman's letter was not concerned with nor was it in response to a specific inquiry relating to a permit on the Glen Ferris plant, and under the circumstances is of no evidential value to establish the issue here in question.

It is manifest that the only permit outstanding on the Glen Ferris development is the one issued by the Secretary of War in 1899 made revocable at will. Certainly it cannot be said that the Respondent's Glen Ferris development today is the same as the one for which a permit was granted in 1899, nor is there any sound reason why a permit issued then should be valid in perpetuity, notwithstanding subsequent modifications in the project. The burden of providing a valid permit covering the replacement of the wooden dam and the improvements since then rests on the licensee. *United States* v. *Denver and Rio Grande R.R. Co.*, 191 U.S. 84, 92; *Rossi* v. *United States*, 289 U.S. 89. The Respondent has failed to prove that it has a license covering its existing project. It can, therefore, claim no exemption under Section 23 of the Act.

Interests of the State of West Virginia. On October 28, 1963, and during the pendency of the hearing the State of West Virginia, through its Attorney General, petitioned the Commission for leave to intervene. On December 10, 1963, the Commission granted leave to intervene conditionally as of November 13, 1963. Thereafter, the Attorney General filed an initial brief, a reply brief, and presented an oral argument before the Examiner.

The Attorney General's briefs in large measure merely buttress the arguments and contentions of the Respondent. In summary the Attorney General contends: (1) that "the New River from Hinton to Kanawha Falls is not navigable in law or in fact," (2) the "hydroelectric projects in question have not, do not now, and will never affect navigability of the Great Kanawha River," and (3) "the Federal Power Commission is without jurisdiction of these projects".

All of these contentions have been dealt with heretofore. It is pertinent to observe, however, that the Attorney General, as well as the Respondent, refer to a number of cases in defining navigability and then endeavor to apply the so-called tests of the cases to the New River. Since all the parties cite the *Daniel Ball*, 10 Wall. 557, 563 (1870), *The Montello*, 20 Wall. 430, 441, *Economy Light and Power Co.* v. *United States*, 256 U.S. 113, *United States* v. *Utah*, 283 U.S. 64, and *United States* v. *Appalachian Power Co.*, 311 U.S. 377 (1940) these cases here may be put aside. The Attorney General for the State also relies upon *United States* v. *Oregon*, 295 U.S. 1, 23, and *United States* v. *Rio Grande Dam and Irrigation Co.*, 174 U.S. 690, but these cases are of no avail as applied to the New river to establish non-navigability. Unlike the New, the lakes claimed to be navigable in the Oregon case lacked water and often were almost dry, and in the Rio Grande case the ordinary flow of water was insufficient for navigation. The case of *Harrison* v. *Fite*, 148 F. 781, 783 which is quoted in *United States* v. *Doughton*, 62 F. 2d 936, 939 and relied on by the Attorney General has been largely overruled *sub silentio* by the Appalachian case and others.

In his brief the Attorney General for West Virginia refers to opinions of officers of the United States Corps of Engineers given some 35 or 40 years ago as to the non-navigability of the New. He quotes General Brown as stating, "* * * it is my opinion that New River is not navigable at any point in its course". In defense of these officers it may be said that they were consistent and that they then envisaged no improvement in the New. General Brown's generalization, however, was rejected by the Supreme Court in the Appalachian case.

Finally, the Attorney General asserts that jurisdiction of the State of West Virginia over the Hinton-Gauley reach of the New River is "supreme under the laws of the State, the Federal Government and the Constitution of the United States," and that "the question is basically whether sovereignty over water power development in the State of West Virginia inheres in the United States or in the State of West Virginia." There is, of course, no dispute as to the jurisdiction of the State of West Virginia as opposed to that of the Federal Power Commission. The State possesses jurisdiction over non-navigable streams within its borders, and although the State issued licenses to the Respondent on its Glen Ferris and Hawks Nest projects, the record fails to disclose any significant interest or steps taken by the State in recent years in respect to the development of water power on the New or the Kanawha rivers. In any event the control of a State is "subject to the acknowledged jurisdiction of the United States under the Constitution in regard to commerce and the navigation of the waters of rivers". *St. Anthony Falls Water Co.* v. *Water Commissioners*, 168 U.S. 349, 366. At this late date there can be no doubt under our Federal system over the sovereignty of navigable waters. The question in issue is one of fact, namely whether the Federal Power Commission has jurisdiction over water power development by reason of the fact that the Respondent's projects are located on navigable waters of the United States, and as heretofore determined we think this question must be answered affirmatively.

FINDINGS AND CONCLUSIONS

Upon consideration of the record, briefs, and arguments of counsel, it is found and concluded, in addition to the findings and conclusions heretofore stated, that:

(1) The Respondent, Union Carbide Corporation, is a corporation organized and existing under the laws of the State of New York.

(2) The Respondent, insofar as it is pertinent in this proceeding, is the successor in interest to the Union Carbide and Carbon Corporation, the Electro Metallurgical Company, the New-Kanawha Power Company, and the Willson Aluminum Company.

(3) The Respondent owns, operates, and maintains the Glen Ferris hydroelectric development located at the Kanawha Falls on the Kanawha river in West Virginia about 95.7 miles above its mouth on the Ohio River at Point Pleasant, West Virginia.

(4) The Respondent owns, operates, and maintains the Hawks Nest hydroelectric development located on the New river, West Virginia, the powerhouse being located at about mile 1.5 and the dam at about mile 6.8, or some 98.5 and 103.8 miles, respectively, upstream from Point Pleasant.

(5) The New river rises in North Carolina and flows first in a northeasterly direction, then northwesterly through Virginia and West Virginia for approximately 250 miles until it is joined by the Gauley River at which point it changes its name and is known as the Kanawha River; the Kanawha flows into the Ohio some 97 miles below the mouth of the New and its juncture by the Gauley.

(6) In 1899 the War Department granted a permit to the Willson Aluminum Company for the construction of a timber dam at the Kanawha Falls, but on application by its successor the Electro Metallurgical Company in 1919 to replace the wooden dam with a concrete dam, to build a new powerhouse, to install two additional generators and related facilities, the Department declined to grant a new permit, which installations constitute a part of the present Glen Ferris development and now owned, operated and maintained by the Respondent.

(7) The Respondent does not have a permit or valid existing right-of-way granted prior to June 10, 1920, or a license granted pursuant to the Federal Power Act for the operation and maintenance of its project works constituting the Glen Ferris development referred to herein in findings (3) and (6).

(8) The Respondent does not have a permit or valid existing right-of-way granted prior to June 10, 1920, or a license granted pursuant to the Federal Power Act for the operation and maintenance of its project works constituting the Hawks Nest development referred to herein in finding (4).

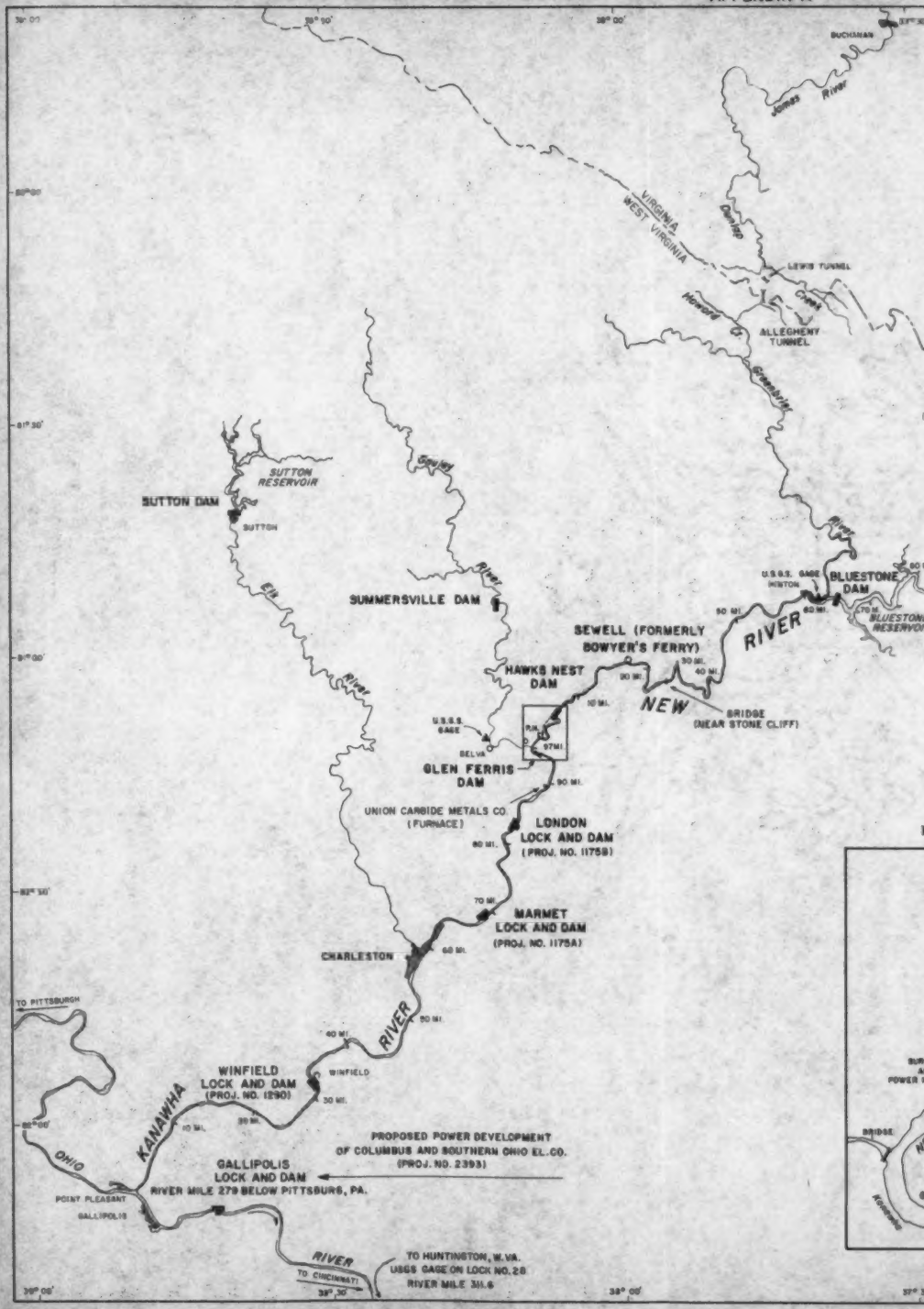
(9) The existing Glen Ferris hydroelectric development with an installed capacity of 4680 kw, and the Hawks Nest development with an installed capacity of 102,000 kw, are part of a unified system which supplies electric energy for the Respondent's metallurgical operations.

(10) Congress has exercised jurisdiction over the New and the Kanawha rivers by appropriating millions of dollars for use in protecting the watershed of these rivers, building Federal dams for flood control, river improvement, navigation, and other purposes.

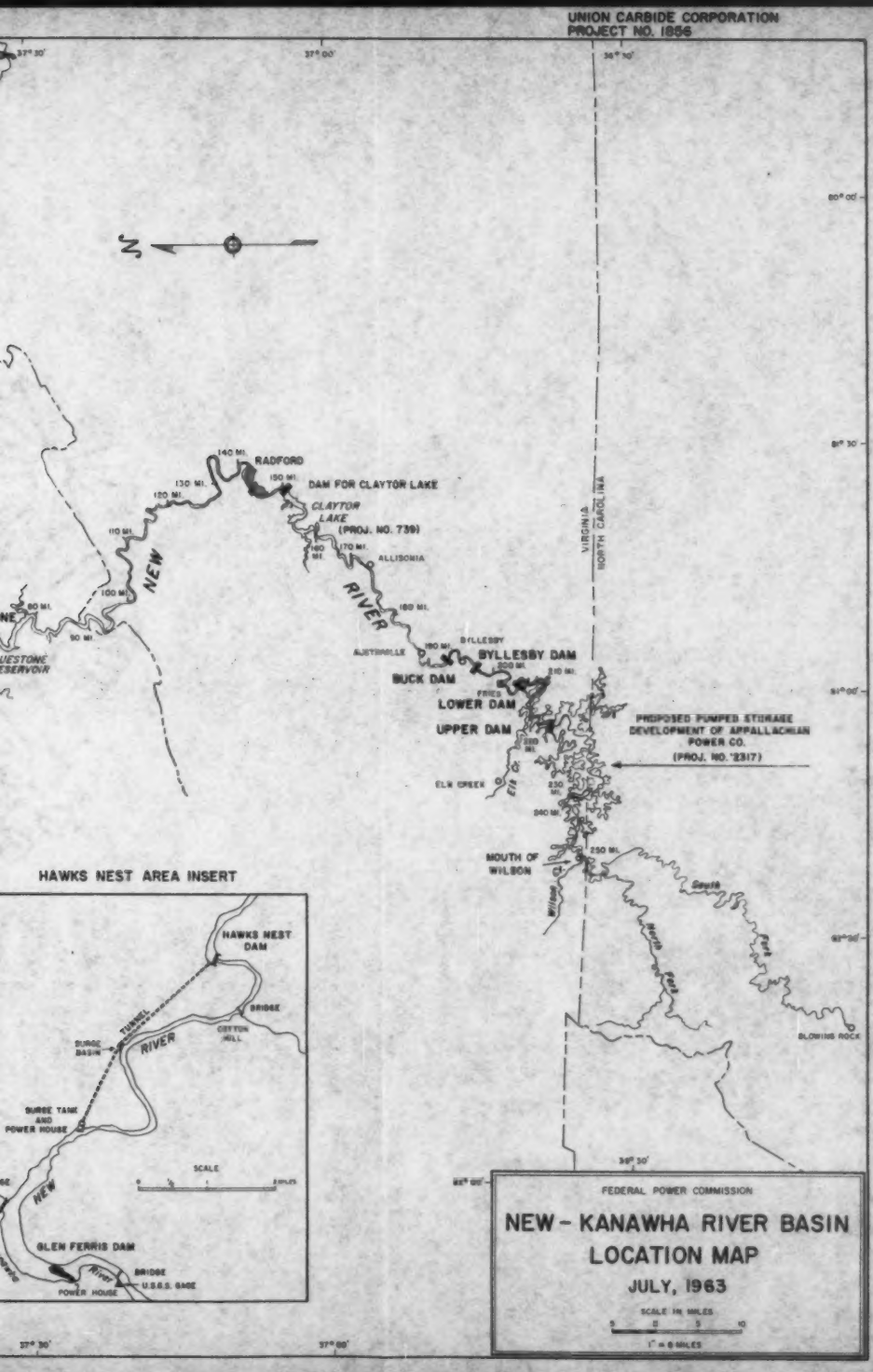
(11) The Kanawha river is a navigable river of the United States. By means of the Winfield, Marmet, and London dams constructed on the river in 1937 a minimum depth of 9 feet is provided for navigation extending from the river's mouth upstream for about 90 miles. The present day commerce on the Kanawha amounts to more than 10,000,000 tons annually, much of which is interstate in character. The remaining 7 miles of the Kanawha (including the site of the respondent's Glen Ferris development) is unimproved for modern navigation. This reach of the river, however, was used extensively for the rafting of logs during the last century, is readily susceptible of improvement for commercial navigation and accordingly is a navigable water of the United States.

(12) The New river for some 111 miles (miles 62 to 173) and above the Hinton-Gauley reach has been held to be a navigable water of the United States in, *United States* v. *Appalachian Power Co.*, 311 U.S. 377, 410, 418 (1940). The Hinton-Gauley section of the river (miles 0 to 62), the area in which the Respondent's Hawks Nest development is located, was navigated downstream by means of bateaux by Chief Justice Marshall and his party in 1812 and by the surveyors Moore and Briggs in 1819. This section was used for many years particularly following 1865 for the floating of loose logs to mills along the river and millions of boardfeet of lumber were cut from the logs and shipped in interstate commerce. Pools in this section of the river presently are capable of sustaining pleasure craft navigation, and in addition the entire section is susceptible of improvement for commercial navigation. The New river from its mouth to Hinton is a navigable water of the United States.

(13) The maintenance and operation by the Respondent, the Union Carbide Corporation, of the Glen Ferris and Hawks Nest hydroelectric facilities referred to in findings (3) and (4) above, are capable of affecting and have


BUCHANAN
James River
VIRGINIA
WEST VIRGINIA
Dunlap
LEWIS TUNNEL
Howard Creek
ALLEGHENY TUNNEL
Greenbrier River
SUTTON RESERVOIR
SUTTON DAM
SUTTON
Elk River
Gauley River
SUMMERSVILLE DAM
U.S.G.S. GAGE HINTON
BLUESTONE DAM
BLUESTONE RESERVOIR
NEW RIVER
SEWELL (FORMERLY BOWYER'S FERRY)
HAWKS NEST DAM
BRIDGE (NEAR STONE CLIFF)
U.S.G.S. GAGE
GLEN FERRIS DAM
UNION CARBIDE METALS CO. (FURNACE)
LONDON LOCK AND DAM (PROJ. NO. 11758)
MARMET LOCK AND DAM (PROJ. NO. 1175A)
CHARLESTON
TO PITTSBURGH
KANAWHA RIVER
WINFIELD LOCK AND DAM (PROJ. NO. 1290)
WINFIELD
OHIO RIVER
PROPOSED POWER DEVELOPMENT OF COLUMBUS AND SOUTHERN OHIO EL. CO. (PROJ. NO. 2393)
GALLIPOLIS LOCK AND DAM
RIVER MILE 279 BELOW PITTSBURG, PA.
POINT PLEASANT
GALLIPOLIS
TO CINCINNATI
TO HUNTINGTON, W.VA.
USGS GAGE ON LOCK NO. 28
RIVER MILE 311.6

UNION CARBIDE CORPORATION
PROJECT NO. 1856



HAWKS NEST AREA INSERT

FEDERAL POWER COMMISSION

NEW - KANAWHA RIVER BASIN LOCATION MAP

JULY, 1963

SCALE IN MILES

1" = 6 MILES

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affected navigation in the New and Kanawha rivers and the interests of interstate and foreign commerce.

(14) It is appropriate and in the public interest to issue an order to conserve and fully utilize the navigation and water resources of the New-Kanawha river basin occupied by the Respondent, Union Carbide Corporation's project works referred to in findings (3) and (4) above, for the use and benefit of interstate and foreign commerce, for the improvement and utilization of water power development, and for other beneficial public uses, including recreational purposes, in accordance with Section 10(a) and other provisions of the Act.

WHEREFORE, IT IS ORDERED, subject to review by the Commission on appeal, or review on its own motion, as provided in its Rules of Practice and Procedure, that:

(A) The Union Carbide Corporation shall file an application for and shall obtain a license under the Federal Power Act for the continued operation and maintenance of its projects consisting of the Glen Ferris and Hawks Nest hydroelectric developments referred to in findings (3) and (4) above.

(B) Such application shall be filed in accordance with the Commission's Regulations under the Federal Power Act within 120 days from the date of issuance of this order.

HARRY C. SHRIVER,
Presiding Examiner.

APPENDIX B

*Table of river locations**

[Union Carbide Corporation Project No. 1856]

Location	River Mile	Remarks
Ohio River		
Huntington U.S.G.S. Gage	—46.0	
Gallipolis Lock & Dam	—13.6	
Kanawha River		
Kanawha River Mouth	0.0	Exh. 1 (Location Map), Exh. 5 (Marshall Survey) Exh. 6 (Moore and Briggs), Exh. 7-A (Map, New & Greenbrier), Exh. 8 (Lorraine Rpt.), Exh. 9 (Lorraine Map).
Winfield Locks & Dam	31.1	
Coal River Mouth	45.6	
St. Albans	46.0—48.5	U.S.G.S. Gage (Upper & Lower).
Elk River	57.8	
Marmet Dam	67.7	Upper & Lower U.S.G.S. Gage; Exh. 37 (Exh. of Lic. No. 1175).
Charleston	56.0—63.0	
Dupont Works	63.4—69.1	
Cabin Creek Steam Plant	74.4	
Cedar Grove	77.5	
London Locks & Dam	82.8	Upper & Lower U.S.G.S. Gage; Exh. 37 (Exh. of Lic. No. 1175).
Handley	83.3	
Montgomery	84.8—85.8	
Morris Creek	84.8	
Harewood (Eagle)	87.7	
Boomer	88.7	
Alloy	90.0	
Boncar	90.4	
9-foot navigation depth	90.57	
Alloy Bridge	90.9	
Loup Creek	91.3	
Deepwater Creek	91.5	Items DD-1 to DD-4 (air photos).
Falls View	91.8	
Paddy Brook	92.0	
Upper end London Pool	94.0	
Kanawha Falls U.S.G.S. Gage	94.6	
Stockton Lumber Co.	95.5	
Kanawha Falls Ferry	94.7	
Kanawha Falls (Town)	95.0	
Kanawha Falls, Foot	95.5	Exh. "46-K" Photo.
Glen Ferris Dam (Kanawha Falls)	95.7	Exh. 17 Q&R, Plan of Dam, Original & Proposed.
Morris's Mill	95.6	MI-1134; Fayetteville quad.
Willson Alum. Co.	95.6	
Confluence of New & Gauley	97.0	

See footnote at end of table.

APPENDIX B—continued

*Table of river locations**—Continued

Location	River Mile	Remarks
New River		
Gauley Junction, Gauley River	0.0	Item Y-25, Exh. 47 air photo; Mi-17, 20.
Gauley Bridge, Gauley River	0.4	On Gauley River.
New River, Stretch of	1.2	Exh. 46-J.
Hawk's Nest Power House	1.5	Item Y-24, Exh. 46-H, K, O, Exh. 46-I (mile 1.7) photos.
New River	3.8	Exh. 46-D, E, G photo; Exh. 46-F (mile 3.5).
Cotton Hill Bridge	5.6	Exh. 19-D (Brdg. Appl.).
Laurel Creek	5.6	Cotton Hill; Mi-974; Fayetteville & Beckley quads.
Hawk's Nest Dam	6.8	Exh. 51 (Color photo).
Hawk's Nest Gage Lower	6.8	
Hawk's Nest Gage Upper	6.8	
Hawk's Nest dewatered Stretch	1.5—6.8	
Turkey Creek	6.9	Trib. of Hawk's Nest; Exh. 51 (photo); Fayetteville quad. (Item FF).
Marshall's Pillar [Hawk's Nest Overlook]	7.0	Exh. 49 & 50 & 98 (color photo); Exh. 96 & 97 (B & W photo).
Chesapeake & Ohio Trestle	7.5	Item Y-23 Exh. 46-B & C (photos).
Ansted (on Mill Cr. mile 1.6)	7.6	Fayetteville quad.
Mill Creek	7.6	Fayetteville quad.
New River	8.0	Exh. 46-A, (photo).
Elmo	10.4	Fayetteville quad.
Michigan	11.0	Fayetteville, quad.
New River	12.0	Exh. "46-F, N."
S. Fayette Bridge	13.1	Item "Y-21."
Turkey Falls	13.7	Mi-1080; Fayetteville quad. (Item FF).
Nuthall Coal Tipple	14.6	
Nuthall South	15.3	Fayetteville quad. (Item FF).
Keeney Creek	15.9	Fayetteville quad.
Canoe Falls	16.0	Mi-1065; Beckley quad. (Item FF); Item Y-20.
Mann's Creek	18.3	Mi-1051; Fayetteville quad. (Item FF).
Cunard	18.5	Beckley quad. (Item FF).
Bowyer's Ferry	18.6	Exh. 45; Mi-18, 19, 22, 25, 27, 1049; Mo-24, 30-32.
Sewell	18.8	Item Y-18 (air photo).
Fire Creek	21.5	Beckley quad. (Item FF).
Flat Creek	27.6	Mi-1021 quad. (Item FF).
Beury Ferry	21.8	Item Y-16; Beckley quad. (Item FF).
Concho	24.5	
Dunloup's Creek (Little Loup Cr.)	25.0	Mi-1029 Exh. 7B; Beckley quad. (Item FF).
Stone Cliff Ferry near Thurmond	26.5	Item Y-15 (air photo).
Claremont	27.6	Exh. 19-C (Brdg. Appl.); Beckley quad. (Item FF).
Thayer	30.4	Item Y-14; Beckley quad. (Item FF).
Dowdy Creek	34.0	Mi-1001; Beckley quad. (Item FF).
War Fording	35.3	Mi-990; Beckley quad. (Item FF).
Terry	36.2	Beckley quad. (Item FF).
Piney Creek	37.2	Mi-982.
Prince	39.1	Fayette County, Beckley quad. (Item FF).
Stretcher's Neck	34.8—38.4	Item Y-12; Beckley quad. (Item FF).
Gidd's Defeat Falls	39.7	Mi-975; Mo-22.
Grandview	40.0	Beckley quad. (Item FF).
Army Pontoon Tests	40.1	Item Y-12.
Quinnimont	40.4	Exh. 45 (color photo); Beckley quad. (Item FF).
Glade Ferry	45.4	Item Y-9 (air photo).
Glade	45.5	Beckley quad. (Item FF).
Pawnee, Old Sawmill	45.5	Item Y-8.
Riley's, Joseph	46.0	Mi-963; Big Bend quad. (Item FF).
Meadow River	50.0	Mi-949; Meadow Creek quad.
Lick Creek	52.5	Item Y-6; Meadow Creek quad.
Richmond's Island (lower end)	52.6	Mi-943; Meadow Creek quad.
New Richmond	52.8	Meadow Creek quad.
Longbottom (near Sandstone Falls)	53.0	
Richmond's Mill	54.1	Mi-19; Mi-936.
Lick Creek Falls	54.6	Mi-933, 19.
Richmond (Sandstone) Falls	54.6	Item Y-5 photo; Mi-22, 24; Great Falls New River.
Sandstone Falls	54.6	Exh. 52 photo; Meadow Creek quad.
Brooks Falls	58.0	Exh. 46-M, Mi-23, 924, Mo. 19.
Peter Davis's	60.5	Mi-922.
Tug Falls	60.7	Big Bend quad; Mi-920.
Madam Creek Shoals	60.9	Item Y-4, Exh. 46-M.
Madam Creek Falls	61.6	Mi-918.
Hinton	62.0	Item Y-1; Big Bend quad.
Hinton U.S.G.S. Gage	62.1	
Avis	63.8	Big Bend quad.

See footnote at end of table.

APPENDIX B—continued

*Table of river locations**—Continued

Location	River Mile	Remarks
New River—Continued		
James Lumber Mill (near Avis)	64.0	Big Bend quad.
Greenbrier River	64.1	Exh. 99; Mi-12-14, 16-18, 21, 27; Mo-19, 24.
Bluestone Dam	65.0	Big Bend quad.
Leatherwood Creek	65.2	Big Bend quad.
Bull Falls	73.8	
Glen Lyn	94.3	
Radford	145.0	
Claytor Dam	151.2	
Allisonia	173.0	
Lead Mines, Austinville	190.0	
Buck	192.5	
Buck Dam	195.5	
Byllesby Project	198.2	
Washington Mills	207.0	Exh. 18 (Rpt. on dams) p. 20; Washington Mills Dam.
Fries, Val	207.0	Exh. 45.
Upper New R. Project No. 2317:		
Lower Dam	210.0	
Upper Dam	222.0	Exhs. 26 & 27 (photos).
Moore's Ferry	217.4	
North Carolina Line	233.5—238.6	
Wilson, Mouth of	252.0	
Forks, North and South of New River	256.0	

*Locations have been derived from matters of record or official notice. For example, in the reach between the mouth of the Greenbrier and the environs of Hawks Nest power plant reference has been made to the survey of Chief Justice John Marshall (Exh. 5); the map of the Marshall Commission (Exhs. 7-A and 7-B) the Moore and Briggs survey report of 1819 (Exh. 6); appropriate U.S.G.S. quadrangels (Items FF 1-4); and official air photos of the area (Exh. 47); Items Y 1-25; DD 1-4.

The reference "Mi" indicates Marshall's survey while "Mo" relates to that of Moore and Briggs. For example, the numbered stations marked on Marshall's map and tabulation are given Marshall's numerical designation. See, *e.g.*, listing of Canoe Falls at New River mile 16. Some references are made also to pages of the report.

Before Commissioners: Joseph C. Swidler; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNIFORM SYSTEMS OF ACCOUNTS FOR PUBLIC UTILITIES, LICENSEES AND NATURAL GAS PIPELINE COMPANIES AND ANNUAL REPORT FORMS FPC NOS. 1, 1-F, 2, 2-A—PRESCRIPTION OF FLOW-THROUGH ACCOUNTING FOR LIBERALIZED DEPRECIATION TAX SAVINGS AND DISPOSITION OF ACCUMULATED DEFERRED TAX BALANCES, DOCKET NO. R-264

ORDER DENYING MOTIONS

(Issued September 15, 1964)*

Notice of proposed rulemaking herein was issued on July 7, 1964, and published in the Federal Register July 18, 1964 (29 F.R. 9723). The notice invited the submittal of data, views and comments by August 26, 1964. The Secretary, on August 7, 1964, issued a notice of extension of time in which to file comments to October 1, 1964 (29 F.R. 11653, August 14, 1964).

The following motions or other pleadings have been filed by persons interested in this proceeding:

Motion to Vacate and Terminate Proceedings or, In the Alternative, for Extension of Time—Filed August 3, 1964, by Independent Natural Gas Association of America (INGAA) (corrected copy filed August 4);

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*Published in the Federal Register on September 19, 1964 (29 F.R. 13119).

Joinder of Southern Natural Gas Co. in motion of INGAA—Filed August 3, 1964;

Joinder of Texas Gas Transmission Corp. in motion of INGAA—Filed August 12, 1964;

Supplement to Motion—Filed August 11, 1964, by INGAA;

Adoption of and Joinder in Motion, as supplemented, of INGAA—Filed August 13, 1964, by Hope Natural Gas Company, et al.;

Motion to Extend Time for Filing Comments—Filed August 14, 1964, by Atlantic Seaboard Corp., *et al.*

Movants allege that the proposed rulemaking is illegal, and that they are unable to submit data, views and comments to support this allegation within the period allowed. As an alternative to moving that the Commission should terminate these proceedings they request an extension of time in which to file comments to (a) a date subsequent to the completion of judicial review in the *Alabama-Tennessee* case or (b) thirty days after the Commission has acted on such motion or September 30, 1964, if that date is later.

In view of the Secretary's action extending the time for filing comments to October 1, 1964, an action which we here confirm, we shall not further discuss the pleadings insofar as they seek additional time to file comments.

The INGAA motion argues that the amendments here proposed "are required by statute to be made on the record after opportunity for an agency hearing" and that, therefore, sections 7 and 8 of the Administrative Procedure Act apply in place of section 4 thereof, pursuant to which we are proceeding in this matter. INGAA's contention, however, is based upon a single sentence of section 8(a) of the Natural Gas Act, quoted out of context. That sentence—"The Commission, *after notice and opportunity for hearing*, may determine by order the accounts in which particular outlays or receipts shall be entered, charged, or credited." (Emphasis supplied)—has no applicability to the prescription or amendment of a system of accounts with which the first two sentences in the section are concerned and pursuant to which our proposals are being made. Those sentences require natural gas companies to "keep * * * such accounts * * * as the Commission may by rules and regulations prescribe" and authorize the Commission to "prescribe a system of accounts." Had Congress intended to require notice and opportunity for hearing with respect to those "general" sentences, it would have so provided, as it saw fit to do with respect to the "particular" matters with which the quoted sentence is concerned. Since the provisions of Section 301(a) of the Federal Power Act are the same as those in 8(a) of the Natural Gas Act, we reaffirm the statement in paragraph 10 of the notice herein that no hearing is "required by the accounting and reporting provisions of the Federal Power and Natural Gas Acts."

The fact that *Alabama-Tennessee* is now under judicial review does not, in our opinion, constitute a valid reason for delaying the filing of comments on the rulemaking proceeding until that case is decided. Contentions relative to the advisability of issuing any accounting rule while the substantive order on which it is based is under court review may be made by the movants herein in their comments. Needless to say, those contentions will be fully considered by the Commission before it issued any order with respect to the proposals being considered in the instant proceeding.

The Commission orders:

The several motions, referred to above, to vacate and terminate this proceeding or, in the alternative, to extend the time for submitting comments to a date subsequent to the completion of judicial review in *Alabama-Tennessee* are hereby denied.

Commissioner O'Connor *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

EASTERN MAINE ELECTRIC COOPERATIVE, INC. AND ST. CROIX PAPER COMPANY, DOCKET NO. E-6853

ORDER AUTHORIZING TRANSMISSION OF ELECTRIC ENERGY TO CANADA AND SUPERSEDING PREVIOUS AUTHORIZATION

(Issued September 16, 1964)

Eastern Maine Electric Cooperative, Inc. (Applicant), incorporated under the laws of the State of Maine, with its principal place of business at Calais, Maine, on June 26, 1964, filed an application for a supplemental order pursuant to Section 202(a) of the Federal Power Act, authorizing an increase in the amounts of electric energy which Applicant is presently authorized to transmit from the United States to Canada. Applicant was joined in its application by the St. Croix Paper Company, a Maine corporation doing business in Maine. The St. Croix Paper Company owns and operates a 28,000 kw steam electric generating plant and an 11,400 kw hydroelectric plant at Woodland, Maine pursuant to an agreement with Eastern Maine Electric Cooperative, Inc., dated May 22, 1964, will provide part of the electric energy which is to be exported to Canada.

By Commission order issued March 9, 1959, in the above docket (21 FPC 338), Applicant was authorized to transmit 200,000 kwh of electric energy annually from the United States to Canada at a maximum rate of transmission of 1,200 kw. Applicants now seek authority to export a maximum of 75,000,000 kwh per year at a rate not in excess of 15,000 kw.

The energy proposed to be exported will be sold by the Cooperative to the New Brunswick Electric Power Commission, a commission appointed under the laws of the province of New Brunswick, Canada, with its principal place of business at Fredericton, New Brunswick, in accordance with the terms and at the rate set forth in a Memorandum of Agreement between New Brunswick Commission and the Cooperative dated June 1, 1962 incorporated by reference as an exhibit to the application.[1] The source of the energy proposed to be transmitted to Canada will be the Cooperative's diesel plant located at Calais and the steam and hydroelectric generating plants of the St. Croix Paper Company at Woodland, Maine. Such energy will be delivered by the Cooperative over a 69 kv transmission line[2] belonging to Applicant, to the New Brunswick Commission at the international boundary near Calais, Maine. The application represents that the energy will be exported by the Cooperative during emergencies occuring on the electric utility system operated by the New Brunswick Commission and during times surplus electric energy is available on the Cooperative system.

Written notice of the application has been given to the Public Utilities Commission of Maine and to the Governor of that State. Notice of the filing of the application has also been given by publication in the Federal Register on July 16, 1964 (29 F.R. 9226), stating that any person desiring to be heard or to make any protest with reference to the application should on or before August 3, 1964, file with the Federal Power Commission, Washington, D.C., 20426 a petition or protest in accordance with the Commission's Rules of Practice and Procedure. No petition or protest or request to be heard in opposition to the granting of the application has been received.

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[1] The Memorandum of Agreement also provides for the sale of emergency and surplus energy by New Brunswick Commission to Cooperative.

[2] Facilities covered by permit issued March 9, 1959 in Docket No. E-6854 (21 FPC 338).

The Commission finds:

The transmission of electric energy from the United States to Canada, as limited herein and as hereinafter authorized, will not impair the sufficiency of electric supply within the United States and will not impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission.

The Commission orders:

(A) Applicants are hereby authorized to transmit electric energy from the United States to Canada in accordance with the terms and conditions set forth in the application and subject to the provisions of this order.

(B) The electric energy which Applicants are hereby authorized to transmit from the United States to Canada shall be in an amount not in excess of 75,000,000 kwh per year at a rate not to exceed 15,000 kw over facilities covered by the aforementioned permit signed by the Chairman of the Federal Power Commission on September 5, 1959, Docket No. E-6854.

(C) The authorization herein granted may be modified from time to time or terminated by further order of the Commission, but in no event shall such authorization extend beyond the date of termination or expiration of the Presidential Permit referred to in paragraph (B) above.

(D) Applicant shall conduct all operations pursuant to the authorization herein granted in accordance with the provisions of the Federal Power Act and pertinent rules, regulations or orders issued by the Commission.

(E) Applicant shall install and maintain adequate metering equipment to measure the flow of all electric energy transmitted between the United States and Canada; shall make, keep and preserve full and complete records with respect to the movement of such energy; and shall furnish to the Commission with respect to such transmission of energy, on or before February 15 of each year, reports in triplicate showing separately the kilowatt-hours received or delivered at each of the points herein authorized, the maximum kilowatts of transmission in either direction and the consideration therefor during each month of the preceding calendar year.

(F) This authorization to transmit electric energy from the United States to Canada shall not be transferable or assignable, but in the event of the involuntary transfer of facilities used for such transmission by operation of law (including such transfers to receivers, trustees, or purchasers under foreclosure or judicial sale), shall continue in effect temporarily for a reasonable time thereafter, pending the making of an application for permanent authorization and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the physical facts relating to sufficiency of supply, rates, and nature of use remain substantially the same as before the transfer.

(G) This authorization shall be without prejudice to the authority of any State or State regulatory commission for the exercise of any lawful authority vested in such State or State regulatory commission, over Applicant.

(H) This authorization is without prejudice to the authority of this Commission, or any other regulatory body, with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission, or any other regulatory body, and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

(I) The authorization herein granted shall supersede that heretofore granted by Commission order issued March 9, 1959, referred to above.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64-276

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 16, 1964)

On May 15, 1964, El Paso Natural Gas Company (Applicant) filed in Docket No. CP64-276 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the sale and delivery of increased volumes of natural gas to the City of Lordsburg, New Mexico, for resale to Community Public Service Company (Public Service) for use by the latter as fuel in its Lordsburg electric generating plant, all as more fully set forth in the application.

Applicant proposes to construct and operate 2.3 miles of 4.5-inch pipeline extending from Applicant's 26 and 30-inch California line in Hidalgo County, New Mexico, to Lordsburg and a dual 6⅝-inch O.D. orifice type measuring and regulating station.

Applicant presently sells gas to Lordsburg for resale and distribution in said community and for resale to Public Service for use as fuel at the Lordsburg generating plant. Applicant states that Public Service is installing additional generating facilities at the Lordsburg Plant and will require additional volumes of natural gas for such new facilities.

The total estimated third year peak day and annual requirements for Lordsburg and the power plant are 10,903 Mcf and 1,917,237 Mcf, respectively.

The estimated total cost of the proposed facilities is $53,300, which cost will be financed out of current working funds, supplemented as necessary by short-term bank loans.

By letter, dated July 16, 1964, applicant was issued a temporary certificate authorizing the subject proposals.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 15, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued January 11, 1944, in Docket No. G-288 (4 FPC 486).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the sale and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sale and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) Total deliveries of natural gas by Applicant for resale to Public Service should not exceed 9500 Mcf per day at a pressure not to exceed 210 psig.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and the sale and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 3 months from the date on which this order issues.

(D) Total deliveries of natural gas by Applicant for resale to Public Service shall not exceed 9500 Mcf per day at a pressure not to exceed 210 psig.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. RP64-16

ORDER MODIFYING ORDER CONDITIONALLY APPROVING RATE SETTLEMENT

(Issued September 16, 1964)

The Commission, on August 21, 1964, 32 FPC 647, issued its order conditionally approving rate settlement in this proceeding. That order provided, among other things, for the flow-through of refunds and rate reductions which Kansas-Nebraska might receive from its suppliers.

On August 27, 1964, Kansas-Nebraska Natural Gas Company, Inc. (Kansas-Nebraska) filed a motion requesting the Commission to amend and clarify the refund and rate reduction conditions set out in paragraphs (D) and (E) of the aforementioned order. In particular, the motion states that: (1) The order is too general and unlimited in that it does not list the specific supplier pending

dockets which may give rise to the refunds and rate reductions Kansas-Nebraska is obligated to pass through to its customers; (2) if Kansas-Nebraska suppliers should increase their rates to it after August 17, 1964,[1] and these increases were later disallowed, in whole or in part, resulting in refunds, or rate reductions, it is inequitable to require Kansas-Nebraska to pass on such refunds or rate reductions which would represent no more than reimbursement of costs which Kansas-Nebraska had absorbed; and (3) it would be particularly inequitable to require pass-through of refunds and rate reductions arising from supplier rate increases after August 17, 1964, when no provision is made for offsetting against such refunds or reductions increases in the cost of purchased gas which may occur in the future.

It was not the intent of the order issued August 21, 1964 to impose refund and rate reduction obligations upon Kansas-Nebraska differing from those generally provided in recent rate settlement agreements which we have approved. Accordingly, to eliminate any claimed ambiguity in that order, we are modifying paragraphs (D) and (E) as hereinafter provided. However, with respect to the refunds which Kansas-Nebraska is not hereby specifically obligated to pass through, this modification shall not be construed as a limitation of the policy and intent set forth in our order issued July 8, 1964 in *Humble Oil & Refining Company*, Docket No. G–9287, *et al.*, 32 FPC 49.

The Commission orders:

(A) Paragraphs (D) and (E) of the order issued August 21, 1964 in this proceeding hereby are amended to read as follows:

(D) The acceptance of the Stipulation is conditioned to provide that Kansas-Nebraska, subject to the approval of the Commission, shall pass on to its jurisdictional customers the proportionate share of any refunds it receives from its suppliers as a result of final non-appealable orders of the Commission in proceedings affecting supplier rates upon which Kansas-Nebraska's purchased gas costs were computed in this docket applicable to gas delivered to it subsequent to August 17, 1964. It shall pass such refunds on to its customers within 30 days after they have accumulated in the manner prescribed above. This provision shall not be deemed to limit any authority which the Commission may otherwise exercise with respect to any other refunds received by Kansas-Nebraska or to prejudice any position which Kansas-Nebraska or any interested party may take in respect of such refunds.

(E) The acceptance of the Stipulation is further conditioned to provide that Kansas-Nebraska, subject to the approval of the Commission, shall make such reductions in its rates as are made to it by its suppliers as a result of final non-appealable orders of the Commission in proceedings affecting supplier rates upon which Kansas-Nebraska's purchased costs were computed in this docket. It shall, within 30 days of such rate reductions having accumulated in the manner prescribed above, make appropriate tariff filings reflecting these reductions with this Commission, and serve a copy thereof upon each of its jurisdictional customers and interested State commissions.

(B) In all other respects, the Commission order issued August 21, 1964 shall remain in full force and effect.

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[1] The effective date of the settlement rates approved by the Commission in its order issued August 21, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP61-204

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 16, 1964)

On January 26, 1961, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP61-204 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 1.35 miles of 4-inch pipeline and one meter station in the South Rayne Field, Acadia Parish, Louisiana, in order to transport natural gas, all as more fully set forth in the application.

The subject facilities are to be used to transport, for the account of Hope Natural Gas Company (Hope), gas purchased by Hope from Texas Gas Exploration Corporation (Operator), *et al.*,* in the South Rayne Field. The transportation for the account of Hope will be rendered pursuant to certificate authorization of August 10, 1959, 22 FPC 378, in Docket No. G-17335, *et al.*

The estimated cost of the proposed facilities is $27,167, which cost is to be financed from cash on hand.

By letter, dated March 17, 1961, Applicant was issued a temporary certificate authorizing the subject proposals.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 15, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued March 30, 1949, in Docket No. G-859 (8 FPC 190).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act

*Such sale to Hope was authorized by Commission order issued December 18, 1963, in Docket No. CI61-1125, 30 FPC 1548.

and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Texas Gas Transmission Corporation, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

CHATTAHOOCHEE VALLEY GAS DISTRICT, DOCKET NO. CP63–163

ORDER ADOPTING PRESIDING EXAMINER'S INITIAL DECISION

(Issued September 17, 1964)*

Syllabus

1. Under Section 7(a), no order may issue requiring pipeline to serve prospective distributor if to do so would impair pipeline's capability of serving present customers. P. 815.
2. Record shows economic feasibility of new project to be quite possible or probable—on basis, among other things, of estimated debt service coverage of 1.529, satisfying rule of 1.5 ratio. P. 817.
3. In proceeding arising under Section 7(a) of the Natural Gas Act, Commission *orders* pipeline to connect its facilities with those proposed by applicant and sell natural gas for new distribution system, conditioned on collection of cash deposit for each customer predicted for first year.

J. Robert Fleenor for Chattahoochee Valley Gas District.
Hugh J. Morgan, Jr. for Southern Natural Gas Company.
Richard C. Steffey for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

On August 6, 1964, the presiding examiner in this Section 7(a) proceeding, issued an initial decision, subject to review by the Commission, directing Southern Natural Gas Company (Southern) to connect its system with the proposed facilities of the Chattahoochee Valley Gas District (Chattahoochee), the applicant herein, and to sell and deliver to Chattahoochee a supply of natural gas, up to 2,658 Mcf per day, for distribution at retail in six Alabama towns[1] and to diverse customers along its 81-mile transmission pipeline. The Examiner imposed the following conditions:

(1) The order is effective upon completion of the pertinent facilities of Southern as covered in its application in Docket No. CP64–259.

(2) To assure the reality of the market claimed, Chattahoochee shall collect a five dollar deposit, as referred to in its proposed tariff, from each of at least

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* Initial decision appears on p. 812.

[1] Ariton, Clayton, Clio, Hurtsboro, Louisville and Midway, Alabama.

1,608 proposed customers, and furnish to the Commission and to Southern its written certification of the amounts so collected, all such collections to be held in escrow until Chattahoochee begins gas service.

No exceptions have been filed to the presiding examiner's initial decision by any party to these proceedings. The examiner's decision contains a careful review of the facts and a sound discussion of the applicable legal principles.

The Commission finds:

Upon consideration of the evidence of record in these proceedings, the briefs filed and the examiner's decision, we are of the opinion that the examiner's decision should be adopted as our own.

The Commission orders:

The initial decision of the presiding examiner issued herein on August 6, 1964, is hereby adopted and such decision shall become effective as the decision of the Commission as of the date of issuance of this order.

INITIAL DECISION

OF THE PRESIDING EXAMINER ON AN APPLICATION FOR AN ORDER UNDER SECTION 7(a) OF THE NATURAL GAS ACT

(Issued August 6, 1964)

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ELLIS, *Presiding Examiner:*

I. Nature of the Case

The Chattahoochee Valley Gas District, which is a public corporation comprised of a group of towns in Southeast Alabama, has petitioned the Federal Power Commission for an order under Section 7(a) of the Natural Gas Act, calling upon the Southern Natural Gas Company to sell and deliver to the Valley District a supply of natural gas, up to 2,658 Mcf per day, for distribution at retail in six Alabama towns and to diverse customers along its 81-mile transmission pipeline. This is an entirely new project, to be built at a cost of $1,750,000, and the only issue of reality and substance is the economic feasibility of the program. Because of its doubts upon this score, the Staff of the Commission has recommended denial of the petition.

II. Procedural History

The present petition, which is the third version of the District's application, was filed in August and November, 1963. A three-day hearing took place in April, 1964, the Commission's brief was filed May 15, and the applicant's brief in reply on June 26.

The original application, filed in December, 1962, was consolidated with a certificate case of the Southern Natural Gas Company, Docket CP63–26, but the project as then planned was somewhat more extensive. Because it was involved with certain other applications not yet filed, that filing was severed from the Southern Natural proceeding by the Commission's order dated March 4, 1963. The applications here considered and acted upon comprise the original filing of December 10, 1962 (Item A by reference), as amended by the application filed August 30, 1963 (Item B), and supplemented on November 6, 1963 (Item C), all in Docket CP63–163. The 1963 filing (Item B) was further amended by Exhibit 1 admitted at the hearing, with the purpose of substituting new pages numbered 3, 83, 84, 85, 86, 87 and 89. Thus the entire application consists of Item A, as amended by Item B and supplemented by Item C and Exhibit 1.

III. Nature of the Project Described

In southeastern Alabama a total of 23 or 24 towns and cities are served natural gas by the Southeast Alabama Gas District under a certificate issued in 12 FPC 550 (1953) and 14 FPC 855 (1955). With two north and south lines about 60 or 65 miles apart, cross-connected at their southern end, Southeast District's service runs to the important cities of Dothan, Troy and Eufaula, as well as quite a number of smaller communities. But most of the area between the two north and south lines appears not now to have natural gas service, hence the present project was organized to bring gas to six communities located on a more or less north-south line between the two lines of the Southeast District. The new organization is called the Chattahoochee Valley Gas District, a quasi-municipal corporation organized under Alabama law by a number of Alabama towns and cities (not quite the same as the six communities now planned to be served). For its gas supply, a connection with the main line of the Southern Natural Gas Company is planned at a point just below Opelika. The transmission line is to extend generally southward for 81 miles, and to be of a modest size, from 4½ to 2⅞ inches in diameter. The Valley Gas District plans to construct the transmission line and also a distribution system in each of the following communities in Alabama: Ariton, Clayton, Clio, Hurtsboro, Louisville and Midway.

The total capitalization required is $1,725,000, but only 72 percent of this amount will be used for actual construction, the remainder ($490,000) going to meet the expenses of the fees of the engineers and others, capitalized interest for two years, bond discount, rights-of-way, equipment and supplies. As of now, the corporation is without funds or organization, since it is planned to raise the entire amount required by the issue of revenue bonds, which on a tax-free basis will be issued to yield about five percent to the investor.

The market which is counted upon to provide the revenues to amortize the bond issue comes to 212,500 Mcf in the third year, with 2,658 required for the peak day. One-fourth of the annual amount is for the service of a single commercial or industrial enterprise under special contract, another fourth is for small commercial buyers (nearly all for space heating), and the remainder is expected to be sold to 1,703 homes out of a total of 1,893 prospective or potential domestic customers in the several areas concerned. That means it is contem-

plated by the end of the third year to attach and sell gas to 90 percent of all the potential customers known to be in the service area.

The total population to be served in the five towns is listed as 5,469 (Exhibit 2), plus an undeterminable number along the transmission line, where 313 customers are counted on out of a potential of 348. The gas supply will be purchased under Southern Natural's G–2 rate schedule, which is a flat rate of 39.8 cents per Mcf subject to Btu adjustment. The contemplated resale rate calls for a dollar and a half minimum per month for the first 300 cubic feet, plus a graduated charge ranging from $1.50 for the first Mcf down to 85 cents for the quantities over 100 Mcf in any month. Automatic escalation is provided for to meet increases in the existing wholesale rates, but nothing is said about decreases in the event of a reduction in the wholesale cost of gas. It is significant that the rate schedules are not subject to state supervision by any public service commission or otherwise, short, or course, of legislative action. Since the District's contemplated sales are at retail and not for resale, they are not subject to the jurisdiction of the Federal Power Commission. Upon the basis of these figures, including number of customers and volumes sold, the District computes that their net income available for debt service is 1.529 times the annual requirement, on the basis of its third year cutoff.

IV. The Issues

The only issue of consequence is whether the project is economically feasible, as to which the Staff are quite unconvinced. First, however, there arise a number of preliminary issues, quite out of proportion to the scope of the case but which will require only brief treatment.

A. Preliminary issues.

(1) Staff's good faith and objectivity.

At the hearing, Valley District attacked the good faith of the Staff, who had presented their own figures to suggest a much lower rate of customer connection. The applicant's counsel said:

> I just wonder if Staff is making a bona fide effort to get the facts in this case. It looks like to me they are delaying and possibly making this an attempt to sabotage this plan to get gas down here in South Alabama.

Likewise in their brief, the Valley District says:

> The fact that *Staff* now asserts such a position raises a question as to whether Staff's primary aim in this docket is not merely the denial of this application rather than an objective and diligent search for all the relevant facts in the public interest.

Speaking of the Staff's use of certain figures, the same brief adverts to the "hypocrisy of the Staff's conclusion." (P. 22.) Again, at page 33, their brief decries the Staff's "zeal to defeat this application" and "the intentionally or neglectfully misleading manner in which Staff has presented this application." All of which, it is said, "casts doubt on the real aim of Staff's efforts in this docket."

There is not the slightest basis for these opprobriums, nor a scintilla of evidence to support this condemnation of the Staff's efforts as improper, impartial or unprofessional, and certainly no ground for suggesting their efforts were ill-motivated or of ulterior design. Under the authority of FPC Regulations, paragraph 1.15(f), all of these statements are excised and rejected, but without prejudice otherwise to the fair, indeed sympathetic, consideration of Valley District's petition.

(2) *Southern Natural's available capacity.*

Under the language of Section 7(a), no order may be issued requiring the pipeline to serve Valley District if to do so would impair the line's capability of serving its present customers. The Staff brief recommends denial of the petition on this ground also, at least as things now stand.

But the facts on this issue were settled and stipulated at the hearing. At the opening, Southern Natural did announce they are sold out, at least at present. On the next day the same counsel referred to a new expansion application being filed currently, which is expected to be approved and completed shortly, with ample provision for the Valley District's needs. Southern Natural completed their statement, saying (T. 174):

> * * * We do propose to install facilities which will permit us to deliver Chattahoochee's requirements during the 1964–1965 winter. As a result of Southern's ability to modify this certificate application so as to cover Chattahoochee's requirements, we can now agree to supply Chattahoochee's requirements during the 1964–1965 winter, provided Southern receives a certificate of public convenience and necessity in the aforementioned proceeding, and provided we receive the certificate in time to install facilities before Chattahoochee requires gas.
>
> Mr. Examiner, I have discussed this arrangement with counsel for Chattahoochee Valley and counsel for the Staff, and it is my belief and understanding that this is agreeable to everybody, and that the capacity issue which has been raised is moot and no longer an issue in this case.
>
> PRESIDING EXAMINER: So say you all?
>
> Mr. FLEENOR: The applicant agrees.
>
> Mr. STEFFEY: The Staff agrees, Mr. Examiner.

Relying on this form of stipulation as to the facts, the applicant was justified at this point in resting their case as to capacity. FPC Regs., paragraph 1.25.[1]

Even if there were no finality to this supposed stipulation of facts, there still could be made applicable the decision in Panhandle, G–2306, 28 FPC 522, 528 (a pipeline of about the same size as Southern Natural), where the Commission authorized a new load of 25,000 Mcf (10 times as much as here), relying largely on the diversity factor between the total contract demands of the pipeline's customers and the sum of their actual needs on any given peak day.

Anyway, the capacity issue is moot. Southern Natural's new expansion application is *in processu* (Docket CP64–259), and all hands agree it will take care of Valley District's needs. The order herewith is in contemplation of the higher capacity there provided for.

(3) *The expert testimony.*

Decrying the Staff's testing of the engineering predictions as to customer connections and sales by the method of comparing the sales records achieved

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[1] Both Southern Natural and the Staff assert that in view of the Commission's order in *Lynchburg Gas Company*, 23 FPC 301 (or at least the dictum therein), Valley District has the juridical burden of proof that Southern Natural's capacity—known to be over a million and a half Mcf per day (Re *Southern Natural*, April 6, 1964, CP63–26, 31 FPC 789)—includes this margin of just 2,658 to serve the modest needs of the Valley District. Whatever might be the rule for a major company like Lynchburg, there is something incongruous and undiscerning or unrealistic in suggesting any such outrageous evidentiary burden as applied to this tiny, new-formed quasi-municipality that has no bank account nor a single person in its employ, nor any background of experience and operation. Especially so since it has no resources for enlisting a body of lawyers and technicians to descend upon Birmingham and ferret out the figures on the capacity of this large and important pipeline. Surely the Commission Staff, with files built up in dozens of dockets on Southern Natural, does not need, or should not need, the applicant's help in this regard.

in actual experience in other towns in the general area—which may or may not be 100 percent comparable—the applicant appears to demand that the Commission accept the statistical projections and predictions made by the engineer on the basis of his evident and admitted expertise, saying that Staff's use of comparable figures from apparently comparable towns might make it possible to dispense with the need for an engineer, and (their Brief adds) "Perhaps we can also dispense with the Commission."

The engineering predictions are of course the principal point of reliance, but they at best are speculations and predictions, they have been subject to question in the past (*Panhandle*, 15 FPC 46, 70) and have resulted in difficulties when over-relied upon. The Commission at times has sanctioned the method of comparing the results in other towns,[2] and accordingly the evidence on that score is required to be considered. In any event, it is settled that the engineering report, although entitled to great respect and necessarily the subject of serious dependence, is not automatically to be regarded as necessarily endorsed or approved.[3]

(4) *Cross-Examination was not denied.*

The Valley District appears to complain at page 8 that it was denied the opportunity adequately to cross-examine the Staff witness because he was called to the stand 30 minutes before the hearing was scheduled to be concluded. As the same brief shows at page 25, that witness merely compiled certain published figures from Brown's Directory (and similar public sources) on the actual sales experience reported for 23 nearby towns served by the Southeast Alabama Gas District, all as compiled in Exhibit 2 by the Staff. The only conclusion stated by the witness (T. 332–3) is that the population per meter for the Southeast Alabama Gas District divides out at 5.3 while that claimed for the Valley Gas District is 3.8, and that this is "some indication" of the economic conditions in the area and of the experience that may be found in attaching customers in the proposed new district.

It is patent that cross-examination in its true sense was not wanted at all since there was and is no suggestion that the witness failed to recite correctly the figures he gave from the sources cited, and this was the only true extent of his testimony. What was wanted instead was to bring out that the witness did not attempt to testify that the 23 nearby towns are necessarily comparable to the new ones proposed to be served, and this non-testimony is amply demonstrated at page 25 of the applicant's brief. Further, it was sought to show from an accounting report that some other figures about the Southeast Alabama District are available, so those figures were copied in the record at page 342, none of them varying perceptibly from the figures already given.

In any event, the applicant did cross-examine the witness, see page 339, and declined the express offer to reassemble the hearing two hours later for the purpose of continuing it (*Id.*). When this cross-examination made it clear that the witness did not claim to have personal knowledge as to the comparability of the two groups of towns, the applicant's attorney announced, "I am satisfied with that" (page 340), while their financial witness said, "We are will-

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[2] See 15 FPC 118, 120, 128; 15 FPC 1421, 1428; 27 FPC 967, 973–975; 28 FPC 41, 48–49; (*American Louisiana Pipe Line Company*, Opinion No. 402, September 17, 1963, 30 FPC 698 at 709, 710, 712 and 716), though the method was questioned in another case (*Town of Poseyville, Indiana*, CP63–224, order issued September 6, 1963, 30 FPC 663.)

[3] "Experts' judgments, however, would not bind the Commission. Their testimony would be in the nature of argument or opinion, and the weight to be given it would depend upon the Commission's estimate of the reasonableness of their conclusions and the force of their reasoning." *Market St. Ry. v. R.R. Comm.* (1945) 324 U.S. 548, 560. See 28 FPC 916, 926; and compare 17 FPC 333, 356 with 28 FPC 979, 982.

ing to read those figures and then we will call it a day." (T. 336) Those are the figures that were read into the record; and, as shown at T. 340, there was no response to the Examiner's final question: "Is there any other questioning to come up in this case?" Upon this stark evidence of the record, the complaint about cross-examination simply is not understood.

B. Feasibility.

The only issue of reality and substance appears in the Staff's recommendation against the requested order in the view that the project does not give promise of economic feasibility since the applicant's market figures are based upon the implausible premise that 90 percent of the potential customers will be attached and will be buying gas service by the end of the third year.

The general language of Section 7(a) of the Natural Gas Act, "Whenever the Commission * * * finds such action necessary or desirable in the public interest, it may by order direct a natural-gas company * * *" has been interpreted to require that the issues to be considered include whether the proposed project can be financed and whether the project is economically feasible (15 FPC 1421, 1425, 1427–29). This does not require a formal finding by the Commission of economic feasibility; rather, it is enough that "there is a strong probability of applicant's project being an economic success." (20 FPC 213, 216) In the case of a municipality, feasibility is measured or determined by showing that the net revenues will equal the annual debt service or sinking fund requirements plus a 50 percent margin of safety, which is normally expressed as the rule of the 1.5 ratio (15 FPC 46, 70; 21 FPC 190, 196).

The difficulty is that the net revenue figure in every case is most speculative and uncertain because it is a direct function of the number of customers predicted to be attached three or four years ahead (the other two factors, rates and quantity per customer, are relatively specific and certain). More often than not, the market predictions of the engineering report are accepted without question or at least without discussion (24 FPC 177; 29 FPC 754; order of December 12, 1963 in Docket CP64–57). In a very few cases the customer predictions have been examined into and some corroboration required, such as a customer canvass or a showing of other circumstances (21 FPC 552, 559, 567, revised at 22 FPC 566; 17 FPC 118; 29 FPC 297). With that background, and in view of the question raised, we turn to the case here made.

(*1*) *The Valley District's case.*

To design their system and prepare their report, the Valley District employed the firm of Goodwin Engineers, Inc., of Birmingham, the same firm and the same engineer, Mr. Stark Perry, whose report was the subject of a similar case, Re *Sylvester, Georgia*, 25 FPC 278, 281 (1961), where it was noted that the firm is an old one which has designed gas distributing systems for 20 cities and towns in the southeast. It was testified that the present report was prepared upon the same basis as that for Sylvester, and that system, after a year and a half of operation, has actually achieved sales very close to what was estimated in the Perry report in that case (3T255).

In the case of Valley District, the engineering prediction that the annual markets will total 212,500 Mcf (at a maximum day of 2,658), which results in the claimed debt service ratio of 1.529, is derived from the following data: The residential market, as actually counted during the course of two or three surveys, comes to 1,893, which, along with others, makes a total market potential of 2,297 prospective customers. Nearly half of them now heat with LP gas and about 2% with fuel oil. The gas consumption for heating the average house is figured at 23.28 cu. ft. per degree day deficiency, a quite normal factor, except that for Class "B" residences (which average somewhat smaller in size) the fig

ure used is a very modest 16.93 cu. ft. (derived from Item B, Exhibit I). Since nearly half the total sales are classed as residential, and 85% of that amount is for space heating, the really significant question is the verity of the prediction that out of the 1,893 residences in the service area, 1,325 or 70% will be attached as paying space heating customers by the end of the first year of operation, and 1,703 or 90% by the end of the third year of operation. No great controversy developed as to the contemplated sales in the commercial class and the one industrial sale which has been committed, but Staff has raised a very serious question as to the claim that 90% of the houses will be heated with natural gas. The figure is significant because the revenues from residential sales account for somewhat more than half of the total income relied upon. (Item B, Exhibit M).

(2) *Doubts raised by the Staff.*

The Staff brief points to a number of circumstances which cast serious doubt on the validity of the prediction that 90% of the homes along the line and in the towns will be heated with gas by the end of the third year. Conceding that the 43% of the homes which now use LP gas (if not also the 2% now using fuel oil) will in practically all cases be so converted because the cost comparison is favorable, the real question pertains to the others who are believed to use coal or wood at presumably less expense. It was remarked that there has been no customer canvass (for what value, if any, that might be in predicting the attachment rate three or four years later). Next, the Staff points out that Mr. Perry's estimate for Sylvester, Georgia in the case cited above was only 69% at the end of the third year, not 90%. When witness Perry referred to the historical records of other systems as the basis for his 90% prediction he was asked to name the gas systems which had achieved that saturation rate and in apparent response he referred to four cities in Georgia and one nearby town in Alabama, but the actual number of customers, including residential and small commercial as a group, for those localities comes to a little less than 50% at the end of the third year and 59% by the seventh or eighth years. (Exhibit 3, 3T314).[4]

In further contrast, the Staff points to 23 towns in this immediate area which have been served for seven years by the *Southeast Alabama Gas District* (12 FPC 550), whose percentage of actual customers to total number of houses works out at 61%, according to data derived from Brown's Directory, Exhibit 2. Turning to another formula, the Staff computes that Valley District expects to attach one meter or customer for each 3.8[5] persons in the total population for the area to be served, whereas the Southeast Alabama District reportedly serves one customer only for each 5.3 persons in their area, citing the same source.

The applicant does not seem to have any better figures to offer with respect to the Southeast Alabama Gas District, but the reservation must be noted that the number of customers used comes from private, unofficial and unverified reports to Brown's Directory, the population used comes from Rand McNally (which may or may not refer to exactly the same area), and the number of houses comes from

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[4] About this question and answer there is claimed to be some misunderstanding, since the applicant's brief at page 24 says that the list of 90% towns was not actually asked for or directed to be copied into the transcript. However, this seems to be belied by the plain question and answers furnished at pages 310–316 and Mr Perry's figures which the Examiner asked to be incorporated into the record as Exhibit 3. Their brief now lists, apparently *dehors* the record, four such towns whose actual attachment rates are given as 94% to 100%. One of them, the perhaps well-named Hokes Bluff, is listed as somehow having achieved a record of attaching 105% of the potential available for connection. But since these figures are not in the record, they cannot be considered.

[5] For comparison, the editor of *Public Utilities Fortnightly* (Vol. 73, p. 8) speaks of the "reliable old rule-o-thumb basis of 3.2 people for every household." P. 15.

the U.S. Census of Housing, which may also have significant differences in its frame of reference. Thus, these figures, while plainly significant, might be misleading if taken alone.

Transplanting the 5.3 population-meter ratio from the 23 surrounding towns in the immediate area to the population figures for the areas to be served by Valley District, the Staff arrives at a prediction of 1,216 customers after three years, which is only 53% of the potential instead of the 90% which the Perry report anticipates. The result of this reassessment by the Staff is to reduce the net revenues available for debt service by about one third, so that the ratio of revenues to debt payments becomes only .984. This, of course, without more would mean that the project would not be economically feasible.

(3) *The counter case.*

However, there are a number of items of rebuttal and counter-circumstance which suggest that the population-meter ratio should not be literally applied and that the applicant's prediction of 90% customer attachment is at least a conceivable one, perhaps a quite possible one. In the first place, the population ratio test used in some prior cases [6] seems not necessarily now to have the Commission's sanction since in Opinion No. 435 of July 17, 1964, 32 FPC 158, in *East Tennessee*, the Commission accepted as "reasonable" the distributor's own estimate of its expected sales, including residential, and those estimates come to 194% of an estimate based on the population-meter ratio. Also, the sources used may lack exactitude since (a) the reports to Brown's Directory may use quite diverse bases for the number of heating customers (for example, where a block of apartments are heated through a single meter), and (b) the Rand-McNally population reports may or may not count only those persons living within the city limits while the gas companies' service area may or may not extend considerably beyond that point. This is not to doubt that Staff made the best use of all the tools at its command, but does suggest that a better reporting system might be sought upon the basis of which proven experience reports of nearby and similar areas might be the best test available upon which to judge the predictions made in applications made for new service.

In the second place, the applicant's program includes a perhaps unusual feature which may greatly promote sales and customer connections. The Valley District plans to pay all the interior piping costs for each domestic heating customer, so that a prospect's only capital cost to be faced is the charge for converting present non-gas heating equipment or for the purchase of new room-heating burners or gas furnaces. Their cost exhibit includes $73,480 for house piping and conversion of 1,837 units (Item B, Exhibit K, page 63). Specifically, this amount is to allow for piping or re-piping of the homes now using LP gas and converting their appliances and for piping of other houses to connect up with the new gas appliances to be bought by the customer (2T179). This would seem to remove a great part of the initial outlay of the prospect who is sought to convert from other forms of house heating. However, no specific measurement of the extent of this betterment was suggested or is perceived. Mr. Perry, who has wide background in this business and in this area, definitely asserts it has been their experience that the residents do purchase space heaters and convert from the present fuel to the use of natural gas.

In the third place, the Commission has "passed" some cases with predictions in the 90% range, *viz.:*

(a) On December 12 last, a section 7(a) order issued to the *City of Montezuma, Georgia*, CP64-57, 30 FPC 1476 upon the basis of an engineering report

[6] The Staff quotes a recent Initial Decision which applied that form of test. *Cf.* 21 FPC 552, 566.

by Merritt and Welker of Marietta, which shows 1,262 potential customers and estimates that 70%, 80% and 85% of them will be attached by the end of the first, second and third years,[7] almost exactly as here claimed. The population-meter ratio there accepted figures out to 3.6, or *less* conservative than for Valley District. It was testified that the financial firm in the present case successfully marketed Montezuma's bonds at less than 5% (3T290). However, nearly half the investment was absorbed through a public works grant from the Housing and Home Finance Agency.

(b) Engineer Perry claimed that another town in the general area, *Adairsville, Georgia*, was also approved by FPC on a prediction of 70–80–90% sales attached in the first three years and that now, as of the end of the first year, Adairsville is ahead of their quota with 72.5% attachments (3T273).[8]

(c) In 1962, *LaCygne, Kansas*, was ordered to be served on the premise that 94% of the potential market would be sold, with a population-meter ratio of 2.4 and investment per customer of $612 (27 FPC 967, 973, 977).[9]

In the fourth place, it seems unusual that as many as 44% of the present homes heat with LP gas; this gives Valley District a "head start" on their sales program because all of them, with a savings in prospect, will expect to convert. This factor also explains the Sylvester, Georgia, case where Mr. Perry, as stated, predicted much lower than 90% saturation, for in that city only one out of eight prospects was already an LP user (3T258).[10]

In the fifth place, the project is financeable, a factor which in other cases has added weight to the evidence of feasibility. The financial witness represents a firm which has handled "a lot" of these cases, financed a "great many" of them (1T131) and already has agreed to underwrite Valley District's revenue bonds and to purchase them if they are not sold otherwise (1T135). Recognizing that such revenue bonds are something less than "gilt edge", the financier has agreed they will offer the bonds to institutional investors who have their own sophisticated means of judging their risks, and who actively seek some participation in these high-yield, tax-free issues as a means of balancing out their portfolios.

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[7] See p. 38 of the report filed in CP64–57.

[8] Inexplicably, what was said about FPC action is not true at all. The Commission's order is dated September 6, 1961, in Docket CP61–308 (26 FPC 468). The engineering report on file in that docket is by Mr. Perry's firm and instead of predicting 70–80–90% of potential customers to be attached in the first three years, actually shows 53.9%, 64% and 73.4% respectively. (Ex. G, p. 4 in CP61–308). But the same report announces "known operating results" of three other towns in Alabama and Georgia where the customer connections are supposed to have been 62.8%, 89.4% and 99% of the potential in their first three years.

Nothing in the present record (so far as known) in the Commission's files would serve to affirm the testimony about Adairsville's actual experience, or that of the other three towns just mentioned. It can only be concluded that if these cases are to be judged by results of other towns (which the Staff here proposes, following this Examiner in a recent case and numerous other precedents), then some better method must be developed to ascertain the true results of such other towns' operations.

[9] These figures compare with a ratio of 2.44 and investment per customer of $725 as derived from the Adairsville file just mentioned.

[10] At the same time, Sylvester leads the Applicant astray into the statistical error of transplanting percentages—it will plainly not do to take the percentage of Sylvester's total potential who are (1) expected to attach but (2) who do not use LP (that is, 56% of the total), and expect to apply that percentage to Valley District's total, since the two bases are so dissimilar. Their brief proclaims they will sell 99.6% of the whole area by this method (p. 16). To complete the *reductio ad absurdum*, had Mr. Perry happened to find just eleven more LP tanks than the number he reported (1,002: Item B, Ex. I, p. 28), the percentage method presented at several places in their brief would have prognosticated sales to 2,299 customers, two *more* than the entire potential in the area (*id.*, p. 33). This error of method appears in their brief at pp. 16, 17, 22 and 29.

Insofar as Commission protection of investors is often said to be the basis for its feasibility requirements, the witness here answered "none whatsoever" to this question: To what extent do prospective investors in small municipal projects rely or depend upon the FPC certificate to assure the project will be successful? (3T296–304). Also, it is regarded as stipulated in the record that the underwriters will not offer the bonds to private individual investors who would not be in a position to make their own verification (3T299).

(4) *The result.*

The result of these conflicting factors in "the difficult task of evaluating the conflicting predictions of experts" [11] is that feasibility of Valley District is quite possible, in truth, with developed performance like that of some other projects approved by FPC, it is in the probable class (the standard cited at 20 FPC 213, 216).

The possibility of failure cannot be denied, but how that could be of irreparable consequence to anyone but the bondholders is not perceived. Some older cases apprehended that a failure would be visited on the general taxpayers (21 FPC 853), but here only revenue bonds will be issued and the Staff's efforts to counter that feature (Brief, p. 42) are quite remote and farfetched.

Some other cases have demanded a strong feasibility proof on the basis that a pipeline investment for a lateral was involved and failure would redound to the expense of present customers, but no special investment by Southern Natural has been mentioned here and this tiny share of its general capacity can hardly be consequential or even measurable. Other cases have mentioned the jeopardy to the new domestic customers who convert to gas heating and may be captive to whatever rate increase might be required to keep the system solvent. But since the advent of LP gas this factor must lose force, since anyone dissatisfied could always return to that source of gas, for which the costs are only $8 per *year* higher and, after all, only the very amount that half the residents are already paying now. (Item B. p. 59). Finally, some cases have mentioned the scarce supply of gas, which (with space-heating limitations as then in force) should not be monopolized by marginal projects, but that view hardly seems currently to be relevant.

The Commission often has reiterated it has no function or jurisdiction to guarantee local projects, 28 FPC 979, 982, hence no conclusive, definitive, formal finding of feasibility is or ever has been required. A "reasonable probability" (*Id.*), not much more than a fair and demonstrated possibility, may be all the law requires—note the statute speaks only in terms of "necessary or desirable in the public interest." After all, it is hard to discover the *public* interest in the recommended denial of the proposal of the *people* in the area to permit them to bring gas to their homes and, hopefully, to their industries when the only significant risk is that of the bondholders who have not asked for and do not require the Commission's protection.

The effort should be to facilitate, not debar, the public advantage in receiving gas service that has often been remarked (19 FPC 143, 148; Op. No. 424 of April 6, 1964, 31 FPC 789; Op. No. 435 of July 17, 1964, 32 FPC 158). Upon proof that the people of this area really want it and in substantial numbers will buy it (as to which, see below), it is believed the true balance of the public interest calls for them to be permitted the chance to achieve their program. It would be a heavy hand of the law indeed which, in the name of the public interest, would deny to the public the privilege to carry on a program, in which the public has an interest, that has the blessing of everyone concerned. If,

[11] Opinion No. 435, July 17, 1964, 32 FPC 158 at 161.

through conceivable mischance, some reorganization does eventuate, and some recasting of the debt structure, the people will still be getting gas, some authority will still operate the system, and the bondholders will only experience the delay or risk which their high interest rates[12] are intended to compensate. When, to them, the Commission can say *caveat emptor*, as it often has, it is not necessary to nonsuit or veto this program of the people of the district at large.

(5) *The performance required.*

The Staff's recommended denial is based on a long line of decision—though many of them may have been based on reasons no longer obtaining—which are binding here at the initial decision stage. To assure, as the precedents require, the reality of the market claimed (1,608 customers in the first year), is seems necessary to refer to the proposed retail tariff (Item B, p. 90) which calls for a $5 deposit by each customer before service begins, and to condition the order to make it operative only upon the actual collection of those deposits, to be held in escrow.

Their witnesses indicated this is really the program anyway—first, to undertake a real civic campaign of education to popularize the need for mass participation if the Gas District is to pay its way, then undertake a customer-by-customer canvass "to sign them up", (3T276–278, 282–3) and then, so it was testified, collect the $5 deposit before the bonds are sold or contract awarded, "in order that we may have then a list of those people to know where to run service as construction progresses." (2T211–212, 3T276–278, 3T282–3).

The effect of the condition hereto attached, in keeping with the Commission's feasibility rulings, is to require that the $5 deposit be collected individually and in hand, from the 70% of the potential customers who are confidently predicted for the first year, before Southern Natural is required to effect its connection. The deposits are to be held in escrow and unspent until service actually begins or until they are refunded to the depositors. The actual collection of even this small sum from 1,608 customers will demonstrate most concretely that the people of the area want this service and will buy it in such substantial numbers that its feasibility will be manifest and adequately be assured.

V. Findings and Order

Upon consideration of the whole record, including the application filed, it is further found and concluded that:

(1) Southern Natural Gas Company is subject to the Natural Gas Act (21 FPC 155).

(2) Applicant, the Chattahoochee Valley Gas District, is a municipality of the State of Alabama within the meaning of Sections 2 and 7(a) of the Natural Gas Act and is authorized to engage in the local distribution of natural gas to the public.

(3) Subject to the conditions below, which are required in the public interest, it is necessary and desirable in the public interest to direct Southern Natural to connect its system with the proposed facilities of the applicant and to sell natural gas to the applicant for resale, all as proposed in the application.

(4) The action herein ordered will place no undue burden on Southern Natural, nor impair its ability to render adequate service to its customers.

ACCORDINGLY IT IS ORDERED, subject to review by the Commission, that:

(a) Southern Natural Gas Company shall establish a physical connection of its transportation facilities with the facilities to be installed by the Chattahoochee

[12] Equal to 8 to 10% rate of taxable interest (3T298).

Valley Gas District, and sell natural gas to the District, as described in the application.

(b) Southern Natural shall report to the Commission the date of commencement of service to the applicant.

(c) This order is subject to each and all of the following conditions:

(1) The order is effective upon completion of the pertinent facilities of Southern Natural as covered in its application in Docket CP64-259.

(2) Applicant shall be prepared to receive natural gas from Southern Natural, as proposed within one year from the effective date of this order, and shall execute a service agreement with Southern Natural in accordance with FPC regulations.

(3) Applicant shall collect and receive the $5 deposit referred to in its proposed tariff (Item B, p. 90) from each of at least 1,608 customers, and furnish to the Commission and to Southern Natural its written certification of the amounts so collected, all such collections to be held in escrow until the applicant begins gas service.

WILLIAM L. ELLIS,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP65-12

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 17, 1964)

On July 13, 1964, Cities Service Gas Company (Applicant) filed in Docket No. CP65-12 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain meter and regulator equipment which would enable Applicant to render direct interruptible natural gas service to six new industrial customers located in Texas, Oklahoma, and Kansas, all as more fully represented in the application in this proceeding.

Applicant seeks specific authority to construct and operate the following facilities:

(1) Tap Applicant's Oklahoma City 20-inch pipeline in the Northwest Quarter of the Northwest Quarter of Section 31, Township 26 North, Range 1 West, Kay County, Oklahoma, and install meter and regulator facilities to sell direct interruptible gas to Mr. Arden C. Finch for the operation of a restaurant and filling station. (per annum sale 1200 Mcf)

(2) Tap Applicant's Pampa 20-inch pipeline in the Southwest Quarter of Section 5, Block 3, I. and G. N. Survey, Gray County, Texas, and install meter and regulator facilities to sell direct interruptible gas to Mr. John Spearman for irrigation operations. (per annum sale 2735 Mcf)

(3) Tap a 2-inch pipeline belonging to Mr. John Spearman, Mr. J. W. Campbell and Mr. Jack H. Benton in the Northwest Quarter of Section 5, Block 3, I. and G. N. Survey, Gray County, Texas, and install meter and regulator facilities to sell direct interruptible gas to Mr. J. W. Campbell for irrigation operations. (per annum sale 2735 Mcf)

(4) Tap a 2-inch pipeline belonging to Mr. John Spearman, Mr. J. W. Campbell, and Mr. Jack H. Benton in the Northeast Quarter of Section 4, Block 3, I. and G. N. Survey, Gray County, Texas, and install meter and regulator facilities to sell direct interruptible gas to Mr. Jack H. Benton for irrigation operations. (per annum sale 2735 Mcf)

(5) Tap Applicant's Wichita-Ottawa 20-inch pipeline in the Southwest Quarter of the Southwest Quarter of Section 12, Township 17 South, Range 19 East, Franklin County, Kansas, and install meter and regulator facilities to sell direct interruptible gas to the Ottawa Bible Church for space heating. (per annum sale 750 Mcf)

(6) Tap Applicant's Sedalia 12-inch pipeline in the Northeast Quarter of the Northeast Quarter of Section 26, Township 16 South, Range 21 East, Miami County, Kansas, and install meter and regulator facilities to sell direct interruptible gas to Mr. John J. Robertson for oil heat treating operations. (per annum sale 1825 Mcf)

Applicant submits that each sale is fully interruptible in character and none of the volumes to be sold replaces or supplements natural gas previously purchased from distributing utilities or municipalities. The subject volumes of gas will be used for irrigation, oil field operations, or small space heating purposes.

Applicant further submits that the total estimated cost of the six proposed projects is $3,230.00, to be paid out of treasury cash.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

At a hearing held on September 15, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) The certificate to be issued by this order is granted on the express condition that the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maxi-

mum delivery obligations of the Cities Service Gas Company for firm resale service to its customers.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Cities Service Gas Company, to construct and operate the proposed natural gas facilities as hereinbefore described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of the Cities Service Gas Company for firm resale service to its customers.

(D) The facilities hereby authorized in paragraph (A) above shall be constructed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 30 days from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

SHARPLES AND COMPANY PROPERTIES (OPERATOR), ET AL., DOCKET NO. RI64-759

ORDER ACCEPTING OFFER OF SETTLEMENT, ACCEPTING NOTICE OF CHANGE, REQUIRING FILING OF CONTRACT AMENDMENT, AND TERMINATING PROCEEDINGS

(Issued September 18, 1964)

On August 10, 1964, Sharples and Company Properties (Operator), *et al.* (Sharples) submitted an offer of settlement in these proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves proposed increased rates for sales of natural gas made to Montana-Dakota Utilities Co. (Montana) by Sharples. The offer relates to a sale made under Sharples' FPC Gas Rate Schedule No. 1 in Big Horn and Washakie Counties, Wyoming. The proposed increased rates were suspended by order of the Commission in Docket No. RI64-759 and were made effective by Sharples on June 5, 1964.

Under the terms of the offer, Sharples proposes to eliminate the price escalation provisions from its rate schedule and to establish a 14.0256¢ per Mcf rate for the subject sale. No protests or objections have been filed to the offer.

The proposed settlement is consistent with the provisions of the Seventh Amendment to the Commission's Statement of General Policy No. 61-1, issued December 20, 1960, 24 FPC 1107, as amended by Order 273, issued November 27, 1963, 30 FPC 1370, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Sharples offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservation of the right to file increases to cover future tax

increases. Nor, may our action herein be construed as constituting approval of any future rate increase that may be filed under the subject rate schedule, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Sharples rate and rate schedule.

The Commission finds:

The proposed settlement of the above-designated proceeding on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Sharples on August 10, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Sharples on August 10, 1964, is hereby approved in accordance with the provisions of this order.

(B) Sharples shall file, within 30 days from the date of issuance of this order, an executed contractual amendment to its FPC Gas Rate Schedule No. 1, eliminating all price escalation provisions therefrom. The contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) The notice of change in rate filed by Sharples to its FPC Gas Rate Schedule No. 1 on July 15, 1964, in accordance with its settlement proposal be and the same is hereby accepted.

(D) Upon notification by the Secretary of the Commisson that Sharples has complied with the terms and conditions of the order, the rate and charge of 14.0256¢ per Mcf at 15.025 psia, specified in its offer of settlement shall be effective as of September 10, 1964, and the above designated proceeding shall be deemed terminated.

(E) The acceptance by the Commission of the Sharples' offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Sharples, including area rate or other similar proceedings.

OPINION NO. 443

SUSQUEHANNA POWER COMPANY AND PHILADELPHIA ELECTRIC POWER COMPANY, PROJECT NO. 405; PHILADELPHIA ELECTRIC COMPANY, PROJECT NO. 2355.

MEMORANDUM OPINION AND ORDER ISSUING LICENSE (MAJOR); DISAPPROVING PERIOD OF CONTRACT FOR SALE OF POWER AFTER EXPIRATION OF LICENSE; AND ORDER AMENDING LICENSE

(Issued September 21, 1964)*

Syllabus

1. Where proposed operator of pumped storage project is same as licensee of existing hydroelectric project, it may frequently be more feasible and

*Order issued November 9, 1964, modifying license and otherwise denying rehearing.

appropriate to amend existing license to include new project work within its terms. P. 829.

2. However, where such applicant is not same as existing licensee or where remaining term for existing license is not long enough to provide reasonable assurance that new development, if included within license, would constitute sound use of applicant's financial resources, special questions will arise, as here. P. 829.
3. Section 22 of Federal Power Act refers specifically to contracts for sale and delivery of power—it is clear from language and legislative history thereof that any agreement which might be approved, and as such be binding upon successor licensee, or United States if it exercised recapture rights, was to be limited to post-license sale of project power. P. 830.
4. Commission was given no authority to approve other agreements between licensee and third party which, as a result thereof, could impair rights of successors to the licensee—sole reason for Section 22 was recognition of possible situations where, in absence of power contracts extending for a period beyond license termination date, licensee would be unable to sell project power. P. 830.
5. Commission has power to give applicant for license for Muddy Run pumped storage project reasonable assurance that during license term Conowingo reservoir will continue to be available as primary source of water for such facility. P. 830.
6. It is established that under Section 10(a) of Act, Commission is authorized to issue license for any project it believes "best adapted to a comprehensive plan for improving or developing a waterway or waterways * * * for improvement and utilization of water power development and for other beneficial public uses, including recreational purposes". P. 831.
7. Commission's comprehensive licensing authority is not restricted by any rights of existing licensees to be free of encroachment from new project where Commission finds that resulting totality of river development, giving full consideration to any negative effects of encroachment, is most conducive to comprehensive development. P. 831.
8. Where record indicates that encroachment will significantly impair operational value of existing project, Commission has included provision in new license requiring compensation to existing licensee. P. 831.
9. Through exercise of its powers under Section 10(a) of the Act, Commission vests in Muddy Run right to utilize Conowingo pool for forty-year license period as integral part of its licensed operation. P. 831.
10. If United States exercises its recapture power at end of present license term, reasonable provision for compensation will serve to reimburse new owner for some portion of net investment price of Conowingo represented by construction costs beneficial to Muddy Run as well as to original project. P. 832.
11. After expiration of existing Conowingo license (or after an annual license issued thereafter), licensee for Muddy Run should share annual costs of jointly used facilities. P. 832.
12. Extent of such sharing between two privately-owned projects should be limited to one-half of annual costs of jointly used facilities and, within this range depend upon the relative ratios of net benefits of the two projects. P. 832.
13. Regardless of ratio of net benefits, new project should only share in paying a proportional amount of half of annual operating costs of jointly used

facilities—under instant circumstances, determination and methodology upon which it is based is considered fair and reasonable. P. 833.

14. Since licensing of the Muddy Run project would clearly add to comprehensive development of this reach of Susquehanna, its authorization as proposed is consistent with statutory criteria. P. 833.
15. New provisions for recreation in applicant's plan of development will result in substantial net recreational advantages as a result of construction of Muddy Run project. P. 834.
16. Commission *finds* that approval of proposed contract between applicant for new license and joint licensees of existing project for sale of power beyond February 19, 1976, would be an inappropriate application of its authority under Section 22 of the Act and not in public interest. P. 834.
17. In a proceeding under Section 4(e) of the Federal Power Act, Commission *issues* license; *amends* license and *disapproves* period of contract for sale of power after expiration of license.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

Application[1] was filed on January 29, 1964, by Philadelphia Electric Company (Applicant) of Philadelphia, Pennsylvania, for a 40-year license under Section 4(e) of the Federal Power Act for the proposed Muddy Run Pumped Storage Project designated as Project No. 2355, to be located on the Susquehanna River and its tributary Muddy Run, in Lancaster and York Counties, Pennsylvania.

The proposed installed capacity of the project is 1,104,000 horsepower connected to generators having a total rated capacity of 800,000 kilowatts. The power output from the project would be delivered by Applicant to the bulk power transmission systems of companies interconnected through the Pennsylvania-New Jersey-Maryland Interconnection and the recently announced Extra High Voltage Transmission Grid interconnecting regions of the Middle Atlantic States. The project will provide peaking capacity needed by the interconnected power system. Applicant proposes to use the Conowingo Reservoir of Project No. 405, whose license expires on February 19, 1976, as the lower pool for its Muddy Run Project. The proposed project boundaries for Muddy Run would include that part of the Conowingo Reservoir which it will utilize. The Commission gave public notice of the application as required by the Federal Power Act.

On January 29, 1964, the Susquehanna Power Company and Philadelphia Electric Power Company, joint licensees for the Conowingo Project (Conowingo) No. 405, and Philadelphia Electric Company, Applicant for a license for the proposed Muddy Run Pumped Storage Project (Muddy Run) No. 2355, filed a request for Commission approval under Section 22 of the Federal Power Act

[1] This application was preceded by the filing of a joint application filed on April 1, 1963 by the Susquehanna Power Company and Philadelphia Electric Power Company (Joint Licensees for Conowingo Project No. 405) for a 50-year license covering: (1) the proposed Muddy Run project and (2) the joint licensees' existing Conowingo development on the Susquehanna River designated Project No. 405 for which a 50-year license was issued February 20, 1926. On January 29, 1964, the joint application was amended by the Joint Licensees and Philadelphia Electric Company by eliminating the request for a new license for the Conowingo Project, and by substituting Philadelphia Electric Company as sole Applicant for Project No. 2355 covering the Muddy Run project only, and to request a 40-year license for the Muddy Run project.

(17 U.S.C. 815),[3] of a proposed contract dated January 29, 1964, betweeen the joint licensees for Project No. 405 and the Applicant for Project No. 2355 under which the joint licensees would sell and deliver virtually the entire output of the power from Project No. 405 to Philadelphia Electric Company until the termination date specified in the license for Muddy Run, which under the forty-year license requested, would be 2004.

The Commission gave public notice of that application on February 28, 1964. No protests or petitions to intervene were received. The Pennsylvania Public Utility Commission, the public service commission in that state in which the sale or delivery of power to be made, approved this contract on February 11, 1964.

This case presents important questions with respect to the licensing of pumped storage developments which would utilize as their primary source of water the reservoir of an existing licensed project. Where the proposed operator of the pumped storage project is the same as the licensee of the existing hydroelectric project, it may frequently be more feasible and appropriate to amend the existing license to include the new project works within its terms. But where the applicant for the pumped storage development is not the same as the existing licensee or where the remaining term for the existing license is not long enough to provide reasonable assurance that the new development, if included within the license, would constitute a sound use of the applicant's financial resources, special questions will arise, as they have here. Since this is a case of first impression, we are setting forth in some detail in this order our views as to (1) the inappropriateness of the Section 22 proposal advanced by the applicant as a device for insuring the continued availability of an existing project's reservoir to a new pumped storage project and (2) the general manner in which we believe these problems of joint utilization of facilities can and should be resolved.

1. In addition to providing for the sale and purchase of power, the proposed contract provides that Conowingo will: (1) operate Conowingo in accordance with sound engineering practices so as to achieve the maximum output of hydroelectric power and water conditions in the Susquehanna River at the times when the energy is required by the Philadelphia Electric Company; (2) maintain the reservoir, dam and appurtenant project works of Conowingo in first class working condition throughout the term of the agreement; (3) not take any action to impair its ability in any manner to fulfill its obligations under the contract, and (4) coordinate the operation of Conowingo with the Muddy Run Project.

The parties to the contract have stated in their application that the bulk of the power output of Conowingo has been sold to the Philadelphia Electric Company since the commencement of its operations under existing contracts. The only justification advanced to show that our approval of the proposed contract is in the public interest is that it would make possible the continued availability of

[3] Section 22 of the Act provides:

That whenever the public interest requires or justifies the execution by the licensee of contracts for the sale and delivery of power for periods extending beyond the date of termination of the license, such contracts may be entered into upon the joint approval of the commission and of the public-service commission or other similar authority in the State in which the sale or delivery of power is made, or if sold or delivered in a State which has no such public-service commission, then upon the approval of the commission, and thereafter, in the event of failure to issue a new license to the original licensee at the termination of the license, the United States or the new licensee, as the case may be, shall assume and fulfill all such contracts. [41 Stat. 1074; 16 U.S.C. 815.]

the Conowingo Reservoir to the Muddy Run Project beyond the expiration of the Conowingo license and for the full term of the Muddy Run license.

The Applicant's desire to be assured of the continued availability of the Conowingo Reservoir as a lower pool and to be free from both physical and undue financial interference with its project for the full term of the proposed Muddy Run license is understandable. The Applicant needs the assurance that its right to use the reservoir will be respected after the expiration of the Conowingo license in the event of recapture by the United States, or in the event of the issuance of a new license to a new licensee. We do not believe, however, that approval of the proposed contract under Section 22 of the Federal Power Act is necessary, or in fact will provide this assurance.

Section 22 of the Federal Power Act refers specifically to contracts for the sale and delivery of power. It is clear from the language of Section 22 and its legislative history that any agreement which might be approved, and as such be binding upon a successor licensee, or the United States if it exercised its recapture rights, was to be limited to a post-license sale of project power; the Commission was given no authority to approve other agreements between a licensee and a third party which, as a result of this approval, could impair the rights of successors to the licensee. The sole reason for the section was the recognition that there might be situations where, in the absence of power contracts extending for a period beyond the license termination date, the licensee would be unable to sell the project power.[2]

In the instant case, applicants do not suggest that a contract for the sale of power extending beyond the term of the Conowingo license is necessary or even relevant to the continued sales of Conowingo power to Philadelphia Electric through the end of its license period for Project No. 405. Accordingly, the Commission's approval of the proposed contract pursuant to Section 22 would be an inappropriate exercise of our discretion to approve post-license sales contracts. Furthermore, the contract provisions between the parties purporting to preclude any action by the Conowingo licensees inimical to the interests of Muddy Run, would not be binding upon any successor taking over the ownership and operation of Conowingo after the expiration of its license, because those provisions are not for "the sale and delivery of power," the only contract provisions which are binding upon a successor to a licensee in the event of contract approval under Section 22 for the post-license sale of power.

2. We do not mean to suggest by the above discussion that Philadelphia Electric, the proposed licensee of the Muddy Run project, does not have a legitimate interest in insuring, before it embarks upon a project of this magnitude that the situation be not substantially changed subsequent to the end of the present Conowingo license in 1976 in a manner which it cannot now evaluate. It obviously would make little sense for Philadelphia Electric to accept any license for Muddy Run without reasonable assurance that during its license term the Conowingo reservoir will continue to be available as the primary source of water for the Muddy Run pumped storage facility. We have the power to give Appli-

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[2] In its only exercise of its authority under Section 22, the Commission on April 7, 1964, approved a contract for a sale of power extending for a maximum of about four and a half years beyond the termination of the license for Project No. 2305, between the licensees, Sabine River Authority of Texas and the Sabine River Authority, State of Louisiana, on the one hand, and the Gulf States Utilities Company, Central Louisiana Electric Company, Inc., and the Louisiana Power and Light Company on the other. The reason why approval of this contract was held to be in the public interest was that the joint licensees could not sell the power from Project No. 2305 without such approval. Additionally, the licensees were state agencies and the project is not subject to recapture.

cant such assurances within the ambit of our existing licensing authority under the Act.

It is established that the Commission, under Section 10(a) of the Act, is authorized to issue a license for any project which it believes is "best adapted to a comprehensive plan for improving or developing a waterway or waterways * * * for the improvement and utilization of water power development and for other beneficial public uses, including recreational purposes". The Commission's comprehensive licensing authority is not restricted by any rights of existing licensees to be free of encroachment from a new project where the Commission finds that the resulting totality of river development, giving full consideration to any negative effects of the encroachment, is most conducive to comprehensive development. Thus, the Commission in a number of cases has authorized a new project which has encroached upon existing projects licensed to other parties in a manner which impaired the actual or potential operation of the existing project to a far greater degree than would be the case here.[4] Where the record indicates that such an encroachment will significantly impair the operational value of the existing project, the Commission has included a provision in the new license requiring it to compensate the existing licensee for the loss.[5]

There are thus two problems to be resolved: (1) to insure that Muddy Run can continue to utilize the Conowingo reservoir for the life of its license even if, after the expiration of the Conowingo license in 1976, that project be recaptured by the United States or licensed to a new licensee; (2) to determine the extent to which, if any, Conowingo should be compensated for the use of its reservoir by Muddy Run.

The first of these two issues presents no serious difficulty. We shall in the license to be issued for the Muddy Run project exercise our authority under Section 10(a) of the Act expressly to provide for Muddy Run's utilization of the Conowingo Reservoir as a source of water and afterbay for the full forty-year period of the Muddy Run license. The continued operation of the Muddy Run project after the expiration of the Conowingo license will also be protected by the fact that its project boundaries will be defined (upon approval of the project exhibits) as including the portion of the existing Conowingo project area which upon completion of Muddy Run will be jointly used by the two projects. (These areas will, of course, also continue to be within the project boundaries of Conowingo.) In sum, through the exercise of our powers under Section 10(a) of the Act, we are vesting in Muddy Run the right to utilize the Conowingo pool for the forty-year period of its license as an integral part of its licensed operation. This will provide adequate protection to Muddy Run in the event that either the United States or a new licensee takes over Conowingo at the end of its license term since they would necessarily take subject to the existing rights of any affected party including the licensee for Muddy Run.

Since the license for Conowingo is held jointly by two subsidiaries of the Applicant for Muddy Run, it can be assumed that whatever transfers of property rights may be necessary to insure that both licensees will thereafter enjoy joint use of the Conowingo Reservoir, can be arranged by mutual agreement, subject, of course, to Commission approval. In addition, we shall by Article 15 of the Muddy Run license require Muddy Run to coordinate its operation with

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[4] See *City of Seattle, Washington*, Project No. 2144 (26 FPC 54); *P.U.D. No. 1 of Douglas County, Washington*, Project No. 2149 (28 FPC 128); *P.U.D. No. 2 of Grant County, Washington*, Project No. 2114 (28 FPC 718); *Cf. P.U.D. No. 1 of Chelan County, Washington*, Project No. 2145 (18 FPC 25 at 29).

[5] See note 4, *supra*.

that of Conowingo, and, by Article 43, require Muddy Run to avoid any action to impair the existing Conowingo operations. Under these circumstances, we do not believe that in order to protect Muddy Run the Conowingo license needs to be modified to add reciprocal articles providing that the licensee thereof will (1) permit the use of its reservoir by Muddy Run, and (2) will not operate Conowingo in a manner inconsistent with the optimum operation of Muddy Run. If, however, the licensees of the Conowingo project were desirous of including additional license terms and conditions to this effect in the license, we would not object to the amendment of the Conowingo license to incorporate appropriate terms and conditions.

We come now to the question of compensation. We do not have any question here of compensation to Conowingo for damages to its licensed operations by Muddy Run; as conditioned as set forth above, there will be none. Instead, the issue is whether where a new licensee is authorized to utilize the facilities of an existing licensed project it should be required to pay some portion of the costs of the facilities of the existing project which it will use and which is essential to the success of the new project. Assuming that provision for such compensation can be shown to aid in meeting the comprehensive plan standards of Section 10(a) of the Act, we would have the authority under Section 10(g) to include it as a condition of licensing Muddy Run.

We do not believe any such conclusion can be reached for the period prior to 1976 when the Conowingo license expires. Since the Applicant here is the parent of the Conowingo licensees and Muddy Run power will flow into the same electrical system as that of Conowingo, the consumers will secure no benefit from an action having the effect of switching funds between corporate affiliates. Moreover, any compensatory payment to Conowingo would not appear to serve to reduce the net investment in the Conowingo project for recapture or other purposes under the provisions of Sections 14, 3(11), and 10(d) of the Act. Under such circumstances, we see no reason to increase the project costs of Muddy Run, without an amendment to the Conowingo license requiring that any sum payment be applied to reducing the net investment in Conowingo.

We believe, however, that the situation after 1976 will be significantly altered. In the event Conowingo is relicensed to its present licensees, the Commission will be in a position to require that the net investment for that project be reduced in the future by the amount of any such payment. The same will be true if Conowingo is licensed to a new licensee. Moreover, in this case, or if the United States exercises its recapture powers at the end of the present license term, a reasonable provision for compensation will serve to reimburse the new owner of Conowingo for some portion of the net investment price of Conowingo represented by construction costs beneficial to Muddy Run as well as to the original project. Thus, we believe that after the expiration of the existing Conowingo license (or after an annual license issued thereafter), the licensee for Muddy Run should share the annual costs of the jointly used facilities.

The extent of such sharing between the two privately-owned projects should, we believe, be limited to one-half of the annual costs of the jointly used facilities and, within this range depend upon the relative ratios of net benefits of the two projects. It would be inequitable to require a marginal new pump storage project to make a substantial contribution to the costs of the joint facilities if the existing project, without such payments, has very high net benefits. On the other hand, if the net benefits of the new project approaches or passes that of an existing project, it can and should bear a larger share of the joint costs. Thus, making the payment vary with the ratio of the net benefits of the two projects will mean that while all but the most marginal new project will pay *some* compensation for use of the existing licensee's facilities, the amount will

never impair the economic feasibility of the new project. We have concluded that, regardless of the ratio of net benefits, the new project should only share in paying a proportional amount of half of the annual operating costs of the jointly used facilities in view of the facts that the jointly used reservoir was designed and located for the benefit of power production at the original project, and the licensees of this project had obligated themselves to bear all of the reservoir costs.

In adopting this payment formula, we are not intending to establish a precedent governing the method by which such payments should be determined or assessed in all cases of joint use or even that compensation will be required in all such cases. At least until we have further experience with this problem, each case must be considered in the light of its particular factual situation. Under the circumstances in the present application, the determination and the methodology upon which it is based is considered fair and reasonable.

On the basis of presently available information, an annual payment by Muddy Run to Conowingo of $285,000 would in our judgment be appropriate—such payment, in the absence of agreement by the present licensee of Conowingo to deduct such sums from its net investment for Sections 14 and 3(11) purposes, to commence at such time after 1976 as a new license (not an annual license) is issued for the project or it is recaptured.

We recognize that our action here means that at least theoretically the Commission in licensing Muddy Run could be said to be limiting the freedom of action of any new operator of Conowingo, whether it be the United States subsequent to recapture, or a new licensee. We do not believe, however, that any such result is inconsistent with the position we took in the recent *Holtwood* case, Opinion 380, 29 FPC 468, in which we refused to accept the surrender of the license for Project No. 2268 by its licensee, Pennsylvania Power and Light Co. and simultaneously issue a new 50-year license for a somewhat enlarged project—an action which would have had the effect of extending the period before Holtwood would be available for recapture by some 43 years. Our action here not only does not legally preclude recapture (or relicensing to a new licensee) at the end of the original license period for Conowingo, but as a practical matter does not significantly impair the value to any potential new operator of Conowingo over what it would be in the absence of a Muddy Run license. Our investigation of the matter leads us to the conclusion that Conowingo's present mode of operation makes the optimum use of its facilities and any successor operator would be most unlikely to wish to change them in a manner which would conflict with their obligations to Muddy Run. In these circumstances, since the licensing of the Muddy Run project would clearly add to the comprehensive development of this reach of the Susquehanna, its authorization as proposed is consistent with the statutory criteria.

Joint application was filed on January 29, 1964, by The Susquehanna Power Company and Philadelphia Electric Power Company, joint licensees for Conowingo Project No. 405, for further amendment of the license for the Conowingo project to exclude therefrom certain intercorporate agreements and leases in the license to such agreements and leases which were entered into with the approval of the Commission at the time that the license was issued. Public notice of the filing of the application has been given. The agreements and leases are referred to in the ninth "Whereas" clause commencing on page 5 of the license, and are set forth in Article 23 through Article 30 of the license. These agreements and leases were entered into in order to have four affiliated corporations participate in the financing and operation of the project. The application states that these agreements are complicated, cumber-

some, inflexible, and outmoded. The agreements and references thereto sought to be deleted from the Conowingo license by the Joint Licensees no longer serve any useful purpose and such deletion would neither affect the terms of the license nor the power output of the project. Accordingly, it is believed appropriate and in the public interest to delete such agreements and references thereto as requested.

These agreements which provide for services and charges for the output of the Conowingo project are on file as rate schedules under the Federal Power Act and will remain so unless superseded or cancelled in accordance with the provisions of Part 35 of the Commission's Regulations under that Act. If those agreements, as embodied in currently filed rate schedules, are to be superseded by other contractual arrangements to be embodied in superseding proposed rate schedules, it will be necessary for licensees to complete all appropriate rate schedule filings pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder.

The Secretary of the Army and the Chief of Engineers, have reported that the plans of the project structures are satisfactory insofar as the interests of navigation are concerned. The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project, certain conditions in the interest of the Department respecting access roads, fishing and hunting and other recreational uses of the project area. The Department of Health, Education, and Welfare, in reporting on the application, advised that the project is not expected to have any adverse effects on water supply or water quality.

An informal protest filed on February 7, 1964, by the Pennsylvania Federation of Sportsmen's Clubs, enclosed a resolution which asserted that recreation would be affected by the fluctuation of the Muddy Run reservoir; also, that rapid return and withdrawal of water from the Conowingo reservoir would affect fishing, hunting, and water sports and be detrimental to natural fish propagation in the lake. Applicant's plan of development provides for a separate lake, 98 acres in area, at the northeastern end of the Muddy Run reservoir which will be maintained at a constant level and will be developed for boating and water sports. The perimeter will be developed for recreation such as camping and picnicking. A five hundred acre area adjacent will be developed as a natural wildlife refuge. Moreover, Applicant proposes to install screens or other protective devices at the Muddy Run pump intakes in the Conowingo Reservoir to protect the fishery. We believe that these new provisions for recreation will result in substantial net recreational advantages as a result of construction of the Muddy Run project.

The Commission finds:

(1) That the approval of the period of the proposed contract between the joint licensees for Project No. 405, the Susquehanna Power Company and the Philadelphia Electric Power Company, on the one hand and the Philadelphia Electric Company, on the other, for the sale and delivery by the joint licensees to the Philadelphia Electric Company of virtually the entire output of the power from the Conowingo project, Project No. 405, from February 19, 1976, until the termination of the license for the proposed Muddy Run Project No. 2355, would be an inappropriate application of the Commission's authority under Section 22 of the Federal Power Act and would not be in the public interest.

(2) Applicant is a corporation organized under the laws of the State of Pennsylvania and has submitted satisfactory evidence of compliance with all

applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given as required by the Act. Except as recited above, no protests or petitions to intervene have been received. No conflicting applications have been filed.

(4) The issuance of a license for the project as hereinafter provided will not affect a Government dam or the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the proposed project is best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charges is 1,067,000 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(7) The 13.8 kv generator leads, the four 13.8/220 kv step-up transformers at the proposed plant, the 220 kv circuit line from Muddy Run to the Peach Bottom Substation, mentioned in paragraph (C) below and which were included in the application for license, as parts of the project within the meaning of Section 3(11) of the Act, and should be included in the license for the project.

(8) The exhibits designated and described in paragraph (C) below conform to the Commission's rules and regulations and should be approved as part of the license for the project to the extent therein indicated.

(9) It will be appropriate and in the public interest to amend the license for Project No. 405 as hereafter provided.

The Commission orders:

(A) Application for approval of the proposed contract between the Susquehanna Power Company and the Philadelphia Electric Power Company on the one hand and the Philadelphia Electric Company on the other, for the sale and delivery of power from the Conowingo Project, No. 405, until the termination of the license for the proposed Muddy Run Project, No. 2355 be and is hereby denied.

(B) This license is hereby issued to Philadelphia Electric Company (Licensee) of Philadelphia, Pennsylvania, under Section 4(e) of the Federal Power Act (Act) for a period of 40 years, effective as of September 1, 1964 for the construction, operation and maintenance of Project No. 2355 on the Susquehanna River, a navigable water of the United States, and its tributary Muddy Run, in Lancaster and York Counties, Pennsylvania, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(C) Proposed Project No. 2355 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined and/or interest in such lands necessary or appropriate for the purpose of the project, whether such lands or interests therein are owned or held by the applicant or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the

amended application for license, and which are designated and described as follows:

Exhibit	*FPC No.*	*Showing*
J	2355–14	General Map of Project Area
K	2355–15	Reservoir
	2355–16	Reservoir
	2355–17	Property Plan
	2355–18	Property Plan
	2355–19	Property Plan

(ii) All project works consisting principally of: (1) a rock-fill dam on Muddy Run and low dikes creating (2) upper reservoir controlled by a spillway with total storage capacity of 60,500 acre-feet and usable storage of 35,500 acre-feet between elevations 520 feet and 470 feet, (3) an open canal about 2,300 feet long leading to intakes of (4) four concrete lined shafts about 350 feet long to (5) four horizontal concrete lined tunnels to (6) four transition wye tunnels about 160 feet long to (7) eight steel lined tunnels about 507 feet long to (8) an outdoor type powerhouse containing (9) eight reversible pump-turbines connected to eight motor-generator units, each rated at 100,000 kw, (10) four 13.8/220 kv step-up transformers and circuit breakers, (11) two 220 kv single circuit transmission lines extending across Conowingo reservoir and on twin circuit towers to Peach Bottom Substation, (12) use of Conowingo reservoir (FPC Project No. 405) as an afterbay causing a fluctuation of about four feet and (13) appurtenant facilities; the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the amended applications for license and which are designated and described as follows:

Exhibit L	*FPC No.*	*Title Muddy Run Development*
Sheet 1 of 7	2355–20	Plan of Development Structures
Sheet 2 of 7	2355–21	Dam & Canal, Sections
Sheet 3 of 7	2355–22	Tunnels, Plan & Sections
Sheet 4 of 7	2355–23	Powerhouse, Sheet No. 1
Sheet 5 of 7	2355–24	Powerhouse, Sheet No. 2
Sheet 6 of 7	2355–25	Cofferdam & Tailrace

The above Exhibit L drawings are approved only as to the general information shown.

Exhibit M (Revised) entitled, "General Description of Structures and Equipment", filed April 24, 1964.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as a part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

(D) This license is also subject to the terms and conditions set forth in Form L–4 (Revised June 1, 1964) entitled "Terms and Conditions of License for Unconstructed Project Affecting Navigable Waters of the United States", which

terms and conditions, designated as Articles 1 through 29, are attached hereto and made a part hereof, and subject to the following special conditions set forth herein as additional articles:

Article 30. The Licensee shall commence construction within one year from the effective date of the license and shall thereafter in good faith and with due diligence prosecute such construction and shall complete construction of such project works within six years from the effective date of the license.

Article 31. The Licensee shall submit in accordance with the Commission's rules and regulations Exhibit L drawings showing the final designs of the project works and the Licensee shall not begin construction of the project structures until the Commission has approved such exhibits.

Article 32. The Licensee shall, within one year from the date of completion of the project, file for Commission approval Exhibits F and K prepared in accordance with the Commission's rules and regulations.

Article 33. The Licensee shall submit in accordance with the Commission's rules and regulations exhibit drawings showing the project transmission lines crossing the Conowingo Reservoir, including a profile with minimum clearance, and the Licensee shall not commence construction of these lines until the Commission has approved such exhibits.

Article 34. The Licensee shall install a weir below the dam across Muddy Run for the purpose of measuring the seepage flow and water turbidity below the dam and correlated with rainfall and surface elevations. The Licensee shall also install several observation wells in the downstream slope of this dam in order to correlate water pressure in the foundation with reservoir water surface elevations. Any abnormal changes in conditions at the weir or in the wells shall be promptly analyzed and reported to the Commission.

Article 35. The Licensee shall employ a board of consultants to review the designs, specifications, and construction of the dam and dikes, suitability and treatment of their foundations and of the reservoir floor, the powerhouse and other project facilities. The Licensee shall submit a report of the board covering each portion of the project prior to the submittal of Exhibit L drawings therefor. The Licensee shall also submit a final report of the board covering the construction of the project, and the Licensee shall receive Commission approval prior to the filling of the upper reservoir.

Article 36. The Licensee shall provide at the Muddy Run plant duplicate automatic means for stopping the units from pumping when elevation 520 feet has been exceeded.

Article 37. The Licensee shall take such steps, and secure written approval from the Office of the Chief of Engineers, as are necessary to place limitations on the approach distances which navigation craft, or persons, may come to the Muddy Run powerhouse tailrace in the interest of safety.

Article 38. The Licensee shall, prior to impounding water, dispose of all temporary structures, unused timber, brush, refuse or other inflammable material resulting from the clearing of the land or from the construction and maintenance of the project works, and shall clear all lands in the reservoir upper area up to normal water level; except that all land in the reservoir area shall be cleared according to a plan to be prescribed by the Commission upon the recommendation of the Pennsylvania Fish Commission and the Bureau of Sport Fisheries and Wildlife. The clearing of the lands and the disposal of the material shall be done with due diligence by the Licensee and to the satisfaction of the authorized representative of the Commission.

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Article 39. The Licensee shall cooperate with the National Park Service, Department of the Interior, Washington, D.C., 20240, to negotiate a contract for archaeological survey and salvage. A sum not to exceed $1,250 shall be provided for initial survey, and a sum not to exceed $3,500, shall be provided for the actual archaeological salvage.

Article 40. Fish screens or other fish-guiding or fish protective devices shall be installed on the draft tubes/pump intakes simultaneously with construction of other project features. The Licensee shall cooperate with the United States Fish and Wildlife Service, and the Pennsylvania Fish Commission in the design of these fish-protective devices.

Article 41. The Licensee shall make available to the Pennsylvania Game Commission, on a long term lease basis, about 500 acres of land adjacent to the Muddy Run Reservoir. These lands shall be fenced and developed to include food and cover plantings at the Licensee's expense, provided that the Pennsylvania Game Commission will manage the area to provide public hunting and will bear operation and maintenance costs. The Licensee, prior to construction, shall negotiate a memorandum of understanding with the Pennsylvania Game Commission, including such details, and this agreement shall be filed with the Commission.

Article 42. The Licensee for Muddy Run Project is authorized to utilize the Conowingo reservoir as a source of water and as a lower pool for the operation of the Muddy Run Project for a period of 40 years from September 1, 1964.

Article 43. The operation of Muddy Run Project shall be such as not to affect injuriously the operation of the Conowingo Project.

Article 44. In consideration of the availability of the Conowingo reservoir to the Muddy Run Project, as a source of water supply and as a lower pool, for the period of the latter's license, the Licensee for the Muddy Run Project shall pay annually, to the Licensee of the Conowingo Project, or its successors or assigns, the sum of $285,000 commencing March 1, 1976.

Article 45. The Licensee shall pay to the United States the following annual charge:

For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purposes is 1,067,000 horsepower.

(E) The exhibits designated and described in paragraph (C) above are hereby approved as part of this license to the extent therein indicated.

(F) The license for Project No. 405 as amended is hereby further amended, effective as of September 1, 1964, by eliminating therefrom the agreements referred to in the ninth "Whereas" clause, commencing on page 5 of the license and in Articles 23 through 30.

(G) These amendments in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision, or condition of the license for Conowingo.

(H) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of the Muddy Run license and the amendment of the Conowingo license. In acknowledgment of the acceptance of this license for Muddy Run and the amendment of the Conowingo license, they shall be signed for the respective licensees and returned to the Commission within 60 days from the date of issuance of this order.

FORM L-4

(REVISED JUNE 1, 1964)

TERMS AND CONDITIONS OF LICENSE FOR UNCONSTRUCTED PROJECT AFFECTING NAVIGABLE WATERS OF THE UNITED STATES

Article 1. The entire project, as described in the order of the Commission, shall be subject to all the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, that if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval amended, supplemental, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. Said project works shall be constructed in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works under the license without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in the project works or divergence from such approved exhibits may be made if such changes will not result in decrease in efficiency, in material increase in cost, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may from time to time prescribe for the protection of life, health, or property.

Article 4. The construction, operation, and maintenance of the project and any work incident to additions or alterations shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project. Construction of the project works or any feature thereof shall not be initiated until the program of inspection for the project works or any such feature thereof has been approved by said representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow him and other officers or employees of the United

States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 5. Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised maps, plans, specifications, and statements insofar as necessary to show any divergence from or variations in the project area and project boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the maps, plans, specifications, and statements approved by the Commission, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variations in or divergence from the approved maps, plans, specifications, and statements. Such revised maps, plans, specifications, and statements shall, if and when approved by the Commission, be made a part of the license under the provisions of Article 2 hereof.

Article 6. Insofar as any material is dredged or excavated in the prosecution of any work authorized under the license, or in the maintenance of the project, such material shall be removed and deposited so it will not interfere with navigation, and will be to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 7. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operation of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 8. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and its rights-of-way and such right of passage through its dams or other structures, and permit such control of pools as may be required to complete and maintain such navigation facilities.

Article 9. The Licensee shall furnish free of cost to the United States power for the operation and maintenance of navigation facilities at the voltage and frequency required by such facilities and at a point adjacent thereto whether said facilities are constructed by the Licensee or by the United States.

Article 10. The operation of any navigation facilities which may be constructed as a part of or in connection with any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

Article 11. The Licensee shall for the protection of navigation, construct, maintain and operate at its own expense such lights and other signals on fixed

structures in or over navigable waters of the United States as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 12. The actual legitimate original cost of the original project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Act and the Commission's rules and regulations thereunder.

Article 13. After the first twenty (20) years of operation of the project under the license, six (6) percent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings of the project for the establishment and maintenance of amortization reserves, pursuant to Section 10(d) of the Act; one-half of the project surplus earnings, if any, accumulated after the first twenty years of operation under the license, in excess of six (6) percent per annum on the net investment, shall be set aside in a project amortization reserve account as of the end of each fiscal year, provided that, if and to the extent that there is a deficiency of project earnings below six (6) percent per annum for any fiscal year or years after the first twenty years of operation under the license, the amount of such deficiency shall be deducted from the amount of any surplus earnings accumulated thereafter until absorbed, and one-half of the remaining surplus earnings, if any, thus cumulatively computed, shall be set aside in the project amortization reserve account; and the amounts thus established in the project amortization reserve account shall be maintained therein until further order of the Commission.

Article 14. The Licensee shall install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 15. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 16. The Licensee shall, for the conservation, and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 17. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be prescribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United

States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 18. The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such recreational facilities including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal and State agencies, after notice and opportunity for hearing and upon findings based upon substantial evidence that such facilities are necessary and desirable, and reasonably consistent with the primary purpose of the project.

Article 19. So far as is consistent with proper operation of the project, the licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: Provided, that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and Provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 20. The Licensee shall be responsible for and shall minimize soil erosion and siltation on lands adjacent to the stream resulting from construction and operation of the project. The Commission upon request, or upon its own motion, may order the Licensee to construct and maintain such preventive works to accomplish this purpose and to revegetate exposed soil surface as the Commission may find to be necessary after notice and opportunity for hearing.

Article 21. No lease of the project or any part thereof whereby the lessee is granted the occupancy, possession, or use of the project, or any part thereof, shall be made without prior written approval of the Commission; and the Commission may, if in its judgment the situation warrants, require that all the conditions of the license, of the Act, and of the rules and regulations of the Commission shall be applicable to such property so leased to the same extent as if the lessee were the Licensee: Provided, that the provisions of this article shall not apply to leases of land or buildings or other property while not required to achieve the purposes of the license.

Article 22. The Licensee, its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and none of such properties necessary or useful to the project and to the development, transmission, and distribution of power therefrom will be voluntarily sold, transferred, abandoned, or otherwise disposed of without the approval of the Commission: Provided, that a mortgage or trust deed or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers

within the meaning of this article. In the event the project is taken over by the United States upon the termination of the license, as provided in Section 14 of the Act, or is transferred to a new licensee under the provisions of Section 15 of the Act, the Licensee, its successors and assigns will be responsible for and will make good any defect of title to or of right of user in any of such project property which is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and will pay and discharge, or will assume responsibility for payment and discharge, of all liens or incumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, that the provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear, or to require the Licensee, for the purpose of transferring the project to the United States or to a new Licensee, to acquire any different title to or right of user in any of such project property than was necessary to acquire for its own purposes as Licensee.

Article 23. For the purpose of determining the stage and flow of the stream or streams from which water is diverted for the operation of the project works, the amount of water held in and withdrawn from storage, and the effective head on the turbines, the Licensee shall install and thereafter maintain such gages and stream-gaging stations as the Commission may deem necessary and best adapted to the requirements; and shall provide for the required readings of such gages and for the adequate rating of such stations. The Licensee shall also install and maintain standard meters adequate for the determination of the amount of electric energy generated by said project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission and may be altered from time to time if necessary to secure adequate determinations, but such alteration shall not be made except with the approval of the Commission or upon the specific direction of the Commission. The installation of gages, the ratings of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of said project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient record of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as to the Commission may prescribe.

Article 24. In the construction and maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines, and telegraph, telephone, and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling and obstructing traffic and endangering life on highways, streets, or railroads. None of the provisions of this article is intended to relieve the Licensee from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

Article 25. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without replacement, or

shall abandon or discontinue good faith operation of the project for a period of three years, or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address to the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license, and not less than 90 days after public notice may in its discretion terminate the license.

Article 26. Upon abandonment of the project the Licensee shall remove all buildings, equipment and power lines from lands of the United States and restore said lands to a condition satisfactory to agency having jurisdiction over the lands and shall fulfill such other obligations under the license as the Commission may prescribe.

Article 27. The right of the licensee and of its transferees and successors to use or occupy navigable waters of the United States under the license for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless a new license is issued pursuant to the then existing laws and regulations.

Article 28. Whenever the Licensee is directly benefited by the construction work of another Licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the costs of making the determinations pursuant to the then current Commission Regulations under the Federal Power Act within 60 days from the date of rendition of a bill therefor and, upon failure to do so, shall thereafter be subject to the payment of the penalties specified in the then current Regulations. The Licensee shall have the right to pay such amounts under protests within the 60-day period and to reconsideration of the amounts billed or a hearing as provided by the then current Regulations under the Act.

Article 29. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PUBLIC UTILITY DISTRICT NO. 1 OF SKAMANIA COUNTY, WASHINGTON, PROJECT NO. 2199

ORDER DENYING APPLICATION FOR REHEARING AND DENYING ALTERNATIVE MOTION TO REOPEN RECORD

(Issued September 25, 1964)

On August 27, 1964, Public Utility District No. 1 of Skamania County, Washington (Applicant), filed an application for rehearing with respect to our Opinion No. 440, issued July 30, 1964, 32 FPC 444, in which we denied Applicant's application for a license to construct a hydroelectric project on the Little White Salmon River and its Rock Creek tributary. In the alternative, Applicant

moved to reopen the record for the submission of additional evidence. Applicant urges that new developments since our original opinion and order justify a rehearing, alleges that it has been denied a fair hearing by actions of the Commission's staff, contends that it should be permitted to offer evidence in accordance with new standards for determination established by the Commission, alleges that certain statements in the opinion are in error, and contends that some of the conclusions of the Commission should be reconsidered.

The specific events alleged by Applicant to have occurred since the hearing are conclusion of a treaty with the Dominion of Canada with respect to power development and sale, the authorization of the immediate construction of the High Mountain Sheep project, and the authorization of the regional power intertie between the Pacific Northwest and the Pacific Southwest. While all of these are relevant to a determination in the case before us, nothing has occurred in connection with them that was not fully anticipated and considered by the Commission in reaching its original decision. They are matters of public record which would require no submission of additional evidence. We think these events furnish no ground for either rehearing or for reopening of the case for the taking of additional evidence.

We do not believe that the petition's charges against the staff warrant detailed discussion. To the extent they do not consist of rhetorical questions and bare allegations, they appear to rest upon the contention that it was somehow improper for staff counsel to take a position by way of brief or oral argument on matters upon which the staff had not introduced record evidence. The short answer to this claim is that any party to a Commission proceeding, including staff counsel, is free to present to the Examiner and the Commission, his views as to the adequacy of the record on any matter in issue regardless of whether he has introduced evidence on this issue at the hearing. The Commission's decision, of course, must be based upon the hearing record or such matters of which it can lawfully take official notice and cannot rest upon facts supplied by counsel in brief or oral argument. It is not a denial of due process for the staff of the Commission to detail in brief or oral argument wherein it believes an applicant for a license has failed to meet its burden of proof so long as the applicant, as here, has a full opportunity to respond and to demonstrate why it believes the staff's arguments are unfounded.

Applicant correctly points out that the Gifford Pinchot National Forest was erroneously referred to in Opinion No. 440 as the "Gifford Pinchot National Park." The application indicates that this is a ground for reconsideration because lumbering activity takes place in a national forest but not in a national park. The error in the original opinion, however, was of nomenclature only. The lumbering activities within the area were made known to the Commission in the record. The misnomer had no effect on our decision and is not ground for rehearing.

Applicant rightly points out that Opinion No. 440 erroneously states that it was the opinion of staff experts who testified before the presiding examiner that the cost of the project would be such that there would be an increase in the cost of power. As also stated in Opinion No. 440, however, this conclusion was an independent judgment of the Commission. Some of the facts on which it was based are set forth in the same paragraph of Opinion No. 440 as the statement which Applicant has corrected. In addition, the cost evidence submitted by Applicant was unconvincing. The application for rehearing presents nothing which would cause us to change our views in this regard.

Applicant further states that Opinion No. 440 was incorrect in stating, with reference to the Western Fish Nutrition Laboratory well water, that "alteration

of the chemical content of the river * * * would result from water flowing through the reservoir." The diversion of water from the river above the laboratory to the reservoir and the return of water at a point below the laboratory would unquestionably result in a lowering of the river level at the laboratory and upstream therefrom to the point of diversion with resultant alteration in chemical content. There is considerable testimony on the record on this point. Witness Halver states (Tr. 247), "The water quality would incontestably be altered by this proposal and as such poses a real jeopardy to conduct of operations at the Western Fish Nutrition Laboratory."

Applicant further asks that, if the Commission opinion established a new rule that a firm contract for the sale of power from the project is necessary to show economic feasibility, the record be reopened to allow Applicant to show that it could obtain such a contract. It does not specify what evidence it would introduce, nor does it state that any such contract is in existence.

As was said in the original opinion, this Commission does not require that a firm contract for a sale of power be obtained. It is incumbent upon an applicant to make a sufficient showing of economic feasibility to satisfy this Commission. One means of doing so would be to present firm contracts for the sale of power. It is clear from our past practice in issuing licenses that this is not the only means of establishing economic feasibility.

We have determined in the instant case that the applicant has failed to carry its burden of proof to establish that the issuance of this license would be for the benefit of the public. On the allegations in the application for rehearing and alternative motion to reopen the record, we can see no profit in reopening this matter at the present time.

We have considered the other arguments made by Applicant in its application for rehearing and find nothing therein that we have not fully considered upon our original decision to which, after careful reconsideration, we adhere. The application for rehearing and alternative motion for reopening the record will be denied.

The Commission orders:

The application for rehearing of Opinion No. 440 and alternative motion to reopen record filed July 30, 1964, by Public Utility District No. 1 of Skamania County, Washington, are hereby denied.

Commissioner Black *dissenting.*

OPINION NO. 438–A

SHREWSBURY MUNICIPAL LIGHT DEPARTMENT v. NEW ENGLAND POWER COMPANY, DOCKET NO. E–7021

OPINION AND ORDER DENYING REHEARING AND MOTION FOR STAY

(Issued September 25, 1964)*

Syllabus

1. NEES proposal to offer all existing wholesale customers of Massachusetts Electric, including Shrewsbury, direct service from NEPCO pursuant to proposed new wholesale R–1 rate is not believed relevant. P. 847.
2. It is responsibility of NEES system to make delivery to Shrewsbury and install whatever facilities are necessary to insure that this service meets ordinary standards of reliability. P. 848.

*Affirmed, *New England Power Co.* v. *F.P.C.*, 349 F. 2d 258 (CA1–1965).

3. Commission *rejects* contention that its reservation of jurisdiction over NEPCO is not authorized by the Act in Section 202(b) proceedings and is in conflict with Section 207. P. 848.
4. Section 202(b) broadly provides that Commission may prescribe terms and conditions of arrangement to be made between persons affected. P. 848.
5. Section 207 is a separate method of requiring adequate service where there is involved no question of an interconnection. P. 848.
6. Commission *rejects* argument that under Section 202(b) it could not properly cancel power contract between Shrewsbury and Massachusetts Electric, *noting* it might be impossible, as here, to order an interconnection without cancelling pre-existing contract. PP. 848, 849.
7. Commission *denies* application for rehearing and motion for stay.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

On August 26, 1964, New England Power Company (NEPCO) and Massachusetts Electric Company (Mass. Electric) filed a joint application for rehearing of our Opinion No. 438 and order issued July 27, 1964, 32 FPC 373, in which we required NEPCO to sell and deliver energy directly to the Municipal Light Department of the Town of Shrewsbury, Massachusetts. Service to Shrewsbury is now rendered by Mass. Electric. Both companies are members of the New England Electric System and will be collectively referred to as NEES. By motion they also request the Commission to extend the two-month period prescribed in our Opinion and order for compliance with its provisions, and Shrewsbury has filed a reply.

In its application NEES's principal argument centers on its proposal to offer a new wholesale rate called R–1 to Shrewsbury and other customers. The proposed new rate, which has been submitted to the Commission on August 26, 1964, embodies a demand charge of $3.17 per month per kw and an energy charge of 7.0 mills per kwh for the first 4,000,000 kwh delivered during the month and 6.5 mills per kwh for amounts in excess. The rate is higher than NEPCO's W–3 rate which we prescribed for service to Shrewsbury, and is in excess of the W–4 successor rate also proposed by NEPCO and submitted on the same date as R–1. The W–3 rate provides for a monthly demand charge of $2.95 per kw of billing demand and an energy charge of 6.4 mills per kwh while the W–4 rate provides for a demand charge of $2.86 and an energy charge of 6.2 mills. According to NEES, the proposed R–1 rate consists of the W–4 rate plus a rolled-in facilities charge involved in reaching wholesale customers beyond NEPCO's interconnected generating and transmission system.

NEES contends that the proposed R–1 rate will permit Shrewsbury to have NEPCO wholesale service at the appropriate NEPCO wholesale rate, will guarantee treatment equal with Shrewsbury for the other Massachusetts resale customers and avoid numerous Section 202(b) applications from other towns. NEES also contends that it is desirable to treat uniformly all customers similarly situated and that Shrewsbury should not be treated differently because of its proximity to NEPCO's 69 kv lines.

Insofar as this case is concerned, we do not believe relevant the NEES proposal to offer all of the existing wholesale customers of Mass. Electric, including Shrewsbury, direct service from NEPCO pursuant to the proposed R–1 rate. We recognize, of course, that if NEPCO is to render direct service to all of Mass. Electric's resale customers, most of whom are located at considerably greater distance from NEPCO's high-voltage lines than is Shrewsbury, such deliveries might in the aggregate involve large costs not involved in sales by NEPCO directly off its high-voltage lines. Such costs would, of course, be part

of NEPCO's cost of service which it would be entitled to recover, along with a reasonable return, under the provisions of the Federal Power Act. We would be well disposed to a solution of NEPCO's rate problems which, instead of charging different wholesale customers different rates on the basis of their distance from the NEPCO high-voltage lines, would establish rates on a broad basis for all of NEPCO's wholesale customers similarly situated. Such rates would of course have to be shown to be just and reasonable, and non-discriminatory as between wholesale customers within and without the class to which the rates would be made applicable. However, the proposed R-1 rate does not at this time represent any rate filing purporting to be applicable to Shrewsbury since, by its terms, the proposed rate is applicable to the eligible customers only upon execution of a contract between NEPCO and such customers. We are not therefore called upon to determine here the question, upon which there is no evidentiary record, as to whether Shrewsbury properly would fall into the class to be established by the proposed new rate. Similarly we need not determine whether it and Mass. Electric properly should receive different rate treatment.

This is not a rate proceeding. In our Opinion and order we required NEPCO to serve Shrewsbury under the W-3 rate because that was NEPCO's only wholesale rate which was then and is now being employed, and we were of the opinion that Shrewsbury had demonstrated it was entitled to direct wholesale service from NEPCO. Whatever may be the appropriate rate or tariff filings to solve the other cost and rate problems of NEPCO or NEES under the Federal Power Act, and whatever the possible future application of such filings to Shrewsbury, there is no justification in the interim for depriving Shrewsbury of the benefits of our order obtained as the result of these proceedings. Similarly, we see no justification for granting the stay requested by NEES.

NEES contends that we wrongly required NEPCO to purchase or pay for the use of Mass. Electric's facilities in the Shrewsbury substation used to effect delivery to Shrewsbury and other facilities used to "firm up" this service. It will be recalled that we rejected Shrewsbury's request that NEPCO be required to serve it at 69 kv but required NEPCO to provide firm service at 13.8 kv to Shrewsbury whose facilities are directly adjacent to those of the NEES system. In doing so NEPCO was permitted but not required to use the Mass. Electric facilities presently being employed for this service. In our opinion it is the responsibility of the NEES system to make delivery to Shrewsbury and to install whatever facilities are necessary to insure that this service meets ordinary standards of reliability.

There are several other objections made by NEES. These, in our opinion, have largely been met by our original Opinion and order. We may note, however, NEES's contention that the Commission's reservation of jurisdiction over NEPCO is not authorized by the Act in connection with proceedings involving Section 202(b) and is in conflict with Section 207. Section 202(b) broadly provides that the Commission may prescribe the terms and conditions of the arrangement to be made between the persons affected. Because the record did not support Shrewsbury's request for immediate service from NEPCO at 69 kv but indicated a possible need for such service in the future we provided that the record remain open so that this aspect of the arrangement between the parties could be modified without delay. Section 207, in our opinion, is a separate method of requiring adequate service where there is involved no question of an interconnection.

NEES further argues that in acting under Section 202(b) we could not properly cancel the power contract between Shrewsbury and Mass. Electric. This is clearly part of the terms and conditions of the arrangement between the parties

subject to that section. In fact it might be impossible, as here, to order an interconnection without cancelling a pre-existing contract.

NEES further objects that we adopted the initial decision of the presiding examiner "to the extent not inconsistent herewith" and that it is unable to determine which portions have been adopted. We shall clarify and limit this statement in a new ordering clause below.

The Commission finds:

(1) The assignments of error and grounds for rehearing set forth in the applications for rehearing filed herein present no facts or principles of law which were not considered by the Commission when it issued its Opinion No. 438, or which, having now been considered, warrant any change in, modification of, or rehearing of such Opinion and order except as specified below.

(2) NEES's application for extension of time for compliance should be denied.

The Commission orders:

(A) The application for rehearing filed by NEES with respect to our Opinion No. 438 and order is hereby denied.

(B) The motion for extension of time for compliance filed by NEES is denied.

(C) Paragraph (F) of our original order is amended to read as follows:

The findings of fact made by the examiner and his ultimate conclusions not inconsistent herewith are hereby adopted as part of this Opinion and order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP64-299

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued September 28, 1964)

On June 12, 1964, as supplemented on July 15, 1964, Cities Service Gas Company (Applicant) with its principal place of business at P.O. Box 1995, Oklahoma City, Oklahoma, filed in Docket No. CP64-299 an application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon by sale of two compressor units totaling 1,100 horsepower located at the plant site of Rounds and Stewart Natural Gasoline Company, Inc. (Rounds and Stewart), in Marion County, Kansas, all as more fully represented in the application in this proceeding.

The application states that Applicant was authorized in Docket No. CP61-184 to construct and operate a 7,100 horsepower compressor station with appurtenant facilities in the gasoline plant of Rounds and Stewart. This station was to be used both on the intake and outlet sides of the plant to compress and transport to Applicant's Hugoton mainline system approximately 24,600 Mcf per day of natural gas at 14.65 psia. The station as constructed comprised three 2,000 horsepower units, one 660 horsepower unit and one 440 horsepower unit. It was designed to operate on a multistage basis, compressing gas from the surrounding fields at low field intake pressure, by three stages of compression, to the plant, and from the plant, by the fourth stage of compression, to Applicant's 8-inch pipeline at pressures necessary to meet the mainline system pressure of approximately 818 psig.

The application further states that during the initial periods of the operation of this plant, natural gas in such volumes was available for delivery to Applicant, and the full capacity of the compressor station was used in compressing the gas. However, the volume of gas from the wells connected to the plant has substantially diminished and, accordingly, the volume of gas available to Applicant has been reduced to 12,300 Mcf per day. Only such reduced volumes will be available for delivery to Cities during the balance of the 20-year life of the contract between Rounds and Stewart and Applicant. As a result of this reduction in volumes of gas to be compressed and transported, the full capacity of this compressor station is no longer needed to handle the gas delivered heretofore. The 660 horsepower unit and the 440 horsepower unit are no longer necessary in Applicants' operation there. The remaining capacity of the station, *i.e.* 6,000 horsepower, is and will be adequate to handle such reduced volumes of gas.

Applicant is advised by Rounds and Stewart that it intends to use the 1,100 horsepower sought to be abandoned, in processing volumes of gas belonging to an intrastate pipeline company. Exhibit V to Applicant's application indicates that under the operating conditions depicted, the total horsepower required by the Rounds and Stewart plant is 3,520. After the sale of the proposed 1,100 horsepower the remaining total horsepower will be in operation at various times due to fluctuations in operating conditions. If cause for usage of the full 6,000 remaining horsepower does not increase within the next year, consideration will be given to installing some of it in new and needed locations, or selling it to Rounds and Stewart for use in a proposed gas recycling project. Applicant contends that the two units proposed to be sold represent an original investment of $263,407.16, a depreciated investment of $237,750.00 and a net salvage value of $167,883.00. Applicant would receive $200,000 for the units from Rounds and Stewart.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 25, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business P.O. Box 1995, Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) The abandonment of the facilities as hereinbefore described, as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission under the provisions of Section 7(b) of the Natural Gas Act.

(3) The abandonment of the proposed facilities by Applicant is required by the public convenience and necessity and the order granting permission to abandon these facilities should be issued.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant, Cities Service Gas Company, of the facilities as hereinbefore described in the application in this proceeding, be and the same is hereby granted.

(B) Applicant shall advise the Commission in writing of the date of abandonment within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64–258; PHILLIPS PETROLEUM COMPANY, DOCKET NO. CI64–918

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING RELATED FPC GAS RATE SCHEDULE

(Issued September 28, 1964)

On April 29, 1964, as supplemented on July 27, 1964, El Paso Natural Gas Company (El Paso) filed in Docket No. CP64–258 an application pursuant to Section 7(c) of the Natural Gas Act (Act) for a certificate of public convenience and necessity authorizing the construction and operation of an additional 2700 horsepower compressor unit and necessary appurtenances at El Paso's Dumas Compressor Station, Moore County, Texas, all as more fully set forth in the application.

The purpose of the proposed facilities is to enable El Paso to receive and subsequently utilize some 40,000 Mcf of natural gas per day at 14.65 psia which El Paso has contracted to purchase from Phillips Petroleum Company (Phillips) in addition to gas presently being received from Phillips under other authorization. Delivery is to be taken at the discharge side of Phillips' Dumas Compressor Station.

The total estimated cost of the facilities proposed by El Paso herein is $895,000 which will be financed from current working funds, supplemented as necessary by short-term bank loans.

On February 14, 1964, Phillips filed in Docket No. CI64–918 an application pursuant to Section 7(c) of the Act for a certificate of public convenience and necessity authorizing the sale of the 40,000 Mcf of natural gas per day to El Paso as set forth above. Concurrently with its certificate application, Phillips filed its related rate schedule which has been designated Phillips' FPC Gas Rate Schedule No. 400.

After due notice, no petition to intervene, notice of intervention or protest to the granting of either of the two subject applications has been received.

At a hearing held on September 25, 1964, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications and exhibits, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G–288 (4 FPC 486).

(2) The facilities hereinbefore described, as more fully described in the application in Docket No. CP64–258, as supplemented, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the proposed facilities by El Paso are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's com-

pliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of said Regulations.

(5) Applicant, Phillips Petroleum Company, a Delaware corporation having its principal place of business in Bartlesville, Oklahoma, is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption and is therefore a "natural-gas company" within the meaning of the Natural Gas Act.

(6) The sale of natural gas by Phillips as hereinbefore described and as more fully described in the application in Docket No. CI64-918 will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sale by Phillips, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(7) The proposed sale of natural gas by Phillips to El Paso, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(8) Applicants El Paso and Phillips are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(9) Phillips' related FPC Gas Rate Schedule No. 400 should be accepted for filing, effective on the date of initial delivery of natural gas thereunder, as hereinafter ordered.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities hereinbefore described, as more fully described in the application in Docket No. CP64-258, as supplemented.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon El Paso's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

(C) The facilities authorized by paragraph (A) above shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

(D) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing the sale of natural gas by Applicant, Phillips Petroleum Company, to El Paso Natural Gas Company, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary for such sale, as hereinbefore described and as more fully described in the application in Docket No. CI64-918.

(E) The certificate granted by paragraph (D) above is not transferable and shall be effective only so long as Phillips continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(F) The grant of the certificate issued by paragraph (D) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Phillips. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contract herein involved. Nor shall the grant of the certificate aforesaid for service to El Paso imply approval of all of the terms of the contract, particularly as to the cessation of service upon termination of said contract, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificate aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of the sale of natural gas subject to said certificate.

(G) The related Phillips Petroleum Company FPC Gas Rate Schedule No. 400 is hereby accepted for filing subject to the applicable Commission Regulations under the Natural Gas Act and shall be effective upon the date of initial delivery of natural gas thereunder.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP64-281

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 28, 1964)

On May 25, 1964, as supplemented on June 29, 1964, Florida Gas Transmission Company (Applicant) filed in Docket No. CP64-281 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities in order to sell and deliver natural gas on a direct preferred interruptible basis to International Minerals & Chemical Corporation (International) and on a direct firm and preferred interruptible basis to Ammonia, Inc. for use in their respective chemical and ammonia plants located at Bonnie, near Mulberry, Florida, all as more fully set forth in the application, as supplemented.

Applicant proposes to construct and operate approximately 1152 feet of 4½-inch pipeline extending from Applicant's existing 8-inch Sarasota lateral line in Polk County, Florida, in a general westerly direction to said plants, together with the necessary metering and regulating facilities to render the proposed service.

Natural gas will be used by International for the production of diammonium phosphate to be marketed to the commercial fertilizer industry, and Ammonia, Inc., will use natural gas for the production of the ammonia used in International's processing operations.

The estimated maximum daily and annual deliveries to International are 4,000 M^3Btu and 1,095,000 M^3Btu, respectively, and to Ammonia, Inc. are 7,000 M^3Btu and 2,044,000 M^3Btu, respectively. Of the volumes proposed for Ammonia, Inc. 900 M^3Btu per day and 328,500 M^3Btu annually will be sold on a direct firm basis.

The estimated cost of the proposed facilities is $34,000, which cost will be financed from cash on hand.

By letter, dated August 7, 1964, Applicant was issued a temporary certificate authorizing the subject proposals.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, as supplemented, has been filed.

At a hearing held on September 25, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Florida Gas Transmission Company, a Delaware corporation having its principal place of business in Winter Park, Florida, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1956, in Docket Nos. G-9262 and G-9060 (16 FPC 118).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of such Regulations.

(6) The certificate issued hereinafter should be granted on the express condition that the interruptible service authorized hereinafter should be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Applicant for firm resale service to its customers.

(7) The certificate issued hereinafter should not entitle Ammonia, Inc. to whom firm deliveries are authorized hereinafter to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of resale customers desiring to acquire additional gas to meet any future increases in their requirements.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Florida Gas Transmission Company, to construct and operate the proposed facilities and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general

terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Applicant for firm resale service to its customers.

(D) This certificate shall not entitle Ammonia, Inc. to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

HOPE NATURAL GAS COMPANY, DOCKET NO. CP64-119; MISSISSIPPI RIVER FUEL CORPORATION, DOCKET NO. CP64-133

ORDER AMENDING ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 28, 1964)

On May 4, 1964, Hope Natural Gas Company (Hope), 445 West Main Street, Clarksburg, West Virginia, and Mississippi River Fuel Corporation (Mississippi River), 9900 Clayton Road, St. Louis, Missouri, filed a joint motion to amend the order of the Commission issued April 2, 1964, in Docket Nos. CP64-119 and CP64-133, granting certificate authorizations to Hope and Mississippi River, respectively, so as to delete therefrom Finding No. 6, and to modify the wording of Ordering Paragraphs (B) and (F) therein, all as more fully set forth in the application to amend.

The said joint motion requests that Finding No. 6 reading as follows be deleted from the Commission's order issued April 2, 1964, 31 FPC 757:

> (6) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Hope and Mississippi River complying with the conditions of this order and all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations;

that Ordering Paragraph (B) be modified so as to read as follows:

> The certificates granted in paragraph (A) above are not transferable and shall be effective only so long as Applicants continue the operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission;

and that Ordering Paragraph (F) be modified so as to read as follows:

> The grant of the certificates issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the Applicants. Further, our action in

this proceeding shall not foreclose or prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved.

The joint motion to amend states that Hope and Mississippi River are primarily interstate pipeline companies, but insofar as the particular certificated authorizations are concerned and the operations certificated thereby the Applicants are for all practical purposes independent producers.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued April 2, 1964, in Docket No. CP64–119, *et al.*, be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued April 2, 1964, in Docket No. CP64–119, *et al.*, be and the same is hereby amended so as to delete therefrom Finding No. 6, as set forth hereinbefore, and to modify Ordering Paragraphs (B) and (F) therein so that the same will read hereinbefore.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. CP64–286

ORDER AMENDING ORDER ISSUED SEPTEMBER 10, 1964

(Issued September 28, 1964)

It appears that the order of the Commission issuing a certificate of public convenience and necessity and permitting and approving abandonment in the above-entitled proceeding inadvertently included a wrong reference in ordering paragraph (E) which should be corrected forthwith.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order of the Commission issued September 10, 1964, *supra*, p. 723 in Docket No. CP64–286 be amended as hereinafter ordered.

The Commission orders:

(A) The present ordering paragraph (E) in the order of the Commission issued September 10, 1964, in Docket No. CP64–286 is hereby deleted and the following paragraph (E) inserted in its place:

(E) The certificate issued by paragraph (A) above is granted on the express condition that the additional interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Kansas-Nebraska Natural Gas Company, Inc. for firm resale service to its customers.

(B) In all other respects, said order issued September 10, 1964, in Docket No. CP64–286 shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

LOUISIANA NEVADA TRANSIT COMPANY AND ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP64-291

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 28, 1964)

On June 4, 1964, Louisiana Nevada Transit Company (Louisiana Nevada) and Arkansas Louisiana Gas Company (Arkansas Louisiana) (sometimes hereinafter referred to jointly as Applicants) filed in Docket No. CP64-291 a joint application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the exchange of natural gas, all as more fully set forth in the joint application.

The exchange of natural gas will be at three proposed points of interconnection between Applicants' respective main transmission systems in Hempstead, Lafayette and Howard Counties, all in Arkansas. Additionally, Applicants request authority to construct and operate metering and interconnecting facilities at the foregoing described points of interconnection.

Applicants have entered into an exchange arrangement providing for Louisiana Nevada to take deliveries of gas on a temporary basis while it is effecting repairs and replacements on its pipeline system. The application indicates that the exchange will involve delivery to Louisiana Nevada of approximately 200,000 Mcf of gas at a pressure base of 14.65 psia and will cover a period of approximately 60 days. Louisiana Nevada will return equivalent volumes of natural gas to Arkansas Louisiana as soon as practicable and upon completion of such redeliveries the facilities will be disconnected.

Applicants state that the proposed exchange will be made only when gas is available at the points of delivery consistent with the requirements of the Arkansas Louisiana system.

The total estimated cost of the facilities is $3,500, which cost will be paid by Louisiana Nevada.

By letter, dated August 6, 1964, Applicants were issued a temporary certificate authorizing the proposed exchange and limiting such exchange to a period of 60 days.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the joint application has been filed.

At a hearing held on September 25, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the joint application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Louisiana Nevada Transit Company, a Nevada corporation having its principal place of business in Ada, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by

the Commission in its order of October 20, 1942, in Docket No. G-246 (3 FPC 837).

(2) Applicant, Arkansas Louisiana Gas Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 26, 1943, in Docket No. G-252 (3 FPC 910).

(3) The facilities hereinbefore described, as more fully described in the joint application in this proceeding, are to be used in the exchange and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed exchange and delivery of natural gas by Applicants are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The construction and operation of the proposed facilities and the proposed exchange and delivery of natural gas by Applicants are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

(7) The exchange hereinafter authorized should be permitted only when it will not impair service to Arkansas Louisiana's other customers and should be limited to a period of 60 days from August 6, 1964, the date of issuance of the temporary certificate. Arkansas Louisiana should inform the Commission of the date of commencement of exchange deliveries and the date of completion of exchange deliveries within 10 days of each respective date. Further, the final report should also state the total quantity of gas exchanged.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicants, Louisiana Nevada Transit Company and Arkansas Louisiana Gas Company, to construct and operate the proposed facilities and to exchange and deliver natural gas as hereinbefore described, all as more fully described in the joint application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of such Regulations.

(C) The exchange authorized in paragraph (A) above shall be permitted only when it will not impair service to Arkansas Louisiana's other customers and shall be limited to a period of 60 days from August 6, 1964, the date of issuance of the temporary certificate. Arkansas Louisiana shall inform the Commission of the date of commencement of exchange deliveries and the date of completion of exchange deliveries within 10 days of each respective date. Further, the final report shall also state the total quantity of gas exchanged.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NORTHERN NATURAL GAS PIPELINE COMPANY, DOCKET NO. CP64–274; NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP64–275

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 28, 1964)

On May 13, 1964, as supplemented on June 24, 1964, Northern Natural Gas Pipeline Company (Pipeline), 2223 Dodge Street, Omaha, Nebraska, 68101, filed in Docket No. CP64–274 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of an 8-inch side valve on its 12-inch transmission line in Sutton County, Texas, and the transportation of natural gas for Northern Natural Gas Company (Northern) from said point to a redelivery point on Northern's system in Schleicher County, Texas, all as more fully set forth in the application.

On May 13, 1964, Northern Natural Gas Company (Northern), 2223 Dodge Street, Omaha, Nebraska, filed in Docket No. CP64–275 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) the construction and operation of transmission pipeline facilities in Sutton County, Texas, extending from a new gas supply area in the South Sonora Field in Sutton County, Texas, to a point of connection with Northern Pipeline's transmission line in Sutton County, Texas, and (2) the transportation of natural gas from said field to the point of delivery on Pipeline's line, all as more fully set forth in the application.

Northern has contracted for an additional supply of gas located in the South Sonora Field in Sutton County, Texas (116,964 Mcf) which it proposes to connect to its system by means of (a) new facilities consisting of 11.3 miles of 10-inch, 8-inch and 4-inch lines together with five 4-inch measuring stations and one 6-inch meter run and dehydration and processing plant to be constructed in Sutton County, Texas, and (b) by utilizing the pipeline system of Pipeline, its subsidiary, and the new facilities proposed by the subsidiary in Docket No. CP64–274.

The estimated cost of facilities proposed by Pipeline and Northern is $2,520 and $387,660, respectively, all of which will be defrayed from the current funds of the respective companies.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on September 25, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the applications and exhibits, as supplemented, submitted in support of the authorizations sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Northern Natural Gas Pipeline Company, a Texas corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of May 6, 1963, in Docket No. CP61–5 (29 FPC 890).

(2) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(3) The proposed construction and operation of facilities, and the transportation of natural gas in interstate commerce, as hereinbefore described and as more fully described in the applications and exhibits as supplemented in these proceedings, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid proposed construction and operation of facilities and transportation of natural gas are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) Pipeline and Northern are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Pipeline and Northern's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued to Pipeline and Northern in these proceedings, authorizing the construction and operation of facilities, and the transportation of natural gas in interstate commerce, as hereinbefore described and as more fully described in the applications, as supplemented, and exhibits filed in these proceedings, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Pipeline's and Northern's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized by paragraph (A) above shall be constructed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP61-154

FINDINGS AND ORDER DISMISSING APPLICATION

(Issued September 28, 1964)

On November 25, 1960, as supplemented on December 9, 1960, Southern Natural Gas Company (Applicant) filed in Docket No. CP61-154 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas, on an interruptible basis, to Texas Eastern Transmission Corporation (Texas Eastern) at two exist-

ing points of interconnection between the two pipeline systems near Lucky, Bienville Parish, Louisiana, near Kosciusko, Attala County, Mississippi.

On January 9, 1961, Applicant was issued a temporary certificate authorizing it to sell up to 35,278,000 Mcf of natural gas, on an interruptible basis, for the period extending through December 31, 1962. Applicant agreed to accept a permanent certificate authorizing the sale of the before mentioned maximum volume of natural gas for the limited period ending December 31, 1962.

On December 17, 1962, the Commission by its order issued in Docket No. CP61–206 authorized Applicant to sell and deliver to Texas Eastern a contract quantity of 40,000 Mcf of natural gas per day at Kosciusko, Mississippi.

In view of the authorization in Docket No. CP61–206 to sell to Texas Eastern a contract quantity of 40,000 Mcf of natural gas per day and in view of the termination on December 31, 1962, of the sale of natural gas to Texas Eastern still pending permanent certification in Docket No. CP61–154, it appears that the application in Docket No. CP61–154 should be dismissed as moot.

The Commission finds:

The application for a certificate of public convenience and necessity filed in Docket No. CP61–154 should be dismissed as moot.

The Commission orders:

The application for a certificate of public convenience and necessity filed in Docket No. CP61–154 be and the same is hereby dismissed as moot.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP65–2

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 28, 1964)

On July 1, 1964, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP65–2 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing additional firm pipeline service to seven existing customers, initial storage service to one existing customer and additional volumes of natural gas, on an interruptible basis, to Owens-Corning Fiberglas Corporation (Owens-Corning), all as more fully set forth in the application.

Specifically, Applicant proposes the following additional service:

Customer	Rate Schedule	Mcf per day at 14.7 psia
Manufacturers Light & Heat Company, The (Muncy)	CD–3	1,100
Public Service Company of North Carolina, Inc.	CD–2	3,000
Manufacturers Light & Heat Company, The (New Village)	G–3	100
Elberton, Georgia, City of	G–1	200
Social Circle, Georgia, City of	G–1	181
Butler, Alabama, City of	OG–1	125
Hartwell, Georgia, City of	OG–1	250
Total proposed additional firm pipeline service		4,956
Greenwood, South Carolina, City of (Initial storage service)	GSS	800
Owens-Corning Fiberglas Corporation (Interruptible industrial)		1,250

Applicant states that the proposed additional firm pipeline and storage service is necessary to meet the requirements of Applicant's customers commencing with the 1964–65 winter season. Owens-Corning will utilize the proposed additional gas for its expanded production of fiberous glass products at its Anderson, South Carolina, plant.

No new facilities will be required to make the proposed deliveries since Applicant has the necessary excess capacity as a result of its system expansion authorized in Docket No. CP64–96.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 25, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G–1143 (7 FPC 145).

(2) The sales, transportation and delivery of natural gas hereinbefore described, as more fully described in the application in this proceeding, will be in interstate commerce, subject to the jurisdiction of the Commission, and the proposed sales, transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales, transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(6) The certificate issued hereinafter should be granted on the express condition that the interruptible service authorized therein should be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Applicant for firm resale service to its customers.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Transcontinental Gas Pipe Line Corporation, to sell, transport and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(C) The sales, transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by pargaraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 3 months from the date on which this order issues.

(D) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Applicant for firm resale service to its customers.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP63-290; NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP63-291

FINDINGS AND ORDER AFTER STATUTORY HEARING AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 28, 1964)

On June 24, 1963, Northern Natural Gas Company (Northern), and on July 6, 1963, Transwestern Pipeline Company (Transwestern) filed in Docket Nos. CP63-291 and CP63-290 respectively, applications to amend the order issued October 10, 1963, 30 FPC 997, in the aforementioned dockets and extend for one year their "best efforts" gas exchange authorized by said order, all as more fully represented in the application in this proceeding.

The applications state that the exchange of gas is in accordance with an agreement between Northern and Transwestern dated April 12, 1963, wherein Transwestern agreed to deliver to Northern an average daily volume of 30,000 Mcf of natural gas for an initial period of one year with a "best efforts" agreement to increase the average daily volumes to 40,000 Mcf per day. Northern has the option to take like volumes for an additional year immediately following final delivery of the initial volumes. Northern has exercised its option to continue taking volumes for the second year commencing August 1, 1964, and the parties herein seek authority permitting the exchange of gas for an additional year, but as amended in the manner described in the following paragraph.

Northern and Transwestern have signed an amendment dated May 1, 1964, to the original exchange agreement of April 12, 1963, which reduces the minimum annual volume of gas equivalent to an average daily volume of 10,000 Mcf with a daily minimum of 5,000 Mcf during the second year. Northern would continue to use its best efforts to increase the volumes of gas exchanged to an average volume for the year of 40,000 Mcf per day.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

At a hearing held on September 25, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's

order, issued October 10, 1963, in Docket Nos. CP63–290 and CP63–291 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued October 10, 1963, in Docket Nos. CP63–290 and CP63–291 be and the same is hereby amended by authorizing Transwestern Pipeline Company and Northern Natural Gas Company respectively, to exchange natural gas for an additional year pursuant to an agreement dated April 12, 1963, as amended May 1, 1964, between both applicants, all as hereinbefore described and as set forth in the subject applications.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP65–6

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 28, 1964)

On July 6, 1964, as supplemented on July 15, 1964, Transwestern Pipeline Company (Applicant) filed in Docket No. CP65–6 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a 1,000 horsepower gas turbine compressor at its Keystone Compressor Station, located in Winkler County, Texas.

The purpose of the proposed facilities is to enable Applicant, during off-peak periods of operation, to make up under-production of gas with equal over-production of gas in the West-Texas area so as to balance the takes from the gas fields involved, all as more fully described in the application. The present system does not permit Applicant to take gas ratably and the new facilities will cure this defect in its system and afford better service to its customers.

The estimated total cost of the proposed facilities is $221,000, which will be financed from current funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 25, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 10, 1959, in Docket No. G–14871, *et al.* (22 FPC 391).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Transwestern Pipeline Company, to construct and operate the proposed facilities, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (4) and (e) of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP64-301

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 28, 1964)

On June 15, 1964, as supplemented on July 2, 1964, United Gas Pipe Line Company (Applicant) filed in Docket No. CP64-301 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the enlargement and operation of certain measuring and regulating facilities serving the Clarke-Mobile Counties Gas District, located in Mobile County, Alabama, all as more fully represented in the application in this proceeding.

Applicant proposes to enlarge and operate certain orifice measuring and regulating facilities serving the Clarke-Mobile Counties Gas District, located in Section 13, Township 1 South, Range 1 West, Mobile County, Alabama. Applicant states that the facilities are being enlarged in order to provide for the sale and delivery of natural gas on a firm basis to Allied Paper Corporation (Allied), of Mobile County, Alabama, to meet the fuel requirements for the operation of purchaser's pulp mill located at Jackson, Clarke County, Alabama.

Allied is presently engaged in constructing a pulp mill and the proposed enlargement of facilities and their operation will permit Applicant to supply Allied with a dependable source of fuel for the operation of the mill. Applicant's existing pipe lines through which this gas will be transmitted have adequate

capacity to handle the additional quantities of gas to be sold to Allied, however, it is necessary to increase the capacity of the existing meter station and regulating facilities through which the gas will be delivered. Applicant will sell the gas to Allied at its Clarke-Mobile Counties Gas District meter station, as enlarged, and the Gas District will transport the gas for Allied from the meter station to its plant near Jackson.

Applicant further states that the enlargement of the facilities will cost $2,284 and that during the third year of the contract it will sell and deliver to this customer approximately 1,575,000 Mcf of natural gas. Applicant intends to finance the cost of the proposed project out of its current working funds.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

At a hearing held on September 25, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business at 1525 Fairfield Avenue, Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G–232 (3 FPC 863).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(6) This certificate should not entitle the industrial customer to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of resale customers desiring to acquire additional gas to meet any future increases in their requirements.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, United Gas Pipe Line Company, to construct and operate the proposed natural gas facilities as hereinbefore described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the gen-

eral terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized in paragraph (A) above shall be constructed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

(D) This certificate shall not entitle the industrial customer to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP65-22

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued September 28, 1964)

On July 20, 1964, United Gas Pipe Line Company (Applicant) filed in Docket No. CP65-22 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon and remove sixteen Hope Type VSA 160 horsepower compressor units and the Jackson Compressor Station No. 1, located in Rankin County, Mississippi.

Applicant shows that since October 23, 1955, the above described facilities have not been used because of substantial changes in its system wherein the flow of natural gas from South Louisiana to the McComb and Jackson areas and from the Baxterville Field to the Hattiesburg area has displaced the flow of gas through the Sterlington to Jackson pipeline for deliveries in the McComb and Hattiesburg areas where the facilities to be abandoned had functioned since 1939, all as more particularly described in the application.

No cessation or interruption of service to customers will result from the proposed abandonment and removal.

The current depreciated cost of the facilities to be abandoned is $117,599 of which $5,155 will be salvaged and the balance written off.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 25, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The facilities to be abandoned, as hereinbefore described, are subject to the jurisdiction of the Commission and the abandonment thereof is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by United Gas Pipe Line Company of the facilities hereinbefore described be and the same are hereby granted.

(B) Applicant shall advise the Commission of the date of said abandonment and removal within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED NATURAL GAS COMPANY, DOCKET NO. CP64-262

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 28, 1964)

On April 29, 1964, United Natural Gas Company (Applicant), 308 Seneca Street, Oil City, Pennsylvania, filed in Docket No. CP64-262 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the installation and operation of an additional 300 Hp compressor unit and connecting facilities at Applicant's Medix Run Field Compressor Station in Benezette Township, Elk County, Pennsylvania, all as more fully set forth in the application.

Applicant is presently operating its Medix Run Field Compressor Station for the purpose of applying suction on producing gas wells in that area and compressing such produced gas for discharge into Applicant's Line F-M 100. Due to increased operating pressures being maintained in Line F-M 100 Applicant now requires a two-stage compressor operation in order to discharge said natural gas into Line F-M 100, instead of the single stage unit now utilized. In addition, the proposed unit will enable Applicant under emergency conditions to maintain the station in operation in the event the present compressor becomes inoperable.

Applicant proposes to take a presently available unused 300 Hp compressor unit from a field compressor station in Potter County, Pennsylvania, and relocate it in the Medix Run Field Compressor Station for use as stated. The estimated cost of the installation of the compressor unit and the construction of connecting facilities is $4,830, which will be defrayed from current funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 25, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, United Natural Gas Company, a Pennsylvania corporation having its principal place of business in Oil City, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of March 30, 1943, in Docket No. G-328 (3 FPC 959).

(2) The proposed construction and operation of facilities and the transportation of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application and exhibits filed in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and the transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, United Natural Gas Company, authorizing the construction and operation of facilities and the transportation of natural gas in interstate commerce, as hereinbefore described, all as more fully described in the application and exhibits filed in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized by paragraph (A) above shall be constructed and placed in actual operation within 12 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

COLORADO INTERSTATE GAS COMPANY,* DOCKET NO. CP64-115, ET AL.

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING RELATED FPC GAS RATE FILINGS

(Issued September 29, 1964)

On November 21, 1963, Colorado Interstate Gas Company (CIG) filed in Docket No. CP64-115 an application pursuant to Section 7(c) of the Natural Gas Act (Act) for a certificate of public convenience and necessity authorizing the construction and operation of approximately 4.5 miles of 4- and 6-inch gathering lines, and dehydrating, metering and regulating facilities necessary to attach approximately 15,585 MMcf of recoverable natural gas reserves to be purchased from three producers who have filed applications for authorization to make the related sales, in the Wamsutter Field in Sweetwater County, Wyoming, and to deliver such gas into CIG's existing 22-inch Wyoming transmission line, all as more fully set forth in the application.

*And other Applicants listed herein at p. 872.

The total estimated cost of the facilities proposed under Docket No. CP64–115 is $90,600, which will be financed out of current working funds.

On January 27, 1964, as supplemented on March 16, 1964, CIG filed in Docket No. CP64–166 an application pursuant to Section 7(c) of the Act for a certificate of public convenience and necessity authorizing the construction and operation of one main line valve and one check meter station to enable CIG to receive at its main transmission line natural gas from a proposed gathering system in Desert Springs Field in Sweetwater County, Wyoming, where CIG has contracted to take gas reserves of approximately 119,573 MMcf to be purchased at the wellhead from nine producers who have filed applications for authorization to make the related sales.

The total estimated cost of the facilities proposed under Docket No. CP64–166 is $15,650, which will be financed out of current working funds. CIG's related proposed gathering system is estimated to cost $1,362,800.

Each of the producer Applicants listed herein has filed an application pursuant to Section 7(c) of the Act for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas to CIG for resale in interstate commerce, all as more fully described in the respective applications.

Said producer Applicants have filed related FPC gas rate schedules and propose to initiate service to CIG as indicated in the tabulation herein. All sales certificated hereinafter are either equal to or below the area ceiling prices established by the Commission's Statement of Policy 61–1, as amended.

After due notice, no petition to intervene, notice of intervention or protest to the granting of any of the respective applications in these proceedings has been filed.

At a hearing held on September 25, 1964, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications and exhibits, submitted in support of the respective authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of June 5, 1945, in Docket No. G–294 (4 FPC 936).

(2) The facilities hereinbefore described, as more fully described in the applications in Docket Nos. CP64–115 and CP64–166, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by CIG are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the proposed facilities by CIG are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(4) Public convenience and necessity require that the certificates hereinafter issued in Docket Nos. CP64–115 and CP64–166 and the rights granted thereunder be conditioned upon CIG's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of said Regulations.

(5) Each of the producer Applicants herein is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission or will be engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and

will therefore be a "natural-gas company" within the meaning of said Act upon the commencement of the service under the respective authorizations granted hereinafter.

(6) The sales of natural gas hereinbefore described, as more fully described in the respective producer applications herein, will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sales by the respective Applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(7) The sales by the respective producer Applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(8) All Applicants herein are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(9) The respective related producer rate schedules not heretofore accepted by the Commission should be accepted for filing.

The Commission orders:

(A) Upon the terms and conditions of this order, certificates of public convenience and necessity be and the same are hereby issued authorizing Applicant, Colorado Interstate Gas Company, to construct and operate the facilities to take natural gas from producers thereof as hereinbefore described and as more fully described in the applications and exhibits in Docket Nos. CP64–115 and CP64–166.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon CIG's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

(C) The facilities hereby authorized shall be completed by CIG and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date on which this order issues.

(D) Certificates of public convenience and necessity be and the same are hereby issued, upon the terms and conditions of this order, authorizing the respective sales to Colorado Interstate Gas Company by the respective producer Applicants herein of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary for such sales, all as hereinbefore described and as more fully described in the respective producer applications and exhibits in these proceedings.

(E) The certificates issued by paragraph (D) above are not transferable and shall be effective only so long as the producer Applicants continue the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(F) The grant of the certificates issued by paragraph (D) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the respective Applicants. Further, our action in this pro-

ceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. Nor shall the grant of the certificates aforesaid for service to CIG imply approval of all of the terms of the respective contracts, particularly as to the cessation of service upon termination of said contracts, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificates aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificates.

(G) The grant of the certificate issued by paragraph (D) above is hereby conditioned upon each producer Applicant's filing of a contract amendment providing for an extension of the initial take and pay requirement from three years to five years.

(H) The certificates issued by paragraph (D) above to Socony Mobil Oil Company, Inc. in Docket No. CI64-287, to Humble Oil & Refining Company in Docket No. CI64-872 and to Gulf Oil Corporation in Docket No. CI64-1279 are hereby conditioned upon the filing of appropriate rate schedules by said three Applicants.

(I) The related FPC gas rate schedules set forth in the tabulation herein which have not heretofore been accepted by the Commission are hereby accepted for filing, to be effective on the date of initial delivery thereunder.

Filing Code: A—Initial service certificate application
B—Application to amend pending certificate application
C—Application to amend certificate by adding acreage
D—Application to amend certificate by deleting acreage

INDEPENDENT PRODUCER APPLICATIONS

Docket No. & Filing Date	Field and Location	Purchaser	Initial Price per Mcf & psia Pressure Base	Related Rate Schedule No.	Related Rate Schedule Supp.
CI64-287, (A-9/3/63 & 1/28/64).	Socony Mobil Oil Company, Inc., Desert Springs Field, Sweetwater County, Wyoming.	Colorado Interstate Gas Company.	14.5¢ @ 14.65	(1)	-------
CI64-349, (A-9/16/63)	Humble Oil & Refining Company, Wamsutter Unit Area Field, Sweetwater County, Wyoming.	----do----	15.0¢ @ 14.65	345	-------
CI64-418, (A-10/4/63)	Union Pacific Railroad Company, Wamsutter Unit Area Field, Sweetwater County, Wyoming.	----do----	15.0¢ @ 14.65	6	-------
CI64-866, (A-1/31/64)	Texaco Inc., Desert Springs Field, Sweetwater County, Wyoming.	----do----	14.5¢ @ 14.65	325	-------
CI64-872, (A-2/5/64)	Humble Oil & Refining Company, Desert Springs Field, Sweetwater County, Wyoming.	----do----	14.5¢ @ 14.65	(1)	-------
CI64-903, (A-2/11/64)	Pubco Petroleum Corporation Desert Springs Field, Sweetwater County, Wyoming.	----do----	14.5¢ @ 14.65	15	-------
CI64-921, (A-2/6/64)	Union Pacific Railroad Company, Desert Springs Field, Sweetwater County, Wyoming.	----do----	14.5¢ @ 14.65	7	-------
CI64-949, (A-2/27/64)	Mohawk Petroleum Corporation, Desert Springs Field, Sweetwater County, Wyoming.	----do----	14.5¢ @ 14.65	1	1
CI64-951, (A-2/27/64)	Martha Featherstone, Desert Springs Field, Sweetwater County, Wyoming.	----do----	14.5¢ @ 14.65	1	-------
CI64-1137, (A-3/25/64)	The Pure Oil Company, Desert Springs Field, Sweetwater County, Wyoming.	----do----	14.5¢ @ 14.65	81	-------
CI64-1279, (A-4/27/64)	Gulf Oil Corporation, Desert Springs Field, Sweetwater County, Wyoming.	----do----	14.5¢ @ 14.65	(1)	-------
CI64-1421, (A-5/27/64)	Union Oil Company of California (Operator), *et al.*, Desert Springs Field, Sweetwater County, Wyoming.	----do----	14.5¢ @ 14.65	91	1

[1] Rate schedule not yet filed; certificate authorization herein conditioned upon acceptable filing being made.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

HUMBLE OIL & REFINING COMPANY, DOCKET NO. G-9287, ET AL.; TENNESSEE GAS TRANSMISSION COMPANY, RP65-6; NATURAL GAS PIPELINE COMPANY OF AMERICA, RP65-7; TRUNKLINE GAS COMPANY, RP65-8; MISSISSIPPI RIVER FUEL CORPORATION, RP65-9; LONE STAR GAS COMPANY, RP65-10; GAS GATHERING CORPORATION, RP65-11[1]; HUMBLE GAS TRANSMISSION COMPANY, RP65-12; SOUTHERN NATURAL GAS COMPANY, RP65-13; NORTHERN NATURAL GAS COMPANY, RP65-14; UNITED GAS PIPE LINE COMPANY, RP65-15; TEXAS GAS TRANSMISSION CORPORATION, RP65-16; KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., RP65-17; PANHANDLE EASTERN PIPE LINE COMPANY, RP65-18; COLORADO INTERSTATE GAS COMPANY, RP65-19; EL PASO NATURAL GAS COMPANY, RP65-20; CITIES SERVICE GAS COMPANY, RP65-21; UNITED FUEL GAS COMPANY, RP65-22; AMERICAN LOUISIANA PIPE LINE COMPANY, RP65-23

ORDER REQUIRING REPORT OF INTENDED DISPOSITION OF REFUNDS

(Issued September 29, 1964)

In our order issued July 8, 1964, 32 FPC 49, as amended by our order of August 7, 1964, 32 FPC 542, in Docket No. G-9287, *et al.*, we conditionally approved a rate settlement proposal filed by Humble Oil & Refining Company. That order stated that we considered it our duty in carrying out the mandates of the Natural Gas Act to assure, within the limits of our jurisdiction, that refunds made pursuant to the settlement are actually flowed through to the parties legally and equitably entitled thereto.

The order went on to state that:

> We are not here determining that a pipeline purchaser from Humble or one down the line in the chain of resales between the producer and ultimate consumer are never entitled as a matter of law or equity to retain all or part of the refunds received from a supplier. We conclude only that merely because a pipeline is under no special express requirement to flow refunds through to its customers and did not previously pass on to its customers the producer's price increase (or higher gas costs arising from sales temporarily certificated at prices higher than that fixed in the settlement), does not determine that it is entitled to retain such refunds. Unlike the corresponding refund provisions of the Federal Power Act (Section (205(e), 16 U.S.C. 824(d)) and the Interstate Commerce Act (Section 15(7), 49 U.S.C. 15(7)) which provided that refunds must be paid "to the persons in whose behalf such amounts [increased rates] were paid," Section 4(e) of the Natural Gas Act does not specify to whom refunds are to be paid. And in the *Federal Power Commission* v. *Interstate Natural Gas Company*, 336 U.S. 577, the Supreme Court rejected the claim that pipeline purchasers were the legal owners of funds placed in escrow pursuant to the terms of a judicial stay of a Commission directed rate reduction, merely because the fund was created from their payments at the previous higher rate. See also *Central States Company* v. *Muscatine*, 324 U.S. 138 (1945), (dissenting opinion).

In the paragraph immediately following, our order issued July 8, 1964, in Docket No. G-9287, *et al.*, set out the procedures we propose to follow to carry

[1] The docket number is assigned for identification purposes only and is not intended as a classification of the company for other purposes.

out our indicated policy. That paragraph and the procedures therein provided are incorporated herein.

It appears from the terms of the settlement between the parties and the appendices attached to our order issued July 8, 1964, that each of the companies listed in the caption may receive refunds directly from Humble through this settlement. Accordingly, it is necessary and appropriate that these companies submit the report hereinafter required setting out their proposed disposition of the refunds they may receive under the settlement of Docket No. G–9287, *et al.*, as indicated in the report served upon them by Humble.

The Commission orders:

(A) The natural gas companies listed in the caption (except Humble) shall submit, in their respective docket, within ten days of the issuance of this order, the report required by the paragraph of our order issued July 8, 1964, in Docket No. G–9287, *et al.*, incorporated herein and shall serve such report upon its customers and the interested state commissions.

(B) Any of the above companies claiming the right to retain any portion of the amount it may receive from Humble, shall submit, in addition to the above report, a detailed statement of the legal and equitable basis for such claim.

(C) Pending further order of the Commission, Humble shall retain the amounts to be refunded in accordance with Paragraphs (F), (G) and (H) of our order of July 8, 1964, as amended by our order of August 7, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

HASSIE HUNT TRUST, OPERATOR, ET AL., DOCKET NO. G–19115; H. L. HUNT, OPERATOR, ET AL., DOCKET NO. G–19116; HUNT OIL COMPANY, DOCKET NO. G–19117; WILLIAM HERBERT HUNT TRUST ESTATE, OPERATOR, ET AL., DOCKET NO. G–19118; LAMAR HUNT TRUST ESTATE, DOCKET NO. G–19119; GEORGE W. GRAHAM, INC., OPERATOR, ET AL., DOCKET NO G–19123; PLACID OIL COMPANY, OPERATOR, ET AL., G–19124; PLACID OIL COMPANY, OPERATOR, ET AL., DOCKET NO. G–19125

ORDER DENYING MOTION FOR AMENDMENT OF MORATORIUM CONDITION

(Issued September 29, 1964)

The applicants designated above (hereinafter referred to collectively as "Hunt") filed on May 14, 1964, a motion setting forth their basis for factual disagreement as to the three highest effective rates in Texas District Nos. 2, 3, and 4. Based thereon, Hunt requests modification of the price moratorium provision imposed in the order issued February 24, 1964, 31 FPC 447, in the above-entitled proceedings and confirmed on April 17, 1964, 31 FPC 946, in an order denying rehearing. As explained in the April 17 order, the lowest of the three highest effective rates in each area formed the basis for the price moratorium provision which was included as a condition to the issuance of the certificate authorizations to Hunt. The price moratorium precludes the filing of any price increases in excess of 18¢ per Mcf for sales in District Nos. 2 and 4 and 19¢ per Mcf in District No. 3 pending the issuance of a final decision in the Texas Gulf Coast Area Rate Proceeding, Docket No. AR64–2, or until January 1, 1968, whichever is earlier.

Hunt in its motion claims that 19¢ is not the lowest of the three highest prices in District No. 3. Hunt refers to a number of proposed increased rates of

19.33333¢ and 19.11402¢[1] per Mcf that have been filed and suspended until June 1, 1964, to support its position that the price moratorium for sales in District No. 3 should be higher. Some of the producers have placed the above proposed rates in effect, subject to refund, in accordance with the provisions of Section 4(e) of the Natural Gas Act. Hunt fails to mention, however, that these increased rate filings are themselves redetermination rates based in part on the 20¢ initial contract rates of Hunt involved in Opinion No. 412 to which this order relates. Specifically, the 19.33333¢ (and 19.11402¢) rates were arrived at by dividing the total of the rates for the following sales by three:

sale (by applicants) to Natural Gas Pipeline Company of America	20.0¢ per Mcf
sale to Trunkline Gas Company	20.0¢ per Mcf
sale to United Gas Pipe Line Company	18.0¢ per Mcf

In Opinion No. 412, 30 FPC 1438, we held that the in-line price prior to the policy statement for sales in District No. 3 was 16¢ per Mcf. Certificates were issued to applicants for sales in this area conditioned at a total initial price not in excess of 16¢ and applicants were required to refund any amounts collected in excess of 16¢ for the period of time sales were made under temporary authorization. In Opinion No. 412–A, 31 FPC 181, we stayed our initial price determination and refund requirement pending judicial review. The refund requirement, subject to court approval, will encompass the period during which the redeterminations involved here were reached.

In these circumstances the redetermination rates were properly filed, since applicant's 20 cent rates were then effective. However, a substantial question exists as to whether there is a valid contractural basis for the redetermination rates to the extent that they depend upon the 20 cent rates of applicants. See *Shell Oil Co.*, Opinion No. 382 and 382–A, 29 FPC 498, 851; *Texaco Inc., et al.*, Docket No. G–17613, *et al.*, order issued February 10, 1964, 31 FPC 402. We need not here determine the contract question whether redetermined rates filed pursuant to clauses providing that the new rate should be based upon the three highest prices "being paid" in the area, are subject to reduction in the event one or more of the three triggering rates turns out to have been effectively lower during the critical period; this we must leave to a hearing in the proceedings on such rate increases. It is sufficient here to indicate that for purposes of imposing a moratorium against possible price increases above the triggering ceiling we cannot consider prices which are themselves based on a price we have held to be too high and which was the subject of a hearing on this question at the time of the redetermination. In fact the situation here well illustrates the mushrooming effect that an out-of-line price for a given sale may have on other sales in the area through redetermination clauses and clearly does not justify a bootstrap operation raising the moratorium level we had set.

Hunt also claims the Commission has discriminated against it as to the length of the price moratorium imposed because the Commission has certificated without limitation contracts permitting (1) in District No. 2 the filing of price increases up to 23¢ per Mcf prior to the end of 1964, (2) in District No. 3 the filing of price increases up to 20¢ prior to October 10, 1965, and (3) in District No. 4 the filing of price increases up to 22¢ prior to the end of 1964.

The sales relating to contractual increases to 23¢ in District No. 2 to which Hunt refers are being made pursuant to temporary authorization which prohibit rate filings in excess of 18¢ per Mcf. These sales are consolidated in the District

[1] The only difference between the 19.1142¢ and 19.33333¢ rates is that the former rates include a contract deduction for dehydration by the buyer.

No. 2 "in line" certificate proceeding in *Sinclair Oil & Gas Co., et al.*, Docket No. G–16760, *et al.* The only sale in District No. 4 under a contract permitting an increase as high as 22¢ prior to the end of 1964 is the one being made under E. M. Spencer's Rate Schedule No. 1. That sale was certificated in Opinion No. 422, 31 FPC 623, at an initial rate of 16.0¢ per Mcf with a moratorium provision prohibiting any rate filing in excess of 18.0¢ until January 1, 1968.

It is true, however, that certain producers in these areas may file for rate increases above the moratorium level determined here for Hunt. The situation to which Hunt refers is the result of the Commission's failure in previous certificate cases to impose any price moratorium conditions in certificate authorizations. This in no way, however, lessens the importance of imposing a price moratorium here, nor does it limit the type of price moratorium that should be applied. It merely means that it may be necessary to utilize other means of protecting the public should any of the cited producers file for a rate increase which might have an impact on price redetermination clauses in other producer contracts in these areas. In similar circumstances we have initiated a number of individual hearings involving producer rate increases in South Louisiana.[1] We would not hesitate to take similar action in these areas in the event the facts warrant such action. But we are not compelled by our past actions to follow this more complicated procedure here. It could as well be argued that because we had not previously placed conditions against price increases in temporaries we could not impose the condition approved in *F.P.C. v. H. L. Hunt, et al.*, 376 U.S. 515.

The Commission orders:

For the reasons set forth above, Hunt's motion filed on May 14, 1964, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PACIFIC POWER & LIGHT COMPANY, DOCKET NO. E–7176

SUPPLEMENTAL ORDER AUTHORIZING THE ISSUANCE OF FIRST MORTGAGE BONDS

(Issued September 29, 1964)

By order issued September 15, 1964, *supra*, p. 767, in the above-entitled matter, the Commission authorized Pacific Power & Light Company (Applicant) to issue and sell at competitive bidding $30,000,000, principal amount of First Mortgage Bonds, due 1994, subject, among other, to the provisions set forth in paragraph (B) of that order as follows:

(B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h) of those Regulations relating to affiliation, and shall have advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

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[1] See, for instance, *Southeastern Public Service Company*, Docket No. RI63–361, Opinion No. 425 issued April 21, 1964, 31 FPC 973; and *H. L. Hunt, et al.*, Docket No. RI62–467, *et al.*, Opinion No. 369 issued November 30, 1962, 28 FPC 897.

(ii) The Commission, by further orders, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

Applicant, on September 28, 1964, filed an amendment, pursuant to the requirements of the afore-mentioned Commission order, setting forth, among other things, that it proposes to accept as providing the lowest annual cost of money to it, the bid of Blyth & Co., Inc., White, Weld & Co. to purchase the proposed issuance of $30,000,000, principal amount of Bonds, for the price of 98.911 of principal amount, with an interest rate of 4⅝%.

The Commission finds:

(1) Applicant has satisfactorily complied with the requirements of paragraph (B) of the Commission's order issued September 15, 1964, in the above docket and under the bid it proposes to accept for the Bonds, the price to be received by Applicant therefor and the interest rate thereof are reasonable.

(2) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by the Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The price to be received by Applicant for the proposed Bonds and the interest rate thereof under the bid referred to above, are approved as reasonable.

(B) The proposed issuance and sale of Bonds referred to above upon the terms and conditions and for the purposes specified in the application, as supplemented by the amendment referred to above, are authorized, subject only to the provisions of paragraphs (A), (C), (D), and (E) of the Commission's order issued September 15, 1964 in the above docket.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TURNBULL & ZOCH DRILLING CO., ET AL., DOCKET NO. G-17960, ET AL.

ORDER GRANTING APPEAL FROM RULING OF PRESIDING EXAMINER

(Issued September 29, 1964)

There is presently before us for consideration an appeal by Blanco Oil Company and Killam and Hurd from a ruling of the presiding examiner made at the second prehearing conference in this proceeding on September 2, 1964.

This consolidated proceeding was initiated by order of the Commission issued May 28, 1964 and involves 67 separate applications by some 52 producers, individually or as operator, for authority under Section 7 of the Natural Gas Act to sell gas in Texas Railroad District No. 4 to five pipelines[1] for resale in interstate commerce.

The presiding examiner has ruled that our March 4, 1964 order in *E. E. Fogelson, et al.*, Docket No. G-19013, *et al.*, 31 FPC 476, established a precedent which is

[1] The five pipelines are: Natural Gas Pipeline Company of America, Florida Gas Transmission Company, South Texas Natural Gas Company, Tennessee Gas Transmission Company, and Valley Gas Transmission, Inc.

binding upon him in this proceeding and, as a result, he is unable to order the issuance of a permanent certificate to any producer applicant whose pipeline purchaser does not have, at the time his initial decision issues, a permanent certificate to construct the necessary facilities required to receive and transport the natural gas now being, or to be, purchased from a producer herein. This result follows, he says, even though all the other public convenience and necessity requirements present in a Section 7 initial price case are met. Further, the examiner ruled that he could not issue a permanent certificate to a producer and condition the certificate upon the pipeline purchaser obtaining a permanent certificate.[3]

Blanco and Killam and Hurd contend that the examiner of the Commission can issue a permanent certificate to producers even though, at the conclusion of the instant hearing, the pipeline companies continue to operate under temporary certification while awaiting permanent authorization.

On this interlocutory review upon the examiner's certification, we conclude that it is proper to grant the appeal of Blanco and Killam and Hurd for the reasons expressed below.

The proceeding in *E. E. Fogelson, et al., supra*, involved applications by a number of producers under Section 7 of the Natural Gas Act to sell gas to Transwestern Pipeline Company (Transwestern) from acreage in the Panhandle areas of Texas and Oklahoma. There was no issue as to price, but an issue arose as to whether or not certain of the applications should be granted in the absence of permanent authority to Transwestern for the necessary facilities to receive the gas. The Commission ruled as follows:

> Under these circumstances we are unable to issue permanent certificates to the producers in these seven dockets at this time although temporary certificates will remain outstanding. The fact that the gas will flow into Transwestern's facilities permanently certificated in Docket No. G–14871 is immaterial, for the connecting facilities are not shown to be so. To grant permanent certificates to the producers now would be prejudging the proceedings in Transwestern's Docket Nos. G–20464, CP61–168 and CP62–160, even if we conditioned the certificates as proposed by Transwestern. Since the issuance of certificates in these seven dockets cannot be granted until permanent certificates are granted in G–20464, CP61–168, CP62–160, which are consolidated, we shall order the seven dockets severed from the present proceedings and consolidated with the proceedings in Docket No. 20464, *et al.*

It is apparent from this passage that the Examiner's interpretation of the *Fogelson* case was a reasonable one. In our opinion, however, some clarification of the scope of that order is desirable. To remove any uncertainty, we point out that the *Fogelson* rule as enunciated was not intended to be as broad as the examiner suggests. The *Fogelson* case is distinguishable from the instant proceeding on two substantive grounds:

(1) In *Fogelson*, Transwestern had not been granted permanent certificates and had specifically opposed the issuance of permanent certificates to the producers, and

(2) Transwestern's certificate applications were involved in a comparative hearing and the Commission was in the position of avoiding prejudgment of any of the issues in the contest.

In the instant proceeding, unlike *Fogelson*, the pipeline companies are not objecting to the granting of permanent certificates to the producers and the pending pipeline application is not involved in a competitive proceeding. We

[3] TR. 283–284.

conclude that it is neither reasonable nor practical to extend the *Fogelson* rule to the present case because there is no adequate reason for such an extension and because it could hinder sound regulation. In our view, it would be unjust to require a producer to come to hearing, prepare evidence and participate in a proceeding only to find that a certificate cannot issue prior to certification of its pipeline purchaser when there is no reason to question the need for the gas supply involved. This result, in circumstances like those involved herein, would not advance the orderly and expeditious disposition of the applications in question. Furthermore, it would become difficult to issue budget-type certificates to pipelines since issuance of such certificates presupposes permanently certificated supplies of gas.

The nature of the record indicates that it would be more practicable and in the interest of the effective administration of the Natural Gas Act, for the presiding examiner to proceed with consideration of the evidence and to issue a permanent certificate where the record so warrants. The producer, of course, is on notice that in the event permanent certification of facilities proposed by the pipeline purchaser is denied he will no longer have a market.

The Commission orders:

The appeal by Blanco Oil Company and Killam and Hurd in the above entitled proceeding from the ruling of the presiding examiner is hereby granted and the presiding examiner is directed to proceed in a manner consistent with the provisions of this order.

OPINION NO. 428–B

UNITED GAS PIPE LINE COMPANY, DOCKET NO. RP63–1

OPINION AND ORDER REJECTING APPLICATION FOR REHEARING IN PART, DENYING REHEARING, AND DENYING STAY

(Issued September 30, 1964)*

Syllabus

1. Commission *rejects* pipeline's application for rehearing of supplementary opinion to extent it repeats verbatim application for rehearing of basic opinion. P. 880.
2. Proposal to use actual figures for locked-in period would invite a multiplicity of rate filings—disposition of instant case would be greatly delayed if record were left open to receive such figures since new set of figures would require further hearing and cross-examination after end of period. P. 880.
3. Commission *rejects* application, in part, and *denies* rehearing and stay.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

BLACK, *Commissioner:*

On September 10, 1964, United Gas Pipe Line Company filed an application for rehearing of our Opinion No. 428–A and order issued September 2, 1964, *supra*, p. 687, on rehearing in the above-entitled proceeding. This opinion was issued after we had granted rehearing with respect to our original Opinion No. 428 and order 31 FPC 1180, for purposes of more orderly and more adequate

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*Order issued October 22, 1964, rejecting and denying application for rehearing, 32 FPC 1163. See settlement order issued December 23, 1964, 32 FPC 1515. Set aside, *United Gas Pipe Line Co.* v. *F.P.C.*, 357 F. 2d 230 (CA5–1966); affirmed —— U.S. —— (1967).

consideration. In Opinion No. 428–A we confirmed with certain modifications Opinion No. 428, which determined the cost of service and rates of United, and we reissued the ordering clauses to carry these modifications into effect.

United's present application for rehearing repeats verbatim most of its application for rehearing filed June 11, 1964, with respect to Opinion No. 428. In addition to this United adds further arguments on questions discussed in our Opinion on rehearing. The greater part of United's application for rehearing is not properly addressed to the issues which can now be raised in this application, and accordingly, as provided in ordering clause (A) below, we reject United's application insofar as it essentially restates the matters raised in its application for rehearing filed June 11, 1964, with respect to Opinion No. 428. There are, however, several matters which may properly be raised and will be considered briefly.

In its original application for rehearing United questioned the derivation of the amount of $10,772,145 representing interest on debt for the purpose of computing income taxes. We explained that the figure was derived from the debt outstanding at the end of 1962 in the amount of $239,381,000 as shown in United's 1962 Annual Report to the Commission on Form 2. United now points out that the annual report shows actual interest for 1962 in the amount of $10,573,947 instead of $10,772,145. The lower figure reflects changes in the outstanding debt during the year. In our original Opinion we determined that it was more appropriate to use the debt outstanding at the end of the year. The amount of $10,772,145 represents the interest on that debt rounded off to a composite rate of 4.5 percent. However, if United wishes to compute the interest on each issue of bonds and notes at the applicable interest rates so as to arrive at the somewhat more accurate figure of $10,736,315, it may do so.

In the order accompanying Opinion No. 428–A we added a new paragraph (N) providing as follows:

> The obligations imposed on United by this order shall apply only to the period before the rates herein prescribed (and as modified by further filings required) are superseded by subsequent rates prescribed or approved by the Commission as the result of rate proceedings or settlements.

United indicates that this paragraph restrains it in filing new rates and is beyond the power of the Commission. Paragraph (N) is a generalization of the same provision found in paragraph (I) of our original order and is rather designed to limit the effects of our order. It has nothing to do with United's right or lack of right to file rate changes.

United argues that in accordance with the Commission's order issued August 24, 1964, 32 FPC 653, suspending United's increased rates in Docket No. RP65–1, there will be a "locked-in" period for the RP63–1 rates extending from January 1, 1963, to February 1, 1965, and that actual figures can be used for this period instead of the estimates used in Opinion Nos. 428 and 428–A. Such a proposal merely solicits relitigation of the issues here resolved, and would invite a multiplicity of rate filings. Further, in our opinion, it would greatly delay the disposition of Docket No. RP63–1 if the record were left open to receive the actual figures relating to this period, for a new set of figures would require further hearing and cross-examination after the end of the period. *Cf. State Corp. Comm. of Kansas v. F.P.C.*, 215 F. 2d 176 (CA8). In any case United has precluded any such course, or at least for some time, by filing petitions for review.

United has filed an application for a stay of the ordering paragraphs of Opinion Nos. 428 and 428–A. We think that United's application for a stay should be denied. A stay would harm its customers and would be contrary to

the public interest in just and reasonable rates. See *Virginia Petroleum Jobbers v. F.P.C.*, 259 F. 2d 921 (CADC). The accumulation of amounts to be refunded if a stay were granted does not provide satisfactory protection to the consumers who may be quite different at the time a refund is made from what they were at the time the rates were paid.

The Commission further finds:

(1) The portions of United's application for rehearing listed below should be rejected.

(2) The assignments of error and grounds for rehearing set forth in those parts of United's application for rehearing which are properly filed present no facts or principles of law which were not considered by the Commission when it issued its Opinion No. 428–A, or which having now been considered, warrant any change in, modification of, or rehearing of such Opinion and order, except as specified below.

(3) The motion and application of United for a stay of Opinion Nos. 428 and 428–A and accompanying orders should be denied.

The Commission orders:

(A) The following portions of United's application for rehearing filed September 10, 1964, are hereby rejected:

Page 1 last two lines through page 50 first two lines.

Page 51 third line through page 60 first two paragraphs.

(B) To the extent not rejected United's application for rehearing filed September 10, 1964, is hereby denied.

(C) In computing the rates and refunds as required in the order attached to Opinion No. 428–A, United may use the amount of $10,736,315 for tax deductible interest instead of the amount of $10,772,145 specified in Opinion Nos. 428 and 428–A.

(D) The motion and application of United for stay of Opinion Nos. 428 and 428–A and accompanying orders, pending judicial review, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CHATTANOOGA GAS COMPANY, COMPLAINANT v. EAST TENNESSEE NATURAL GAS COMPANY, DEFENDANT, DOCKET NO. RP65-3

ORDER INSTITUTING INVESTIGATION, PROVIDING FOR HEARING AND DESIGNATING PROCEDURE

(Issued October 1, 1964)

On July 29, 1964, Chattanooga Gas Company (Chattanooga) filed a formal complaint naming its sole supplier, East Tennessee Natural Gas Company (East Tennessee) as defendant. Citing Article I of its 1959 service agreement with East Tennessee and the latter's rate schedules G-2 (firm service) and I-1 (interruptible service) under which Chattanooga purchases gas, the complaint alleges, among other things; that the service agreement provides that Chattanooga shall not manufacture gas without East Tennessee's permission, nor purchase gas from sellers other than East Tennessee so long as requirements remain under 40,000 Mcf per day; that Chattanooga's present requirements are 31,500 Mcf per day; that to the extent the foregoing provisions constrict Chattanooga's freedom to contract for, and to purchase additional volumes up to 40,000 Mcf per day, from less costly sources of supply, said provisions conflict with the principal purpose of the Natural Gas Act; that the firm service rate presently charged by East Tennessee is so high as to preclude Chattanooga from meeting competition; that with respect to interruptible sales, Farmers Chemical Association, Inc. (Farmers Chemical), its largest industrial customer proposes to purchase its future requirements from a projected new pipeline owned by Georgia-Tennessee Gas Corporation (Georgia-Tennessee); that to date frequent interruptions of service in the supply of East Tennessee's gas have seriously reduced the revenues of Farmers Chemical by limiting its production of anhydrous ammonia and sales of products; and that Farmers Chemical now demands firm service instead of interruptible service and finds the cost of firm service from Georgia-Tennessee to be less costly than firm service derived from East Tennessee's gas available through Chattanooga. Complainant further alleges that unless it can obtain gas from East Tennessee under terms permitting it to compete with the proposed rates of Georgia-Tennessee, Chattanooga may lose its largest industrial customer and be obliged to seek increased rates from its remaining customers.

Chattanooga further states that it has entered into a precedent agreement with Southern Natural Gas Company (Southern) to acquire a firm supply of gas at rates substantially lower than those available from East Tennessee and that it proposes to sell such gas to Farmers Chemical and others; that this method of meeting competition however would be frustrated if the aforementioned provisions of Chattanooga's service agreement were construed as a limitation upon its freedom to obtain supplies in excess of 31,500 Mcf per day from sources other than East Tennessee; that if the aforementioned provisions of the service agreement so restrain Chattanooga from obtaining additional volumes of gas at lower rates from other suppliers, such restraint and the consequent lessening of competition would appear to violate Section 3 of the Clayton Act, 15 U.S.C.A. § 14; further, that preclusion of Chattanooga from additional volumes of gas at lower cost from another supplier would constitute undue discrimination against Chattanooga for the reason, among others, that

East Tennessee's proposed service agreement with Roanoke Gas Company in Docket No. CP64–21 does not restrain Roanoke by compelling it to make all future purchases from East Tennessee; that Chattanooga entered into the 1959 service agreement under duress and that the Commission did not grant East Tennessee an exclusive franchise for all future gas requirements of Chattanooga.

The complaint filed under Sections 4(a), 4(b) and 5(a) of the Act, requests, among other things, a public hearing and prescription of tariff provisions, rules, regulations, practices and a service agreement which are just, reasonable and not unduly discriminatory in relation to service to be rendered by East Tennessee to Chattanooga.

East Tennessee filed its answer to the foregoing complaint on September 8, 1964, setting forth a general denial of undue discrimination and stating in particular, among other things: that East Tennessee proposes to file by September 14, 1964, an application for authorization to serve Chattanooga with the volumes of gas necessary to meet the entire requirements of Farmers Chemical; that until the issues in that proceeding and those in pending application by Southern at Docket No. CP64–314 are decided, a public hearing herein would be premature; that East Tennessee was authorized to serve Chattanooga by Commission order in Opinion No. 163 (7 FPC 5) issued February 2, 1948, Docket No. G–889; that the Chattanooga market was absolutely essential to the feasibility of East Tennessee's proposal; that the fact of the denial of Southern's application to serve the same market evinced the conclusion that the market was too small to justify supplies from two pipelines; that Chattanooga purchased approximately 37% of East Tennessee's sales for resale and 21% of its total sales in 1963; that East Tennessee on April 1, 1964, made rate reductions equivalent to 6.5¢ per Mcf in firm service gas purchases by Chattanooga; that at no time in 1963 was Farmers Chemical completely curtailed; that Farmers Chemical does not demand firm service, but would be willing to take 65% firm, and 35% interruptible service which East Tennessee can furnish. Defendant further denies that its service agreement with Chattanooga was executed under economic duress and alleges that Chattanooga has a long history of agreeing to successive amendments of the initial service agreement since 1950, which culminated in the present one.

The pleadings leave unresolved substantial questions of fact and law bearing upon issues evoked by conflicting contentions concerning the service agreement, East Tennessee's tariff and the relative costs of gas; whether, among other things, Chattanooga is subject to undue discrimination and if so, the tariff provisions, rules and regulations the Commission should prescribe, pursuant to the provisions of the Act, for service to Chattanooga by East Tennessee. East Tennessee contends that a public hearing herein should be deferred on account of pending certificate proceedings. However, the complaint is filed under Sections 4 and 5 of the Act and while in some areas, the problems presented may have relationship with possible future developments in certificate proceedings, the allegations of the complaint, on the other hand, bear upon existing facts and conditions, and upon rates presently effective. It is our view, therefore, that pendency of certificate applications relating to future operations do not constitute a valid basis for deferring a public hearing on the complaint.

It appears that a public hearing should be held in order to afford all parties opportunity to present evidence concerning the issues herein; that Chattanooga has the obligation of adducing evidentiary support of its allegations and of going forward first in the presentation of its case-in-chief; that the issues

herein should be determined with the greatest possible expedition in conformity with Section 2.59(h) of the Commission's Rules of Practice and Procedure and to that end, each party should have the opportunity to understand and evaluate the positions of the other parties. All matters which can be fully resolved without formal trial should be eliminated from hearing and settled by stipulation.

The Commission finds:

It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the issues raised by the complaint filed by Chattanooga be set for public hearing and that the proceeding be expedited in accordance with the procedures set out below.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Natural Gas Act, particularly Sections 5, 15, and 16 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act (18 CFR, Chapter I), a public hearing be held concerning the matters involved and the issues presented in this proceeding.

(B) At the hearing herein, the complainant, Chattanooga, shall have the obligation of going forward first with the presentation of its direct case-in-chief.

(C) Chattanooga shall serve the prepared testimony and exhibit constituting its case-in-chief, upon all parties on or before October 19, 1964.

(D) The defendant, East Tennessee, shall serve the prepared testimony and exhibits comprising its direct case upon all parties on or before November 13, 1964.

(E) The Commission staff and all other parties to this proceeding proposing to present evidence herein, shall serve their prepared testimony and exhibits on all parties on or before November 18, 1964.

(F) The Presiding Examiner shall set the date for the service of Chattanooga's rebuttal case and, if determined necessary and appropriate without unduly delaying the proceeding he may provide for filing of cross-rebuttal between the parties (including Staff) on a date prior to the date set for service of Chattanooga's rebuttal.

(G) Presiding Examiner Seymour Wenner or any other officer or officers of the Commission designated by the Chief Examiner for that purpose (see Delegation of authority, 27 F.R. 4276, etc.), shall preside at the prehearing conference and at the hearing in this matter, pursuant to the Commission's Rules of Practice and Procedures, and as further provided by this order, shall set the date of hearing by notice thereof.

(H) Without limitation upon the authority of the Presiding Examiner to convene conferences prior to, or subsequent to the date herein fixed, pursuant to the provisions of Section 1.18 of the Commission's Rules of Practice and Procedure, a prehearing conference before the Presiding Examiner herein designated shall commence at 10:00 A.M. (EST) on November 23, 1964, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., 20426, for the purpose of effectuating the intent of the Commission as hereinabove set out.

(I) Notices and petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the Commission's Rules of Practice and Procedure, Sections 1.8 and 1.37(f) [18 CFR 1.8 and 1.37(f)] on or before October 9, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., PROJECT NO. 2338

ORDER REOPENING THE RECORD AND FIXING ORAL ARGUMENT

(Issued October 1, 1964)

On July 31, 1964, the Presiding Examiner issued his decision in the above proceeding on application for license. Briefs on exceptions have been filed by certain parties, including the Town of Yorktown (Yorktown), Intervener, which objects to the decision in that it would permit a portion of the project transmission line to traverse Yorktown. In addition, Yorktown has moved that the hearings be reopened to permit it to introduce evidence of the effect on the community of the transmission line route. In explanation of its absence from sessions of the hearing at which testimony was heard on this subject, Yorktown states it had been led to believe that the route would bypass the Town except for a short stretch.

The Commission finds:

It is appropriate and in the public interest that oral argument be held before the Commission respecting the issues involved in this proceeding and that the record should be reopened as ordered hereafter.

The Commission orders:

(A) The record in the above-entitled proceeding is reopened to permit Yorktown to file with the Commission by November 2, 1964, and serve on staff counsel and parties of record, such written testimony as it deems relevant to the issue of the location and characteristics of the project transmission line.

(B) The Applicant may, by November 9, 1964, file with the Commission and serve on staff counsel and the parties its rebuttal testimony.

(C) Oral argument shall be held before the Commission at 10 a.m. (EST) on November 17, 1964, in the Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., respecting the issues involved in this proceeding.

(D) Any party to this proceeding desiring to participate in oral argument shall advise the Secretary of the Commission on or before November 1, 1964, to that effect and shall state the amount of time it wishes for argument.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NEW ENGLAND POWER COMPANY

ORDER ACCEPTING RATE SCHEDULES EFFECTING RATE REDUCTIONS FOR FILING, DIRECTING STAFF INVESTIGATION AND SUBMISSION OF DATA

(Issued October 1, 1964)

On August 26, 1964, New England Power Company (NEPCO), Boston, Massachusetts, filed, pursuant to Section 205 of the Federal Power Act, proposed rate schedules for wholesale electric service to five customers, three of which are

affiliated companies, at a W–4 rate to supersede its present W–3 rate, and three customers at an R–1 rate. The proposed W–4 rate reduces NEPCO's demand charge from $2.95 to $2.86 per kw of billing demand per month, and decreases the accompanying energy charge from 6.4 mills per kwh to 6.2 mills per kwh. The proffered R–1 rate is a two-part rate, consisting of a demand charge of $3.17 per kw of billing demand per month and an energy charge of 7.0 mills per kwh for the first 4,000,000 kwh delivered during the month and 6.5 mills per kwh for amounts in excess thereof. Rates W–4 and R–1 are more fully identified and designated in attached Appendix A.

The recent rate schedule filings would effect an aggregate reduction of $2,135,918 in electric charges to NEPCO's present wholesale customers served by or through NEPCO and its corporate affiliates, chiefly Massachusetts Electric Company (Masselec). Rate W–4 provides direct service from the Company's interconnected generating and transmission system. Rate R–1 provides for service at wholesale from NEPCO to electric customers currently served by means of additional delivery facilities of NEPCO or its corporate affiliates, chiefly Masselec. The latter customers include 20 municipals,[1] 2 investor owned electric systems[2] and three operating districts of Masselec and Granite State Electric Company (Granite State), another corporate affiliate of NEPCO.

As filed, R–1 is applicable upon agreement to a two year contract service period. Contracts embodied in specific rate schedule submittals covering the three operating districts of Masselec and Granite State and reflecting the R–1 rate have been filed. If in addition, to those customers, the R–1 rate is accepted by Manchester Electric Company, Green Mountain Power Corporation (Stanford district) and by municipal systems currently served by Masselec, it would afford an aggregate reduction to those wholesale customers of $266,000 from charges of Masselec during 1963, a 4.3% reduction in those customers' 1963 purchased power expenses ($6,190,000).[3]

NEPCO's proposed W–4 rate would result in an annual reduction in revenue of $2,101,305, to NEPCO, or 3.1% to the five resale customers presently served under NEPCO's W–3 rate, Masselec, Granite State, Narragansett Electric Company, Fitchburg Gas and Electric Company and Littleton, New Hampshire.

Commission Opinion No. 438, issued July 27, 1964, 32 FPC 373, directed NEPCO to undertake direct service to the Municipal Light Department, Shrewsbury, Massachusetts, replacing Masselec, the Town's former supplier. This made it eligible for the W–3 rate then in effect and makes it eligible for the new W–4 rate. It is also eligible for the R–1 rate by the express terms of that schedule. As we indicated in our Opinion No. 438–A, there is a continuing question of classification involving not only Shrewsbury but at least some of NEPCO's other wholesale customers as well, which will eventually have to be resolved—namely, the basis for NEPCO having two separate rate schedules for wholesale service and, assuming the dual system is justified, which of its customers properly fall into each category. We shall give consideration to this question in our

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[1] Ashburnham, Boylston, Danvers, Georgetown, Groton, Groveland, Holden, Littleton, Mansfield, Marblehead, Merrimac, Middleton, North Attleborough, Paxton, Peabody, Princeton, Shrewsbury, Sterling, Templeton and West Boylston, Massachusetts.

[2] Manchester Electric Company and Stanford, Vermont District of Green Mountain Power Corporation.

[3] Subsequent to the tender of the subject rate schedules here accepted for filing NEPCO tendered other rate schedule submittals covering R–1 service to Green Mountain Power Corporation, Manchester Electric Company and the Towns of Georgetown, Groveland, Marblehead and Merrimac, Massachusetts.

continuing study of the NEPCO rate structure. Meanwhile Shrewsbury may, at its option, take service from NEPCO at either the W–4 or R–1 rate.

In accepting NEPCO's rate schedules for filing as hereinafter provided, the Commission recognizes the need for further active consideration of the level of all of NEPCO's rates and charges as well as the terms and conditions under which the Company undertakes to serve wholesale electric customers, including provisions as to availability of W–4 and R–1 service, metering and voltage discounts and resale to other utility systems. Our jurisdiction over interstate wholesale rates and charges is a continuing matter and in the exercise thereof, we intend to assure the integrity of wholesale power supply to all customers at the lowest reasonable rates and charges, under proper terms and conditions of service. Accordingly, our action in accepting the rate schedules of NEPCO is not to be construed as approval by the Commission as to rate level, rate design, or the terms and conditions of NEPCO's wholesale electric service. Nor is it to be understood as in any way prejudicing the opportunity to file complaints with this Commission by wholesale power customers of NEPCO or its corporate affiliate. On September 30, 1964, comments were received from the Municipal Electric Association of Massachusetts and a number of its constituent members[4] which indicate dissatisfaction with various aspects of NEPCO's and Masselec's present rates and proposed rates W–4 and R–1. In general, these comments call to our attention matters previously communicated to the Commision and its staff through conferences between representatives of the Association and staff. The matters which the municipalities would have us consider are included within those to be investigated by the staff as ordered herein. We note that certain of the comments seek Commission suspension of the availability clause of rate W–4. In our opinion, this would have the legal effect of continuing in operation an availability clause of NEPCO's rate W–3, a provision no less restrictive than the provisions of W–4 about which comments are made. NEPCO's rates W–4 and R–1 being rate reductions we see no useful purpose in the suspension of the schedules of rates and charges therein.

By order of the Commission issued February 28, 1962, 27 FPC 404, we granted a request by NEPCO for an increase in its wholesale rates and charges as reflected in its W–3 rate schedule. That increase, then estimated to amount to approximately $1,500,000 annually, was granted to facilitate improved operating efficiencies and reduced power costs for NEPCO and its corporate affiliates. NEPCO's operating experience and Commission staff analysis since that time indicates continuing improvement in power costs of NEPCO. Projections through the year 1967 are set forth in this Commission's staff study published June, 1964. Our analysis of that study, data submitted in support of the recent rate filings, and representations by the Municipal Electric Association of Massachusetts indicate that further and substantial rate reductions may be possible. We believe this fact is recognized by the Company's undertaking to supply additional cost of service data and review the Company's rate structure early in the calendar year 1965 based on 1964 actual operating experience.

To minimize the effect of any possible regulatory lag, we are here directing the submission of NEPCO's 1964 cost of service data on or before February 15, 1965; that data to be submitted in such form as would serve as part of the Com-

[4] Included within the membership of the Association are all municipally owned resale purchasers from Masselec as well as purchasers from other electric systems.

pany's case in chief. To the extent that further wholesale reductions are indicated but not voluntarily effected by NEPCO, we intend that a formal rate hearing be convened promptly and this matter disposed of in accordance with our rate regulatory jurisdiction under the Federal Power Act.

NEPCO requests that the proposed rate schedules become effective as of October 1, 1964. As indicated above, Rate W–4 is available to all customers of NEPCO currently served under its W–3 rate, including the Town of Shrewsbury whose service we directed. R–1, an optional rate, is available to all wholesale customers of NEPCO and its corporate affiliates not directly connected to NEPCO's generating and transmission system, including the Seekonk operating district of Masselec and Pelham and Salem operating districts of Granite State, 20 municipal electric systems (including the Town of Shrewsbury if it should elect to take the R–1 rate), and two non-affiliated, investor owned companies, Green Mountain Power Corporation and Manchester Electric Company, presently served by Masselec. Masselec and its corporate affiliate, Narragansett Electric Company, have tendered certain rate schedule submittals to reflect this change in the power supply of the three operating districts of Masselec and Granite State.

The Commission further finds:

It is necessary and appropriate for the purpose of the Federal Power Act, particularly Sections 205, 206, 307, and 309 thereof, that NEPCO's, Masselec's and Narragansett's proffered rate schedules, as identified and designated in the attached Appendix A, be accepted to become effective as filed rate schedules under that Act on and after October 1, 1964; and that NEPCO be directed to submit cost data for the 1964 calendar year, together with such additional financial or other data as may be required by staff in its continuing review of NEPCO's utility operations.

The Commission orders:

(A) NEPCO's, Masselec's and Narragansett's rate schedules identified and designated in the attached Appendix A are hereby accepted for filing pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations under that Act, to become effective as filed rate schedules of those companies on October 1, 1964.

(B) On or before February 15, 1965 NEPCO shall show its cost of rendering service under the revised rate schedules referred to above, calculated in accordance with applicable Commission rulings and utilizing, among other things, as the test period the calendar year 1964 adjusted for the rate changes for the calendar year 1964, a prudent net investment rate base, and a fair rate of return thereon; and shall furnish such additional data as may be required by the Commission staff in its continuing review of NEPCO's utility operations.

(C) The foregoing showing shall not preclude or limit any additional showing by NEPCO, or its corporate affiliates, and shall be without prejudice either to any future action by the Commisison or its staff or to any future position NEPCO and its corporate affiliates may wish to take as to the significance of, or conclusions to be drawn from, the above factual showing.

(D) The foregoing showing shall be submitted in writing with sufficient copies to provide this Commisison with six copies and to provide each State Commission affected with a like number of copies.

APPENDIX A

RATE SCHEDULE DESIGNATIONS

Rate schedule designations	Other party	Date of Instrument	Description
New England Power Company: Supp. No. 4 to Rate Schedule FPC No. 105 (Supersedes Supp. 2 to FPC 105).	Fitchburg Gas & Electric Co.	Undated	Decrease from W-3 to W-4.
Supp. No. 5 to Rate schedule FPC No. 106 (Supersedes Supp. 2 to FPC 106).	Narragansett Electric Company.	do	Do.
Supp. No. 3 to Rate Schedule FPC No. 112 (Supersedes Supp. 2 to FPC 112).	Granite State Electric Company.	do	Do.
Supp. No. 2 to Rate Schedule FPC No. 116 (Supersedes Supp. 1 to FPC 116).	Town of Littleton, New Hampshire.	do	Do.
Supp. No. 5 to Rate Schedule FPC No. 118.	Massachusetts Electric Company.	do	Do.
Supp. No. 1 to Rate Schedule FPC No. 112.	Granite State Electric Company (Pelham and Salem Districts).	8/26/64	Cancels contract for service to 2 districts.
Rate Schedule FPC No. 122 (Supersedes Supp. 1 to FPC 112 and supplement thereto).	Granite State Electric Company (Pelham and Salem Districts).	do	Substitutes proposed R-1 for W-3.
Rate Schedule FPC No. 123	Massachusetts Electric Company (Seekonk District).	do	Do.
Supp. No. 6 to Rate Schedule FPC No. 118.	Massachusetts Electric Company (Seekonk District).	do	Cancels contract for service to 2 districts.
Massachusetts Electric Company: Supp. No. 1 to Rate Schedule FPC No. 7.	Granite State Electric Company (Pelham and Salem Districts).	do	Cancels contract for use of facilities.
Rate Schedule FPC No. 32 (Supersedes FPC 7 and supplement thereto).	New England Power Company.	do	Use of facilities.
Narragansett Electric Company: Supp. No. 1 to Rate Schedule FPC No. 20.	Massachusetts Electric Company (Seekonk District).	8/26/64	Cancels contract for use of facilities.
Rate Schedule FPC No. 23 (Supersedes FPC 20 and supplement thereto).	New England Power Company.	8/26/64	Use of facilities.

Effective dates or designations have not been assigned to notices of cancellation of Supp. No. 1 to Nepco's Rate Schedule FPC No. 112, Masselec's Rate Schedule FPC No. 7, and Narragansett's Rate Schedule FPC No. 20 since these rates are superseded by other rate schedule filings and the proffered notices of cancellation therefore are unnecessary.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOUTHERN CALIFORNIA EDISON COMPANY, PROJECT NO. 2085

ORDER DETERMINING ACTUAL LEGITIMATE ORIGINAL PROJECT COST, NET CHANGE THEREIN, AND PRESCRIBING ACCOUNTING THEREFOR

(Issued October 1, 1964)

Southern California Edison Company, Licensee for Project No. 2085,[1] filed its initial statement of claimed cost, pursuant to Section 4.1 of the Commission's Regulations under the Federal Power Act, on February 13, 1961, showing a

[1] The project, known as Mammoth Pool Project, is located in the Sierra National Forest, on the San Joaquin River, Rock Creek, and Ross Creek, in Fresno, and Madera Counties, California. The license for the construction, operation and maintenance of the project was issued under Section 4(e) of the Federal Power Act for a period of 50 years, effective as of December 1, 1957.

claimed actual legitimate original cost $48,898,019.11 as of December 31, 1960.[2] In addition, Licensee's books and records show for the period from January 1, 1961, through December 31, 1962, a net increase in project cost of $345,406.45, resulting in a total claimed or recorded project cost of $49,243,425.56 as of December 31, 1962.

The Commission's staff conducted a field examination of the licensee's books and records for the purpose of determining the initial actual legitimate original cost as of December 31, 1960, net changes therein through December 31, 1962, and the resulting actual legitimate original cost as of December 31, 1962.

As a result of this examination, staff proposed, subject to Commission approval, certain adjustments, agreed to by the licensee, as shown in the attached Schedules I and II. These adjustments involve a total reduction of $88,352.79 in the claimed actual legitimate original cost as of December 31, 1960, from $48,898,019.11 to $48,809,666.32. No adjustments to recorded project cost were proposed for the period from January 1, 1961 through December 31, 1962.

The proposed accounting dispositions of the amounts involved in the proposed adjustments are shown in the attached Schedule II.

By letter dated April 8, 1964, Licensee confirmed its agreement with the proposed staff adjustments and resulting project costs.

The California Public Utilities Commission was advised by letter of this Commission dated April 14, 1964, as to the proposed staff adjustments and resulting project costs. By letter dated May 29, 1964, the California Commission indicated no objection thereto.

The Commission finds:

(1) Licensee, by its acceptance of the proposed adjustments, including the accounting dispositions and resulting project costs, and the California Public Utilities Commission, by its lack of objection thereto, have obviated the necessity for notice and opportunity to protest provided in Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

(2) The proposed adjustments, including the accounting dispositions, are reasonable and appropriate for the purposes of the Federal Power Act and, therefore, should be approved and directed as hereinafter provided.

(3) The actual legitimate original cost of the project as of December 31, 1960, is $48,809,666.32; the net increase or change in the actual legitimate original cost of the project for the period from January 1, 1961, through December 31, 1962, is $345,406.45; and the resulting actual legitimate original cost of the project as of December 31, 1962, is $49,155,072.77, classified by primary plant accounts as shown in attached Schedule I.

The Commission orders:

(A) The provisions of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments, including accounting dispositions, proposed by the staff and agreed to by Licensee, are hereby approved and directed to be made by Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and subsidiary project plant accounts, showing the debit balance of $48,809,666.32 as the actual legitimate original cost of the project

[2] Article 23 of the license provides for Commission determination of the actual legitimate original cost of the project, and of any addition thereto or betterment thereof.

as of December 31, 1960, the debit amount of $345,406.45 as the net increase or change in the actual legitimate original cost of the project for the period from January 1, 1961, through December 31, 1962, and the debit balance of $49,155,-072.77 as the actual legitimate original cost of the project as of December 31, 1962, all as more specifically shown in the attached Schedule I, classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(D) Licensee shall within 90 days from the issuance of this order file with the Commission FPC Form No. 7 and three certified copies of its adjusting journal entries showing compliance therewith, and submit two additional certified copies to the Regional Accountants at San Francisco, California.

SCHEDULE I

PROJECT NO. 2085 (MAMMOTH POOL)

SOUTHERN CALIFORNIA EDISON COMPANY

Summary by detailed plant accounts of claimed initial cost as of Dec. 31, 1960, and recorded changes thereto for the period from Jan. 1, 1961, through Dec. 31, 1962, with adjustments thereto and allowed balances as of Dec. 31, 1962

Account No.	Account Title	Initial cost as of Dec. 31, 1960				Recorded changes from Jan. 1, 1961, through Dec. 31, 1962			Allowed balance as of Dec. 31, 1962
		As recorded and claimed	Adjustments	As allowed		As recorded	Adjustments	As allowed	
				Before distribution	After distribution				
		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	Hydraulic production plant								
330[1] (320)	Land and land rights	$140,979.36		$140,979.36	$162,941.68				$162,941.68
331 (321)	Structures and improvements	831,733.32		831,733.32	1,465,249.89	$33.65		$33.65	1,465,283.54
332 (322)	Reservoirs, dams, and waterways	24,419,914.29		24,419,914.29	38,210,307.51	216,976.95		216,976.95	38,427,284.46
333 (323)	Water wheels, turbines, and generators	4,144,733.86		4,144,733.86	5,512,749.69	77,000.00		77,000.00	5,589,749.69
334 (324)	Accessory electric equipment	528,704.12		528,704.12	796,574.97	622.76		622.76	797,197.73
335 (325)	Miscellaneous power plant equipment	380,669.15		380,669.15	451,880.90	50,773.09		50,773.09	502,653.99
336 (326)	Roads, railroads, and bridges	672,380.92		672,380.92	914,451.82				914,541.82
	Total hydraulic production plant	31,119,115.02		31,119,115.02	47,514,246.46	345,406.45		345,406.45	47,859,652.91
	Transmission plant								
350 (340)	Land and land rights	4,294.18	($200.00)	4,094.18	4,331.19				4,331.19
351 (341)	Clearing land and rights-of-way	7,772.45		7,772.45	15,763.38				15,763.38
353 (343)	Station equipment	586,523.84		586,523.84	763,529.84				763,529.84
354 (344)	Towers and fixtures	222,980.29		222,980.29	260,813.07				260,813.07
356 (346)	Overhead conductors and devices	133,634.93		133,634.93	155,787.32				155,787.32
359 (349)	Roads and trails	20,295.18	(1,176.20)	19,118.98	37,653.15				37,653.15
	Total transmission plant	975,500.87	(1,376.20)	974,124.67	1,237,877.95				1,237,877.95

	General plant								
397 (378)	Communication equipment	39,556.00		39,556.00	57,541.91				57,541.91
	Total direct costs	32,134,171.89	(1,376.20)	32,132,795.69	48,809,666.32	345,406.45		345,406.45	49,155,072.77
	Indirect construction costs								
61	Temporary construction facilities	2,141,170.84	(56.84)	2,141,114.00					
62	Construction equipment	3,681,281.32	(86,291.89)	3,594,989.43					
63	Camp and commissary	1,246,253.32	(71.29)	1,246,182.03					
64	Labor expense	90,231.85		90,231.85					
65	Superintendence, timekeepers, clerks, etc	1,526,299.49	(146.47)	1,526,153.02					
66	Insurance, injuries and damages	357,207.28	(3.71)	357,203.57					
69	Contractor's fees	1,801,501.90	(65.31)	1,801,436.59					
	Total indirect construction costs	10,843,946.00	(86,635.51)	10,757,310.49					
	Overhead construction costs								
71	Engineering	2,513,399.81	(246.44)	2,513,153.37					
75	Taxes during construction	219,169.93	(11.17)	219,158.76					
76	Administrative and general expenses	768,524.82	(38.63)	768,486.19					
77	Interest during construction	2,418,806.66	(44.84)	2,418,761.82					
	Total overhead construction costs	5,919,901.22	(341.08)	5,919,560.14					
	Total indirect and overhead costs	16,763,847.22	(86,976.59)	16,676,870.63					
	Total cost of project	48,898,019.11	(88,352.79)	48,809,666.32	48,809,666.32	345,406.45		345,406.45	49,155,072.77

( ) Denotes credit.
[1] Account numbers in effect prior to Jan. 1, 1961.

SCHEDULE II

PROJECT NO. 2085 (MAMMOTH POOL)

SOUTHERN CALIFORNIA EDISON COMPANY

Summary of adjustments to claimed initial cost as of Dec. 31, 1960, and accounting disposition thereof

Account No.	Account Title	Total	No. 1 Additional salvage of material and equipment	No. 2 Excessive depreciation charge on automotive equipment	No. 3 Nonproject road
		(1)	(2)	(3)	(4)
	Transmission plant				
(1) 350 (340)	Land and land rights	($200.00)			($200.00)
359 (349)	Roads and trails	(1,176.20)			(1,176.20)
	Total transmission plant	(1,376.20)			(1,376.20)
	Indirect construction accounts				
61	Temporary construction facilities	(56.84)			(56.84)
62	Construction equipment	(86,291.89)	($82,687.67)	($3,139.51)	(464.71)
63	Camp and commissary	(71.29)			(71.29)
65	Superintendence, timekeepers, clerks, etc.	(146.47)			(146.47)
66	Insurance, injuries, and damages	(3.71)			(3.71)
69	Contractor's fees	(65.31)			(65.31)
	Total indirect construction costs	(86,635.51)	(82,687.67)	(3,139.51)	(808.33)
	Overhead construction costs				
71	Engineering	(246.44)			(246.44)
75	Taxes during construction	(11.17)			(11.17)
76	Administrative and general expenses	(38.63)			(38.63)
77	Interest during construction	(44.84)			(44.84)
	Total overhead construction costs	(341.08)			(341.08)
	Total adjustments	(88,352.79)	(82,687.67)	(3,139.51)	(2,525.61)
	Accounting disposition				
101 (100.1)	Electric plant in service—nonproject	2,525.61			2,525.61
107 (100.3)	Construction work in progress—electric	82,687.67	82,687.67		
108 (250.1)	Accumulated provision for depreciation of electric plant in service—nonproject	3,139.51		3,139.51	
	Total disposition	88,352.79	82,687.67	3,139.51	2,525.61

( ) Denotes credit.
[1] Account numbers in effect prior to Jan. 1, 1961.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SUN OIL COMPANY, DOCKET NO. G-8288, ET AL. AND G-18353 [1]

ORDER CONDITIONALLY APPROVING RATE SETTLEMENT PROPOSAL, SEVERING AND TERMINATING PROCEEDINGS AND PRESCRIBING REFUNDS

(Issued October 1, 1964)

There is before us for consideration a Motion for Approval of Settlement Proposal, Termination of Rate Proceedings, and for Shortened Procedure Certification filed on July 31, 1964, by Sun Oil Company (Sun) encompassing

[1] The additional dockets involved herein are set forth in Appendices A, B, and C, attached hereto.

the rates for 95 of Sun's currently effective FPC Gas Rate Schedules. Comments have been filed by some of the parties to these proceedings, all of which have been given due consideration. In summary, the settlement proposal as filed by Sun provides:

(1) Settlement rates, including tax reimbursement, equal to or less than the Commission's applicable area ceilings with three exceptions hereinafter discussed;

(2) Sun waives the right to file for contractually authorized increased rates until August 1, 1967, for all of the rate schedules involved in the settlement However, Sun reserves the right to file for any increased rates, if contractually authorized, up to the applicable area-rate levels established by any order or rule of the Commission, or to file for any contractually authorized increase in tax reimbursement;

(3) Sun will delete any favored-nation and price redetermination clauses contained in its Rate Schedule Nos. 9, 10, 11, 12, 13, 15, 33, 67, 79, 104, 170, and 171, and additionally will delete the periodic pricing provisions in its Rate Schedule Nos. 27, 29, 41, 42, 70, and 87;

(4) Refunds with interest at the applicable rates, under rate schedules where collection was made subject to refund, of the difference between the revenues actually collected and those which would have been collected at the settlement rate, in each instance, commencing with January 1, 1961, to the date of issuance of this order for all of Sun's rate schedules, excepting Rate Schedule No. 119 for which the refund commencement date would be April 1, 1963, in accordance with other recent settlements we have approved in the consolidated proceedings in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, and Rate Schedule No. 87 whereunder Sun proposes a refund rate different than the proposed settlement rate;

(5) Exclusion from the settlement proposal of 13 sales in the Permian Basin; 13 sales related to previous offers of settlement accepted by the Commission; 1 sale to another producer whose resale rate is under suspension; and 10 sales consolidated in certificate proceedings that are presently before the Commission.

With respect to refunds, the parties to the settlement conference utilized cost of service studies and revenues based on contract rates to determine Sun's revenue-cost relationship. These studies indicate that it is appropriate that we require that refunds should be computed for sales made on and after January 1, 1961, excepting the refunds to be made under Sun's Rate Schedule No. 119 which will be computed for sale made on and after April 1, 1963, in accordance with our previous orders accepting settlements in proceedings in *Union Texas* (*supra*). Additionally, as noted above, in regard to Sun's Rate Schedule No. 87, it proposes to make refunds computed on a rate of 17¢ per Mcf, although it proposes to reduce the presently effective rate of 21¢ per Mcf to the settlement rate of 15.0256¢ per Mcf. This rate schedule is for a sale by Sun to Southern Natural Gas Company in the Gwinville Field, Mississippi. We have recently considered a similar proposal involving the same purchaser in the same field in *Humble Oil & Refining Company*, Docket No. G–9287 and G–9288, *et al.*, 32 FPC 49 and 542, orders issued July 8, and August 7, 1964, and there found no justification for a departure from the established policy of requiring refunds for all rates schedules, where refunds are due, for the same period of time. In this instance, we likewise find no justification for departing from our policy of requiring that where refunds are required in general rate settlements the refund amount for each rate schedule, where collection was made subject to refund, be computed as the difference between such a rate and the settlement rate. Therefore, for all of the reasons set forth in our orders in *Humble* (*supra*) we shall condition our approval of Sun's proposal to require it to make refunds under its Rate Schedule No. 87 in accord with the same terms and conditions as under the

other rate schedules involved in the settlement. Applicable interest shall be paid on all of the refunds through July 31, 1964. As herein conditioned, such refunds will be approximately $4,250,000, exclusive of interest. Sun's future revenues will be decreased approximately $1,400,000 annually as a result of the settlement.

The purchasers of gas under the various rate schedules to which this settlement proposal relates are all natural gas pipeline companies subject to our jurisdiction under the Natural Gas Act, and many of such purchasers in turn have customers who are natural gas pipelines. Some of these pipeline customers of Sun or Sun's customers are required under express provisions of outstanding orders of this Commission to flow through to their customers all or any part of the refunds they may receive from Sun as a result of this settlement; others may choose so to do in the absence of such express provisions. For all of the reasons set forth in our order in *Humble* (*supra*) we shall require Sun to retain the amounts of refund ordered herein until further order directing the nature of their disposition [2] and also to submit within 45 days of this order to the Commission and each customer a detailed report setting out, by purchasers, the amount of refund related to each rate schedule, the volume of gas sold thereunder and the period covered. We shall also by separate action direct each of the pipeline purchasers within ten days from the receipt of such report, to submit a report of their own setting forth whether they intend to pass on all or part of such refund amounts to their customers and the names of such customers and amounts of refund each would receive, or, if they claim the right to retain any portion of the refunds, a brief statement as to the legal or equitable basis for such claim. In the event such reports indicate that the refunds will flow through to ultimate consumers or distribution companies not subject to the Commission's jurisdiction, the Commission will authorize the release of such refund sums by Sun (unless a state regulatory authority after notification of the sum to be made available to a company subject to its regulatory jurisdiction asks us to defer releasing the funds until it can determine their ultimate disposition). In the event a pipeline purchaser from Sun (or a pipeline customer of such a pipeline) indicates that it is asserting a claim to retain substantial refund sums the Commission will by further order prescribe the procedure for determining the relative rights to such funds of such pipeline or its customers.

Settlement rates which are exceptions to the applicable area ceiling are proposed by Sun for a sale to Tennessee Gas Transmission Company (TGT) in the Six Parish Area in South Louisiana under Sun's FPC Gas Rate Schedule No. 37, and a sale to Transcontinental Gas Pipe Line Corporation (Transco) in the North Markham and North Bay City Fields in Texas Railroad District No. 3 under Sun's FPC Gas Rate Schedule No. 27. The circumstances surrounding the sale to TGT are the same as those we considered in *Sohio Petroleum Company*, Docket No. G–8488, *et al.*, 30 FPC 1623 (Order issued December 30, 1963) where we there approved the same settlement rate for a sale to TGT as Sun herein proposes. Therefore, we shall herein approve Sun's proposal to reduce the currently effective rate of 23.675¢ per Mcf to 17.75¢ per Mcf for this sale.

As to the sale to Transco, Sun proposes to dedicate substantial additional reserves approximating sixty-million Mcf of gas, and to extend the term of the contract for a period of three years so that it will run to December 24, 1973. Additionally, Sun proposes to eliminate the periodic price escalation provision

[2] Exempted from this requirement are the refunds to be made to Marshall R. Young Drilling Co. since the amount of refunds to this company is *de minimis*.

from the contract and will retain the existing maximum quantities which Transco is now obligated to take under the contract. We have in other general rate settlements considered like circumstances, and have approved settlement rates which were exceptions to the applicable area ceilings, *e.g.*, *Gulf Oil Corporation, et al.*, Docket No. G–9520, *et al.*, 29 FPC 837, and, therefore, we find Sun's proposed settlement rate of 15.5¢ per Mcf to be proper and approve the same.

The settlement proposal includes rates for which issuance of related permanent certificates is pending, some of which are for sales presently being made under temporary certificates.[3] We shall set such applications for abridged hearing in accordance with Section 7 of the Natural Gas Act, providing that the settlement rates shall be the initial rates.

Additionally, included in the settlement proposal are pending certificate applications for sales by Sun in Texas Railroad Commission District Nos. 3 and 4. The sale in District No. 3 is to Trunkline Gas Company in the Sarah White Field, Galveston County, under Sun's FPC Gas Rate Schedule No. 120 for which the presently effective rate is 20¢ per Mcf, and Sun proposes to reduce the rate to 16¢ per Mcf. This sale is presently involved in the consolidated proceedings in *H. L. Hawkins, et al.*, Docket No. G–18077, *et al.*, in which the hearings have been concluded and the matters therein are now pending before the presiding examiner. Consequently, we shall not herein provide for permanent certification of this sale, and approve the settlement rate as proposed but find the initial rate shall be that determined in the *Hawkins* proceedings.

The sales in District No. 4 by Sun are to TGT in the Fitzsimmons Field, Duval County (Rate Schedule No. 154, Docket No. CI63–989) and to Natural Gas Pipeline Company of America in the Willamar Field, Willacy County (Rate Schedule No. 164, Docket No. CI64–470) for which the presently effective rates are 16¢ per Mcf. Sun's proposal is to continue these sales under temporary authority, and to retain the present rates. Since these proceedings are consolidated in the *Turnbull & Zoch Drilling Co.* (*Operator*), *et al.*, proceedings, Docket No. G–17960, *et al.*, we shall approve the settlement rates contingent upon the final order in such proceedings.

Sun is presently making two sales under temporary certificates to Southern Natural Gas Company (Southern), in Kokomo and Knoxo Fields, Walthall County, Mississippi, under its FPC Gas Rate Schedule Nos. 137 and 152, respectively. Additionally, it has pending a certificate application in Docket No. G–19015 (Rate Schedule No. 111) for a sale in Dexter Field, Walthall County to Southern which is presently being made under a rate schedule of another producer. Sun proposes an interim rate of 21.5¢ per Mcf for each of these sales pending final order, subject to judicial review, in the consolidated proceedings in *Sun Oil Company, et al.*, Docket No. G–8592, *et al.*, and it proposes then to accept the rate for each of such sales to that finally determined in such proceedings. Sun will refund the difference between the settlement rate, from the date of issuance of this order, and the rate finally determined in such proceedings if the latter be lower.

Sun has two sales to United Fuel Gas Company (United Fuel) in the Ellis and North Chalkley Fields, South Louisiana, under its FPC Gas Rate Schedule Nos. 38 and 76, respectively. The accepted rate under Rate Schedule No. 38 is 17.5¢ per Mcf for the originally dedicated acreage. Sun added acreage and was granted a certificate at 19.5¢ per Mcf in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, 32 FPC 254 (Opinion No. 436, issued July 23, 1964). Also, Sun was granted a certificate for added acreage in *Union Texas* under its

[3] Dockets CI60–75, CI63–13, CI63–1142, CI63–1360 and CI64–315.

Rate Schedule No. 76 at a rate of 20¢ per Mcf while the base rate was 18.3¢ per Mcf. Sun proposes a rate of 17.5¢ per Mcf for its sales to United Fuel under its Rate Schedule No. 38, and a rate of 19.1¢ per Mcf under its Rate Schedule No. 76 for all of the gas sold and delivered under each of such schedules. Because the additional acreage, under Rate Schedule No. 76, has increased the reserves dedicated to that sale by approximately 15.4 million Mcf, over the basic figure of 4.7 million Mcf, we find the settlement rate to be in the public interest and shall approve the same.

Sun's settlement proposal includes a sale to TGT in the Northwest Chalkley Field, South Louisiana under its Rate Schedule No. 157 from acreage which it obtained by assignment from Samedan Oil Corporation (Samedan). In Docket No. CI62–378 we imposed a refund condition on Samedan subject to final order in *Union Texas* (*supra*). Consequently, we hereby condition our approval of Sun's settlement proposal to impose the same refund obligation on Sun in its Docket No. CI63–1360, in which its certificate application is pending, as presently is on Samedan.

Our conditional approval of Sun's proposal results in Sun refunding approximately 67% of amounts collected above the settlement rates, subject to refund, and the reduced rates of $1,400,000 annually will constitute disallowance of approximately 70% of the increased rates currently being collected in Section 4(e) proceedings. Additionally, four of Sun's rates are being reduced below the "last-firm-rate," of which one is not subject to Section 4 proceedings.[4]

As conditioned herein, we believe that the principles underlying the present settlement proposal are consistent with those utilized in previous major independent producer rate settlements.

Our action herein should not be construed as constituting approval of any future rate increases, if any, that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in future proceedings, including area rate or similar proceedings, involving Sun's rates and rate schedules.

The Commission finds:

The proposed settlement of the subject proceedings on the basis described herein, as more fully set forth in the Settlement Proposal filed by Sun and as herein conditioned on July 31, 1964, is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act, that it be approved and made effective as hereinafter ordered, and good cause exists for approving the settlement rates, for severing and terminating certain proceedings and providing for refunds.

The Commission orders:

(A) The settlement of these proceedings on the basis of the settlement proposal as herein conditioned, filed by Sun on July 31, 1964, is approved and made effective subject to the terms and conditions herein.

(B) The applicable settlement rates set out in Appendix A hereto are approved, and such rates shall be effective as of September 1, 1964.

(C) The approved settlement rates shall be applicable during the moratorium period herein provided for to all sales of natural gas from all acreage dedicated as of the date of issuance of this order under each of the rate schedules currently on file with the Commission whether such sales are made by Sun, its successors or assignees.

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[4] The annual reduction in rates effectuated by our approval of this settlement under these four rate schedules approximates $19,000.

(D) Sun shall compute the difference between the rates collected subject to refund and the related settlement rates or rate not subject to refund, whichever rate was the greater, for the period from January 1, 1961, to the date of this order, together with interest as specified in each docket to July 31, 1964. Sun shall within 45 days from the date of this order submit a report to the Commission, and serve a copy on each of the purchasers involved, setting out by purchasers the amount of refunds related to each rate schedule (showing separately the principal and applicable interest) the bases used for such determination and the periods covered.

(E) Sun shall retain the amounts shown in the report required under paragraph (D) above, subject to further order of the Commission directing the disposition of those amounts, *provided, however*, Sun shall within 90 days from the date of this order, (1) refund with interest as specified in each docket computed to July 31, 1964, the difference between the rates collected subject to refund and the related settlement rates, on and after January 1, 1961, to the date of this order for all of such of Sun's Rate Schedules, where the rates were collected subject to refund for sales of natural gas to Marshall R. Young Drilling Co. and (2) report to the Commission in writing, the amount of refunds made to Marshall R. Young Drilling Co. showing separately the amount of principal and interest so paid, and the bases used for such determination, together with releases from its purchaser showing receipt of the refunds in conformity with the settlement proposal as conditionally approved herein.

(F) If Sun elects to commingle these retained refunds with its general assets and use them for its corporate purposes, it shall pay interest thereon at the rate of 6% per annum on all funds thus available from November 15, 1964, to the date on which they are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission.

(G) If Sun elects to deposit the retained refunds in a special escrow account, Sun shall tender for filing on or before November 15, 1964, an executed Escrow Agreement, conditioned as set out below accompanied by certificate showing service of a copy thereof upon each of its jurisdictional customers. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Sun and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(1) Sun, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such Agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable only for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation

shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the trust account for the quarterly period.

(H) Sun shall, over the signature of a responsible officer, file with the Commission, within 30 days from the date of the issuance of this order, an original and one copy of its acceptance or rejection of the terms and conditions of this order, including specifically the refund requirements under its Rate Schedule No. 87, and the requirement for possible future refunds under its Rate Schedule No. 157.

(I) Any party to the proceedings or settlement negotiations having objections to the terms of this order shall within 30 days from the date of issuance of this order set forth such objections in writing to the Commission (Original and one copy), and by serving copies on the other parties.

(J) If as a result of any objections filed pursuant to paragraph (I) hereof, the Commission by subsequent order changes Sun's duties and obligations hereunder, Sun's acceptance of this settlement order shall not be binding on it without its express agreement.

(K) The pending certificate proceedings in Docket Nos. CI60–75, CI63–13, CI63–1142, CI63–1360, and CI64–315 set out in Appendix B hereto shall not be terminated on the basis of the approval of the settlement proposal, but shall be determined after hearing in accordance with Section 7 of the Natural Gas Act and the terms and conditions of this order.

(L) Within 90 days from the date of this order, Sun shall make such filings under its rates schedules as are required to make effective the terms of the settlement proposal.

(M) Upon full compliance by Sun with all the terms and provisions of this order, the Section 4(e) proceedings listed in Appendix A and C hereto, and the Section 5(a) proceedings in Docket No. G–18353 shall terminate.

(N) Upon termination of the Section 4(e) proceedings listed in Appendix C hereto, in accordance with paragraph (M) above, said proceedings shall be severed from the consolidated proceedings in Docket Nos. AR61–2, AR64–1, AR64–2 and G–17613, *et al.*, respectively; the Section 7(c) proceedings listed in Appendix C are hereby severed from their respective consolidated proceedings.

(O) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Sun, the Commission staff, or any affected party hereto, in any proceedings now pending including area rate or similar proceedings, or hereafter instituted by or against Sun or any other companies, person or parties affected by this order.

APPENDIX A

SUN OIL COMPANY

FPC RATE SCHEDULES—DOCKET NO. G–8288, ET AL., G–18353

R.S.	Field and location	Purchaser	Certif. docket	Sec. 4(e) docket	Last firm rate ¢/Mcf	Rate in effect ¢/Mcf	Settle. rate ¢/Mcf
	South Louisiana						
37	Midland, Grand Chenier Hog Bayou	Tenn. Gas Trans	G–6837	G–16699 RI63–112	10.72193	23.675	17.75
38	Ellis	United Fuel Gas	G–3653 [13]	G–13444 G–16684 G–19907 RI61–129 RI62–101 RI63–153 RI64–263	17.50	[1] 21.1	[17] 17.50
44	Egan	Transco	G–6838	G–8288 G–17923	10.20715	23.55	15.75
51	Egan (Daily-Truax)	Transco	G–6836		9.37238	9.37238	9.37238
63	East Gibson	United Gas Pipe Line	G–6834	G–16410 G–17717 RI61–276 RI64–448	8.997	[1] 22.75	15.75
71	Cowpen Creek and Kinder	Transco	G–9989	G–17923	17.50	23.55	17.50
72	Crowley	Tenn. Gas Trans	G–10480	G–16700 RI63–112	10.72193	23.675	15.75
75	Branch	United Fuel Gas	G–11115	G–13444 G–16684 G–19907 RI61–129 RI62–101 RI63–153 RI64–263	18.30	[1] 21.1	18.30
76	North Chalkley	United Fuel Gas	G–11116	G–13444 G–16684 G–19907 RI61–129 RI62–101 RI63–153 RI64–263	18.30	[1] 21.1	[16] 19.10
89	Clear Creek	Trunkline Gas	G–13362	G–13937 G–17346 G–20447 RI60–410	17.70	23.50	17.70

See footnotes at end of table.

202–491—67——60

APPENDIX A—continued

SUN OIL COMPANY—continued

R.S.	Field and location	Purchaser	Certif. docket	Sec. 4(e) docket	Last firm rate ¢/Mcf	Rate in effect ¢/Mcf	Settle. rate ¢/Mcf
	South Louisiana—Continued						
93	Egan (Houssiere-Latreille)	Texas Gas Trans	G-13908		12.7964	12.7964	12.7964
98	Midland-Esterwood	United Fuel Gas	G-15267	G-15450	[12]	[12]	17.5
119	Lower Mud Lake	Tenn. Gas Trans	CI60-75	RI63-129	22.8333	23.675	20.00
	North Louisiana						
117	Calhoun	Arkansas La. Gas	CI60-218		18.75	18.75	18.75
140	Vixen	Arkansas La. Gas	CI62-387		18.50	18.50	18.50
	Mississippi						
66	Pistol Ridge	United Gas Pipe Line	G-8592	G-19909	20.1324	24.00	20.0000
77	Pistol Ridge	United Gas Pipe Line	G-10984	G-19908	20.1324	24.00	20.0000
82	Ansley Field	Marshall R. Young Drilling	G-12268	RI61-488	17.00	19.00	17.00
87	Gwinville	Southern Natural Gas	G-13059	G-13664, RI63-36	7.3646	21.00	[4] 15.0256
111	Dexter	Southern Natural Gas	G-19015		[13]	[13]	[13] 21.5
134	Magee	United Gas Pipe Line	CI61-1783		18.00	18.00	18.00
137	Kokomo	Southern Natural Gas	CI62-156		21.5	21.5	[13] 21.5
152	Knoxo	Southern Natural Gas	CI63-283		21.5	21.5	[13] 21.5
	Texas Gulf Coast RRC District 1						
115	Cooke	Transco	G-16526	RI65-98	13.6823	[1] 14.6	14.0
	Texas Gulf Coast RRC District 2						
3	Mission Valley	Transco	G-6626		8.890883	8.890883	8.890883
12	Placedo	Tenn. Gas Trans	G-6634	G-17274, RI64-448	11.02818	15.3333, [1] 18.0	[5] 14.60
17	Cabeza Creek	United Gas Pipe Line	G-6639, G-8683	RI60-420	7.596	14.50	14.00
20	Cabeza Creek	United Gas Pipe Line	G-6642		13.2002	13.2002	13.2002
33	Heyser	Tenn. Gas Trans	G-6652	G-17274, RI64-448	11.02818	15.3333, [1] 18.0000	[5] 14.60
54	Burnell—North Pettus	United Gas Pipe Line	G-6661	RI63-80	9.7229	14.4121	14.00
81	Yoward	Texas Eastern Trans	G-12148		10.8958	10.8958	10.8958
153	Appling	Texas Eastern Trans	CI63-472		12.50	12.50	12.50

	Texas Gulf Coast RRC District 3							
13	Chesterville	Tenn. Gas Trans.	G-6635	G-18521	13.27820	15.95016	[5] 14.60	
27	North Markham and North Bay City	Transco	G-6670	R164-448	14.00	15.70629	[6] [7] 15.5	
28	North Winnie, Stowell Hankamer, & Gilbert Ranch.	Texas Eastern Trans.	G-6839		12.1890	12.1890	12.1890	
29	Gist	Standard Oil of Texas	G-6835	G-15016 G-16624 G-19774 R161-129 R162-101 R163-163 R164-232	13.2118	[1] 15.6	[8] 15.0	
41	Caplen	Texas Gas Pipe Line	G-3965 G-11299	G-13619 G-16585 G-19907	13.3267	17.25	[8] 15.00	
42	Nome	Texas Gas Pipe Line	G-3966	G-13617 G-16586 G-19944 R161-38	13.3267	17.25	[8] 15.00	
70	Nelsonville	Tenn. Gas Trans.	G-9483	G-17354 R164-448	13.27820	[1] 19.33333	[8] 15.00	
96	Jackson Pasture	Texas Gas Corp.	G-14920		8.0672	8.0672	8.0672	
120	Sarah White	Trunkline Gas	CI60-348		20.00	20.00	[8] 16.00	
	Texas Gulf Coast RCC District 4							
5	La Gloria	Transco	G-6628		9.110193	9.110193	9.110193	
6	Sun	Transco	G-6629		9.110193	9.110193	9.110193	
8	La Gloria	Natural Gas Pipeline of America	G-16846		10.81979	10.81979	10.81979	
9	North Government Wells	Tenn. Gas Trans.	G-6631	R160-279	13.125	17.24347	[8] 14.60	
10	Brayton	Tenn. Gas Trans.	G-6632	R160-275	13.125	17.24347	[8] 14.60	
11	Gyp Hill	Tenn. Gas Trans.	G-6633	R160-275	13.125	17.24347	[8] 14.60	
15	Edinburg	Tenn. Gas Trans.	G-6637	R160-275	13.125	17.24347	[8] 14.60	
16	Red Fish Bay	United Gas Pipe Line	G-6638	G-13585 R163-163	12.6400	17.71978	14.00	
(9)	Richard King	Tenn. Gas Trans.		R162-418 [9]	12.1227	17.24347	[8] 15.00	
67	San Salvador	Tenn. Gas Trans.	G-8841	R160-275	13.125	17.24347	[8] 14.60	
66	East Mathis	Coastal States Gas Producing	G-8029		11.358	11.358	11.358	
79	West Sullivan	Tenn. Gas Trans.	G-11251	R160-275	13.125	17.24347	[8] 14.60	
104	Seeligson	Tenn. Gas Trans.	G-6636	R160-275	13.125	17.24347	[8] 14.60	
121	Donna	South Texas Natural Gas Gath.	CI60-349		13.50	13.50	13.50	
154	Fitzsimmons	Tenn. Gas Trans.	CI63-989		16.00	16.00	[10] 16.00	
170	N. Sun (Pena & Garcia Units)	Tenn. Gas Trans.	G-14943	R160-19	12.12268	[1] 15.0952	[8] 14.6	
171	N. Sun (E. Alvarez Unit)	Tenn. Gas Trans.	G-14943	R160-19	12.12268	[1] 15.0952	[8] 14.6	
	East Texas RRC District 6							
2	Carthage	Texas Gas Trans.	G-6620		11.6288	11.6288	11.6288	

See footnotes at end of table.

APPENDIX A—continued

SUN OIL COMPANY—continued

R.S.	Field and Location	Purchaser	Certif. docket	Sec. 4(e) docket	Last firm rate ¢/Mcf	Rate in effect ¢/Mcf	Settle. rate ¢/Mcf
	East Texas RRC District 6—Continued						
18	Carthage	United Gas Pipe Line	G-6640		10.8876	10.8876	10.8876
21	Carthage	United Gas Pipe Line	G-6643		10.8876	10.8876	10.8876
26	Carthage	Texas Gas Trans	G-6648		11.6288	11.6288	11.6288
105	Carthage	Texas Gas Trans	G-18243		11.6288	11.6288	11.6288
123	North Oak Hill	Lone Star Gas	CI61-51	RI63-458	14.49	16.56	14.49
141	Mangiel	Arkansas La. Gas	CI62-470		12.55406	12.55406	12.55406
149	North Scottsville	Arkansas La. Gas	CI62-1352		11.6810	11.6810	11.6810
	RRC District 7B						
150	N. Jameson (Strawn)	El Paso Nat. Gas	CI63-13		15.7093 14.	15.7093 14.5	[10] 15.7093 [11] 14.5
	Texas Panhandle RRC District 10						
78	Hansford	Panhandle E. Pipe Line	G-11072	RI62-185	16.00	17.00	16.00
84	West Perryton	Northern Nat. Gas	G-12548 G-14887	RI60-370 RI63-163	15.50	17.50	15.50
122	Panhandle	Transwestern Pipeline	G-15791		17.00	17.00	17.00
139	John Creek	Northern Nat. Gas	CI62-275	RI63-448	16.50	17.50	16.50
155	John Creek	Northern Nat. Gas	CI63-1142		17.00	17.00	17.00
	Oklahoma Panhandle						
106	Southeast Boyd	Natural Gas Pipeline	G-13541		16.00	16.00	16.00
107	Camrick	Natural Gas Pipeline	G-18737	RI60-284 RI61-484 RI62-397 RI63-399 RI64-694	16.20	[1] 17.20	16.20
109	Southeast Boyd	Natural Gas Pipeline	G-18909		16.00	16.00	16.00
110	Southeast Camrick	Natural Gas Pipeline	G-18910	RI60-185 RI61-391 RI62-373 RI63-357 RI64-640	16.60	[1] 17.60	16.60
116	Camrick	Natural Gas Pipeline	G-19609	RI60-284 RI61-484 RI62-397	16.20	[1] 17.20	16.20

				RI63-399 RI64-694			
135	Southeast Boyd	Natural Gas Pipeline	CI62-165		16.00	16.00	16.00
144	Como	Northern Nat. Gas	CI62-1038		17.00	17.00	17.00
156	Northwest Lovedale	Cities Service Gas	CI63-1355		16.00	16.00	16.00
	Oklahoma Other						
45	Fox Graham	Lone Star Gas	G-7344		4.466454	4.466454	4.466454
46	Katie	Lone Star Gas	G-7201		6.00	6.00	6.00
47	Katie-Gibson	Lone Star Gas	G-7345		9.00	9.00	9.00
49	Katie	Lone Star Gas	G-7346		9.00	9.00	9.00
83	Eureka	Cities Service Gas	G-12513	G-20087	12.00	13.00	12.00
142	South Marlow	Arkansas La. Gas	CI62-580	RI63-448	12.00	13.00	12.00
	Kansas						
69	Hardtner and West Medicine Lodge	Cities Service Gas	G-9462	G-20065	12.00	13.00	12.00
73	Hugoton	Colorado Interstate Gas	G-10672		11.00	11.00	11.00
99	Hugoton	Kansas-Nebraska Natural Gas	G-15434		11.00	11.00	11.00
102	Moehler	Panhandle Eastern Pipe Line	G-17569		16.00	16.00	16.09
103	Sparks	Colorado Interstate Gas	G-17841		16.00	16.00	16.00
136	North Harper Ranch	Northern Nat. Gas	CI62-125		16.00	16.00	16.00
	Northwest New Mexico						
90	San Juan	El Paso Nat. Gas	G-13626	RI64-39 RI64-499	13.00	14.0578	13.00
108	Bisti-Lower Gap	El Paso Nat. Gas	G-16774	RI64-39 RI64-499	13.00	14.0578	13.00
	Utah						
95	Aneth	El Paso Nat. Gas	G-14403		17.70	17.70	17.70

[1] This rate filed but has not been made effective.
[2] Settlement rate subject to outcome of *H. L. Hawkins, et al.*, Docket No. G-18077, *et al.*
[3] Eliminate periodic escalations.
[4] Eliminate periodic escalations. Refunds will be made above the 15.0256¢ settlement rate as conditioned herein.
[5] Eliminate Favored Nations and Price Redeterminations.
[6] Rates shown at 14.65 psia contract rate at 16.7 psia.
[7] Eliminate Favored Nations and Periodic Escalations. Price redetermination clause not further operative.
[8] Eliminate Favored Nations, Price Redetermination and Periodic Escalations.
[9] This settlement price of 15¢ is the same as that for which the operator, South-Tex Corporation, settled its share of the gas which was approved by Commission order issued Apr. 6, 1961, in Docket No. RI61-243. Sun will accept the same type of settlement, including the elimination of the favored-nation clause and amendment of the tax provision. In Docket No. RI62-418 South-Tex Corporation, as operator, has filed for Sun's interest only and this filing has been designated Supplement No. 27 to South-Tex Corporation's FPC Gas Rate Schedule No. 1. (See Commission order issued Nov. 9, 1962, in the lead docket *Sun Oil Co.*, Docket No. G-6550.) Sun filed a corporate undertaking to refund in Docket No. RI62-418. Sun was permitted to intervene in Docket No. RI62-418 by Commission order issued July 17, 1963.
[10] Mitchell County price.
[11] Nolan County price.
[12] This sale is currently being made under Atlantic Refining Company's FPC Gas Rate Schedule No. 613.
[13] Includes acreage added by Supplement No. 8 to Rate Schedule No. 38.
[14] Settlement rate applicable to all acreage, including that added by Supplement No. 9 to Rate Schedule No. 76.
[15] Subject to outcome of *Turnbull & Zoch Drilling Company, et al.*, Docket No. G-17960, *et al.*
[16] This sale is currently being made under Skelly Oil Company's Rate Schedule 123.
[17] Settlement rate applicable to all acreage, including that added by Supplement No. 8 to Rate Schedule No. 38.
[18] Settlement rate subject to outcome of *Sun Oil Company, et al.*, Docket No. G-8592, *et al.*

APPENDIX B

SUN OIL COMPANY

DOCKET NO. G-8288, ET AL.

PENDING CERTIFICATE APPLICATIONS AND AMENDMENTS INCLUDED IN OFFER OF SETTLEMENT

Rate schedule	Field and location	Purchaser	Docket number	Initial price ¢/Mcf	Settlement price ¢/Mcf
	Texas Gulf Coast RRC District 3				
120	Sarah White	Trunkline Gas Company	CI60-348	20.00	[9] 16.00
	Texas Gulf Coast RRC District 4				
154	Fitzsimmons	Tennessee Gas Trans. Co.	CI63-989	16.00	[10][7] 16.00
164	Williamar	Nat. Gas Pipeline of Amer.	CI64-470	16.00	[10] 16.00
	Texas Panhandle RRC District 10				
155	John Creek	Northern Natural Gas Co.	CI63-1142 [3] *	17.00	17.00
	South Louisiana				
157	Northwest Chalkley	Tennessee Gas Trans. Co.	CI63-1360*	21.25	20.00
119	Lower Mud Lake	Tennessee Gas Trans. Co.	CI60-75 [5] *	22.83333	20.00
98	Midland-Esterwood	United Fuel Gas	G-15267 [11]	18.2	17.5
	S. Pecan Lake	United Fuel Gas	CI60-490 [11]	19.9	18.0
160	Patterson	Tennessee Gas Trans. Co.	CI64-315 [4] *	23.675	20.00
38	Ellis	United Fuel Gas Co.	G-3653 [6]	19.5	17.50
76	North Chalkley	United Fuel Gas Co.	G-11116 [7]	20.7	19.1
	Texas RRC District 7b				
150	N. Jameson (Strawn)	El Paso Natural Gas	CI63-13*	15.7093 14.5	[1] 15.7093 [2] 14.5
	Mississippi				
111	Dexter	Southern Natural	G-19015	[8] 21.5	[8] 21.5
137	Kokomo	Southern Natural	CI62-156	[8] 22.8677	[8] 21.5
152	Knoxo	Southern Natural	CI63-283	21.5	[8] 21.5

*To be disposed of pursuant to the statutory hearing procedure.
[1] Mitchell County price.
[2] Nolan County price.
[3] Applicable only to acreage added by Supplement No. 1.
[4] Application for permanent certificate only.
[5] This is initial contract price. Deliveries have not commenced under R.S. No. 111, but have commenced under R.S. No. 137. Settlement rate subject to outcome of *Sun Oil Company, et al.*, Docket No. G-8592, *et al.*
[6] Applicable to acreage added by Supplement No. 8. Certificated in Opinion No. 436.
[7] Applicable to acreage added by Supplement No. 9. Certificated in Opinion No. 436.
[8] Applicable only to acreage added by Supplement No. 4.
[9] Subject to outcome of *H. L. Hawkins, et al.*, Docket No. G-18077, *et al.*
[10] Subject to outcome of *Turnbull & Zoch Drilling Company, et al.*, Docket No. G-17960, *et al.*
[11] Certificated in Opinion No. 436.

APPENDIX C

SUN OIL COMPANY

DOCKET NO. G-8288, ET AL.

SECTION 4 (e) DOCKETS TO BE SEVERED FROM AREA RATE AND OTHER PROCEEDINGS AND TERMINATED

Dockets in AR61-2		Dockets in AR64-1	
Docket Nos.	R.S. Nos.	Docket Nos.	R.S. Nos.
G-19907	38, 75, 76	G-20065	69
G-20447	89	G-20087	83
RI60-410	89	RI60-185	110
RI61-129	38, 75, 76	RI60-284	107, 116
RI61-276	63	RI60-370	84
RI62-101	38, 75, 76	RI61-391	110
RI63-112	37, 72	RI61-484	107, 116
RI63-129	119	RI62-185	78
RI63-153	38, 75, 76	RI62-373	110
RI64-448	63	RI62-397	107, 116
		RI63-163	84
		RI63-357	110
		RI63-399	107, 116
		RI63-448	139, 142
		RI64-640	110
		RI64-694	107, 116

Dockets in AR64-2		Docket in G-17613, et al.	
Docket Nos.	R.S. Nos.	Docket No.	R.S. No.
G-13585	16	G-17923	44, 71
G-13617	42		
G-13619	41		
G-15016	29		
G-16624	29		
G-16685	41		
G-16686	42		
G-17274	12, 33		
G-17354	70		
G-18521	13		
G-19774	29		
G-19907	41		
G-19944	42		
RI60-275	10, 11, 15, 67, 70, 104		
RI60-279	9		
RI60-420	17		
RI61-38	42		
RI61-129	29		
RI62-101	29		
RI63-80	54		
RI63-163	16, 29		
RI64-232	29		
RI64-448	12, 27, 33, 70		

SECTION 7 (c) DOCKETS TO BE SEVERED FROM THE PROCEEDINGS IN UNION TEXAS PETROLIUM, ET AL., DOCKET NO. G-13221, ET AL., AND CERTIFICATED BY THE STATUTORY HEARING PROCEDURE

Docket Nos.	R.S. Nos.
G-3653 [1]	23
G-11116 [1]	76
G-15267	96
CI60-75	119
CI60-490	

[1] These proceedings involve added acreage only.

OPINION NO. 431–B

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. RP61–3; COASTAL TRANSMISSION CORPORATION, DOCKET NO. RP61–4

OPINION AND ORDER DENYING REHEARING WITH RESPECT TO REOPENING RECORD

(Issued October 2, 1964)*

Syllabus

1. Nothing in vague language of initial certificate order could properly have led pipeline to conclusion that Commission had resolved no-profits-to-affiliates question in its favor rather than deferring it for subsequent consideration. P. 909.
2. Clarification as to intent of language should have been sought when matter was still pending before agency, not years later during course of subsequent proceeding preshadowed by Commission language. P. 909.
3. In carrying out ordinary duty of any judicial body to interpret its opinion, it would be highly improper to consider affidavits from former Commissioners as to what was before them, and even more improper to call them as witnesses. P. 909.
4. Courts and Commissions speak only in their opinions; to depart therefrom would remove any assurance as to significance to be attached to written opinions and make meaning of decisions depend on subjective impressions and vagaries of memory. P. 909.
5. Clearly prior opinion did not decide whether no-profits-to-affiliates rule should be applied in determining pipeline's original cost. P. 910.
6. Commission *denies* petition for rehearing and to reopen record.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SWIDLER, *Chairman:*

On September 3, 1964, Florida Gas Transmission Company filed an application for rehearing of our Opinion No. 431–A and order issued August 5, 1954, 32 FPC 518, insofar as the Opinion and order relate to the petition of Florida Gas to reopen these proceedings. In our Opinion No. 431–A and order we denied rehearing with respect to our original Opinion No. 431 and order issued June 8, 1964, 31 FPC 1402, in which among other things we disallowed as the cost of Florida Gas' pipeline the amount of $8,187,110 representing profits of affiliated engineering and construction companies. We also denied Florida Gas' petition to reopen the record upon the basis of attached affidavits from three former members of this Commission generally to the effect that Opinion No. 301 (16 FPC 118) granting Florida Gas' predecessor, Houston Texas Gas & Oil Corporation, a certificate did not contemplate application of the no-profits-to-affiliates rule but merely a scrutiny of the costs as to their reasonableness.

In the present application for rehearing Florida Gas renews its request that we reopen the record pointing out that the object of the Petition to Reopen was not to have the affidavits received in the record, but to have the testimony of these persons received.

Our objection to consideration of the statements of the former Commissioners in Opinion No. 431–A went not to the fact that they were by way of affidavits, rather than testimony which could be the subject of cross examination, but

*Reversed, *Florida Gas Transmission Co.* v. *F.P.C.*, 362 F. 2d 331 (CA5–1966). Petition for rehearing pending.

to the propriety of attempting to go behind the language of an opinion to determine on the basis of the recollection of former Commissioners, what they intended to decide. We do not think the issue is anyway changed by the suggestion that the Commissioners' testimony, if permitted to be introduced into evidence, would cover the question of what issue they believed was before them for decision as well as how they thought they were resolving it.

The extrinsic facts are that in the course of the proceeding in Docket No. G–9262 leading to Opinion No. 301, an intervener, Green Fuels, Inc., raised the question of whether the no-profits-to-affiliates rule should not be applied to petitioner in view of the relationship between that company and the construction-engineering group which had been disclosed, and the matter was discussed pro and con in the briefs of some of the other interveners and the applicant. However, the Commission in its discussion did not mention the no-profits-to-affiliates rule or in terms adopt or reject the intervener's contentions. Instead it confined itself to the statement:

> * * * While as we have already stated, the cost of the proposed facilities appears to be reasonable, in view of this fact [that three companies who would perform construction activities for the pipeline had presidents who were each officials and directors of Houston Gas, and two of which owned blocks of Houston Gas stock], this cost will be carefully scrutinized in any future proceeding dealing with accounting or rates of Houston Gas. (16 FPC 142)

It is of course possible that the Commission in deciding the matter, and the three Commissioners in the majority, in subscribing to the above statement, intended to hold that the intervener was wrong and the applicant right as to the application of the no-profits-to-affiliates rule, and that "in any future proceeding dealing with accounting or rates of Houston Gas" the careful scrutiny to be given to proposed construction costs would be limited to their reasonableness. This is not, however, what was said. The intervener, who had raised the matter in the first place, clearly was not put on notice by the language the Commission utilized that, if he did not seek rehearing on this point and then raise it on review, there would be a final adjudication outstanding against him on this issue. More important, there was nothing in this vague language which could properly have led Houston Texas to the conclusion that the Commission had necessarily resolved the question in its favor rather than deferring it for subsequent consideration on an appropriate record devoted expressly to the issue. Thus, even assuming that the Commission intended to resolve the issue in petitioner's favor, testimony to that effect today could not change the fact that they did not do so. The time for petitioner to have sought clarification from the Commissioners as to the intent of their language was when the matter was still pending before the agency, not years later during the course of the subsequent proceeding the Commission's language preshadowed.

It devolved upon this Commission to interpret the vague language quoted above. In carrying out this ordinary duty of any judicial body to interpret its prior opinions, we think it would be highly improper to consider affidavits from former Commissioners as to what was before them or what was decided by them, and even more improper to call them as witnesses. We are here dealing with the opinion of a quasi-judicial body. Courts and commissions speak only in their opinions. To depart from this traditional rule would remove any assurance as to the significance to be attached to written opinions, and would make the meaning of our decisions depend on subjective impressions and the vagaries of memory.

The distinction which petitioners attempt to make between what an opinion means and what issues it covers is without substance. The issues decided by an

opinion (as well as how they are decided) can be determined only from the opinion itself. In our judgment it is clear that the prior opinion in this case did not decide the issue whether the no-profits-to-affiliates rule should be applied in determining the original cost of this pipeline.

The Commission further finds:

The assignments of error and grounds for rehearing set forth in the application for rehearing of Florida Gas present no new facts or principles of law with respect to reopening the record to receive the testimony of three former members of this Commission which were not considered by the Commission when it issued its Opinion No. 431–A and order or which, having now been considered, warrant any change in or modification of said Opinion and order except as indicated below with respect to receipt of testimony rather than affidavits.

The Commission orders:

(A) The application for rehearing filed by Florida Gas with respect to Opinion No. 431–A and order is hereby denied.

(B) The petition to reopen the record to receive the testimony of three former members of the Commission is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOUTHERN CALIFORNIA EDISON COMPANY, PROJECT NO. 2290

ORDER DENYING APPLICATION FOR REHEARING

(Issued October 2, 1964)

On September 4, 1964, Southern California Edison Company (Applicant) filed application for modification of the Commission's license order issued August 7, 1964, 32 FPC 553, with respect to Applicant's constructed Kern River No. 3 hydroelectric project located on Kern River, Salmon Creek and Corral Creek in Kern and Tulare Counties, California, in the vicinity of Bakersfield, Bodfish, Isabella, Kernville and Weldon, and affecting lands of the United States within the Sequoia National Forest, Project No. 2290.

Applicant seeks modification of the license order to affect the deletion therefrom of Articles 5, 10 and 12, as set forth in Form L–1 (revised April 1, 1964) entitled "Terms and Conditions of License for Constructed Major Project Affecting Lands of the United States" (32 FPC 71)[1] and a change in the termination date of the license period from December 31, 1993 to September 20, 2013.

In support of its request for the deletion of Articles 5, 10 and 12 from the license order, Applicant states that these Articles are inconsistent and conflict with the provisions of special Articles 34 through 42, inclusive, of the license order, thereby creating an ambiguity. Applicant sets forth two interpretations of the several articles. The first is that the subject matter involved is controlled by the specific provisions of special Articles 34 through 42, inclusive, and that Articles 5, 10 and 12 of Form L–1 are therefore subordinate and ineffective.

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[1] Article 5 deals with the use, storage and discharge from storage of water and Article 10 deals with construction, maintenance, and operation of facilities for the conservation and development of fish and wildlife resources. Article 12 deals with the construction, maintenance and operation of recreational facilities.

The second is that if Articles 5, 10 and 12 are to be given affect and are interpreted as giving the Commission the authority to make further orders with respect to the use and release of water for the construction, maintenance or operation of facilities for fish, wildlife and recreation then the provisions of Articles 34 through 42, inclusive, setting out detailed requirements in certain cases are rendered nugatory. We do not believe that either of these interpretations accurately reflect the intent of Articles 5, 10 and 12.

Articles 5 and 10 which deal with the use, storage and discharge from storage of waters and the construction, maintenance and operation of facilities for the conservation and development of fish and wildlife resources, respectively, provide in broad terms for licensee action in these several areas subsequent to Commission order. To the extent that they cover the same subject matters involved in Articles 34 through 42, inclusive, they are subordinate to them. Articles 5 and 10 would, nevertheless, be applicable in matters outside of the scope of these special articles.

Furthermore, it should be noted that the limitation with regard to the review of Articles 35, 36, 37, 40, and 41 as provided in Article 41 is for a ten year period. As for the provisions of Article 12 which deal with the construction, maintenance and operation of recreational facilities they are nowhere duplicated in Articles 34 through 42, inclusive.

Applicant claims that it is entitled to a 50 year license for Project No. 2290. It further contends that "the Commission did not call upon it to show cause or present any evidence why it should not be granted a license for a substantially shorter period." However, upon consideration of the additional facts and argument presented in its application we do not reach a conclusion different from that set forth in the order issuing license. Section 4 (16 U.S.C. 799) of the Federal Power Act provides that licenses "shall be issued for a period not exceeding 50 years." The determination of a license term is, accordingly, within the sound discretion of the Commission [2] and the Commission has frequently issued licenses for less than 50 years.

The Commission, in issuing a license for Project 2290 for a term of approximately 30 years, spelled out in detail why it believed that a period of 25 years was an appropriate normal term in licensing projects which had previously enjoyed 50 years of operation under a Department of Agriculture permit and why, nevertheless, it would give applicant an additional 5 years here. We made clear in our decision that "in cases where for good cause a different term is justified" we would consider a longer term. But, except for stating that it had previously received 50 year terms for licenses in similar situations, and a bare and totally unconvincing contention that a 50 year license is as necessary for a project which has already been in operation for 50 years as for a new project, applicant has not purported to show good cause for a longer term and the general arguments it has made are not persuasive.

Moreover, in the absence of any showing that the public interest requires a license term of more than 30 years, we see no reason for a hearing on the matter and will deny applicant's request.

The Commission finds:

It is appropriate and in the public interest in administering Part I of the Federal Power Act (16 U.S.C. 791a–825r), that the Southern California Edison Company's application, filed September 4, 1964, for modification of the order issued August 7, 1964, granting a license for Project No. 2290 be denied.

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[2] *Montana Power Company* v. *Federal Power Commission*, 330 F. 2d 781 (1964).

The Commission orders:

The aforesaid application for modification of the order issued on August 7, 1964, be and is hereby denied.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

GENERAL CRUDE OIL COMPANY, DOCKET NO. G-13941, ET AL.[1]

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF CONTRACT AMENDMENT, AND TERMINATING PROCEEDINGS

(Issued October 5, 1964)

On August 4, 1964, General Crude Oil Company (General) submitted an offer of settlement in these proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves proposed increased rates for sales of natural gas made to Texas Eastern Transmission Corporation (TETC) by General. The offer relates to sales made under General's FPC Gas Rate Schedule No. 2 in the Silsbee Field, Hardin County, Texas Railroad Commission, District No. 3. The proposed increased rates ranging from 14.4¢ to 15.6¢ per Mcf were each suspended by order of the Commission for the statutory period.

Under the terms of the offer, General proposes to eliminate the price escalation provisions from its rate schedule, and to establish a 15¢ per Mcf rate for the subject sale. Additionally, General proposes to withdraw Supplement Nos. 11 and 13 to its Rate Schedule No. 2, each of which made effective a rate, subject to refund, above the settlement rate. No protests or objections have been filed to the offer.

General, in its offer, proposes to refund all amounts collected, subject to refund, for sales of natural gas to TETC under the subject rate schedule in excess of the settlement rate. The estimated total dollars to be refunded approximates $1,000 exclusive of interest.

The proposed settlement is consistent with the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61-1, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, and its acceptance would serve the public interest.

For all of the reasons set forth in our order issued July 8, 1964, in *Humble Oil & Refining Company*, Docket No. G-9287, *et al.*, 32 FPC 49, we shall require General to retain the amount of refunds, with interest, ordered herein in a savings account in any bank where deposits are insured by the Federal Deposit Insurance Corporation until further order directing the nature of their disposition and also to submit within 45 days of this order to the Commission and to TETC a detailed report setting out the amount of refunds related to the instant rate schedules, the volumes of gas sold thereunder and the period covered. We shall also by separate action direct the pipeline purchaser within ten days from the receipt of such report to submit a report of its own setting forth whether it intends to pass on all or part of such refund amounts to its customers or, if it claims the right to retain any portion of the refunds, a brief statement as to the legal or equitable basis for such claim. In the event such reports indicate that

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[1] Also involved are the proceedings in Docket Nos. G-16675, G-19739, RI61-211, RI62-134 and RI64-204.

the refunds will flow through to ultimate consumers or distribution companies not subject to the Commission's jurisdiction, the Commission will authorize the release of such refund sums by General (unless a state regulatory authority after notification of the sum to be made available to a company subject to its regulatory jurisdiction asks us to defer releasing the funds until it can determine their ultimate disposition). In the event a pipeline purchaser from TETC (or a pipeline customer of such a pipeline) indicates that it is asserting a claim to retain substantial refund sums the Commission will by further order prescribe the procedure for determining the relative rights to such funds of such pipeline or its customers.

However, we desire to make it clear that our conditional approval of General's offer of settlement shall not be construed as approval of any future increased rates filed in accordance with its reservation of the right to file increases to cover future tax increases as provided in its offer of settlement, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving General's rates and rate schedules.

The Commission orders:

(A) The offer of settlement filed with the Commission by General August 4, 1964, is hereby approved in accordance with the provisions of this order.

(B) General shall file, within 30 days from the date of issuance of this order, an executed contractual amendment to its FPC Gas Rate Schedule No. 2, eliminating the present price escalation provisions therefrom as specified in its offer of settlement. The contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) General shall compute the difference between the rates collected subject to refund in Docket Nos. RI62–134 and RI64–204 and the related settlement rate for the period such rates were collected subject to refund, to the date of this order, together with interest as specified in each docket to the date of this order. General shall within 45 days from the date of this order submit a report to the Commission, and serve a copy on TETC setting out the amount of refund related to the subject rate schedule (showing separately the principal and applicable interest), the basis used for such determination and the period covered.

(D) General shall retain the refund amounts shown in the report required under paragraph (C) above in a savings account in any bank where deposits are insured by the Federal Deposit Insurance Corporation, subject to further order of the Commission directing the disposition of those amounts.

(E) Supplement Nos. 11 and 13 to General's FPC Gas Rate Schedule No. 2, which were made effective subject to refund, by General after having been suspended for the statutory period by order of the Commission, and are each for proposed rates above the settlement rate, be and the same are hereby deemed to be withdrawn.

(F) Upon notification by the Secretary of the Commission that General has complied with the terms and conditions of the order, the rate and charge of 15¢ per Mcf at 14.65¢ psia for sales under General's FPC Gas Rate Schedule No. 2, as specified in its offer of settlement, shall be effective as of the date of issuance of this order, and the above designated proceeding shall be deemed terminated.

(G) The acceptance by the Commission of General's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against General, including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SINCLAIR OIL & GAS COMPANY, ET AL., DOCKET NO. G–16760, ET AL.; TURNBULL & ZOCH DRILLING CO. (OPERATOR), ET AL., DOCKET NO. G–17960, ET AL.

ORDER GRANTING AND DENYING IN PART MOTIONS AND PETITIONS

(Issued October 5, 1964)*

By order issued May 28, 1964, in Docket No. G–17960, *et al.*, [Unreported] we consolidated for hearing 67 applications for certificates of public convenience and necessity to make sales for resale in interstate commerce of natural gas produced in Texas Railroad Commission District No. 4, and by order issued March 25, 1964 in Docket No. G–16760, *et al.*, [Unreported] we consolidated for the same purposes 42 applications involving sales for resale from Railroad District No. 2. These consolidations for hearing of virtually all pending producer applications relating to Railroad Commission Districts 2 and 4 were in keeping with our policy of utilizing an area approach to producer regulation in both certificate and Sections 4 and 5 rate matters.

Subsequent to the issuance of an order consolidating the proceedings in Docket No. G–17960, *et al.* for hearing, various motions and petitions, as described below, were filed by various applicants therein and, on July 15, 1964, the presiding examiner referred these pleadings to the Commission pursuant to Section 1.12(d) of the Rules of Practice and Procedure. The pleadings are described as follows:

Applicant	Filing date	Title
(1) Delhi-Taylor Oil Corporation	6/29/64 amended 7/ 6/64	Motion for clarification of issues.
(2) Jonnell Gas, Inc., and J. C. Trahan, Drilling Contractor, Inc.	6/29/64	Petition to remove uncertainty (pursuant to section 1.7(c) of rules).
(3) Bright & Schiff	6/30/64	Motion to: (A) Sever refund issue; and (B) Establish burden of proof with respect to certain equitable considerations with respect to certain intervenors.
(4) Gulf Oil Corporation	6/30/64	Motion to sever refund issue.
(5) The Atlantic Refining Company	7/ 2/64	Motion for clarification of issues.
(6) Blanco Oil Co. and Killam & Hurd	7/ 7/64	Motion for clarification of issues.
(7) Bright & Schiff	6/29/64 amended 7/10/64 (see below)	Motion for rehearing of order issued May 28 1964, consolidating applications; and, in the alternative, motion to sever Docket No. CI61–1541.
(8) Bright & Schiff	7/10/64	Amended motion. (A) For rehearing of order issued May 28, 1964, consolidating applications; and (B) In the alternative, for severance of Bright & Schiff's Docket CI61–1541 from this consolidated proceeding; and (C) In the alternative, to strike the intervention of certain interveners as to refund issue; and (D) In the further alternative, to remove uncertainty by entering an order that the decision of *Amerada* and *Skelly* shall have no effect whatsoever upon the hearing and decision of this consolidated proceeding.

Answers to these pleadings, recommending denial, were filed by the Commission Staff (Staff) on July 9, 1964 and by the Brooklyn Union Gas Company, an intervener, on July 31, 1964.

*Order issued December 2, 1964, denying rehearing, 32 FPC 1387.

The motion of Bright & Schiff, as amended listed as (7) and (8) above, insofar as it requested rehearing of an order of May 28, 1964, *supra*, and in the alternative severence of Bright & Schiff's docket was denied by an order of September 11, 1964, [Unreported] for the reasons stated therein. The remaining pleadings request that the Commission issue an order allowing that the above-entitled proceeding be divided into two stages: stage 1, to be concerned with the initial prices required by the public convenience and necessity and stage 2, to be concerned with the questions relating to refunds should it be decided in the first stage that the prices collected by the applicants under temporary certificates without express refund conditions are higher than the prices required by the public convenience and necessity. Applicants request that the Commission finally resolve the issues in the first stage prior to a hearing on the second stage, should it be necessary.

In Docket No. G–16760, *et al.*, a Motion for Clarification of Issues was filed by Continental Oil Company on June 29, 1964, and was answered and opposed by Staff on July 14, 1964. On July 16, 1964, the presiding examiner filed his Ruling upon Continental's motion, and decided that, as requested by movant, no evidence relating to the issue of refunds would be received at this initial hearing stage, but would be deferred until such time as the in-line price has been determined for Railroad District No. 2.

On July 24, 1964, Staff filed its appeal from the examiners ruling, and on July 27, 1964, United Gas Improvement Company (UGI) filed a "Motion for Reconsideration and Alternatively for Referral to the Commission of Ruling upon Motion for Clarification of Issues." On August 3, 1964, Continental filed an answer in opposition to UGI's motion.

We are of the view that the requests described above are reasonable. The procedure set forth therein would be more orderly and could relieve participants of time and expense of preparing testimony and attending hearings should it be determined that some or all of the prices being collected under temporary certificates are not higher than the prices required by the public convenience and necessity and that there is no refund issue as to some or all of the dockets. Moreover after the exact amount of refund in issue, if any, is known for each applicant, the applicant will be in a better position to decide whether or not to present evidence and arguments as to why refunds should not be ordered; and should the decision be made to present such evidence, what kind of evidence to present. For these reasons we shall order that any consideration of refunds in cases where the temporary certificate does not contain an express refund condition be deferred until further order of the Commission.

In addition to the requests discussed above, certain of the pleadings request that we rule that burdens of proof with regard to the refund issues rest upon parties other than the producers. In this regard, Bright & Schiff (8)(C) above, requests that we strike the intervention of certain producers as to the refund issue. In light of the action that we are taking herein, we shall deny such requests as moot at this time.

Finally, Bright & Schiff ((8)(D) above) requests that we rule that the decisions of the Commission in the *Amerada*[1] and *Skelly*[2] proceedings shall have no effect whatsoever upon the hearing and decision of this consolidated proceed-

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[1] *Amerada Petroleum Corporation, et al.*, Docket No. CI62–1544, *et al.*, Opinion No. 422 issued March 23, 1964, 31 FPC 623, and granting rehearing April 30, 1964, 31 FPC 1041. Order on rehearing May 27, 1964, 31 FPC 1315.

[2] *Skelly Oil Company*, 28 FPC 401, *affirmed* as to initial prices *sub nom.*; *P.S.C. of New York* v. *F.P.C.*, 329 F. 2d 242, cert. denied, *sub nom.*; *Prado Oil & Gas Co.* v. *F.P.C.*, 377 U.S. 963; *Skelly Oil Co.* v. *F.P.C.*, 377 U.S. 963.

ing. Bright & Schiff conclude that the instant consolidated proceeding was instituted "* * * because of *Skelly* and *Amerada* and with the *intent* of arbitrarily applying the decision of these proceedings to this consolidated proceeding." (8 *supra* at p. 4, emphasis in original.) Bright & Schiff and all other participants will receive a full hearing on the merits of all applications. They are free to present any evidence which the Commission has held to be proper in a Section 7(c) producer certificate case,[8] including relevant evidence relating to initial prices of permanently certificated sales. The precedential value of the above-mentioned Commission opinions, other Commission opinions, Commission orders and court decisions relied upon by participants before the presiding examiner and the Commission will be considered in the context of the case when presented. It would be premature to consider such values at this time. Accordingly, this request of Bright & Schiff will be denied.

The Commission orders:

(A) The issue as to whether or not refunds should be ordered to be made by applicants operating under temporary authorizations not containing express refund conditions in these proceedings is hereby deferred until further order of the Commission.

(B) The relief sought by each of the pleadings identified at page 914 of this order, except insofar as granted above or previously denied, is hereby denied.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

SOUTHWEST GAS PRODUCING COMPANY, INC., ET AL., DOCKET NO. RI64-262

ORDER CONDITIONALLY ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF CONTRACT AMENDMENT, AND TERMINATING PROCEEDING

(Issued October 5, 1964)

On August 3, 1964, Southwest Gas Producing, Inc., *et al.* (Southwest), submitted an offer of settlement in this proceeding pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves proposed increased rates for sales of natural gas made to Texas Eastern Transmission Corporation (TETC) by Southwest. The offer relates to sales made under Southwest's FPC Gas Rate Schedule Nos. 5 and 6 in Hico-Knowles and Unionville Fields, Lincoln Parish, North Louisiana. The proposed increased rates of 16.8263¢ per Mcf were suspended by order of the Commission for the statutory period.

Under the terms of the offer, Southwest proposes to eliminate the price escalation provisions from its rate schedules, and to establish a 16.7756¢ per Mcf rate for the subject sales. No protests or objections have been filed to the offer.

Southwest, in its offer, proposes to refund all amounts collected, subject to refund, for sales of natural gas to TETC under the subject rate schedules in excess of the settlement rates. The estimated total dollars to be refunded approximates $2,400 exclusive of interest.

The proposed settlement is consistent with the provisions of the Seventh Amendment to the Commission's Statement of General Policy No. 61-1, 30 FPC

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[8] See Opinion No. 436, *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.*, 32 FPC 254, at pp. 263, 264 and cases referred to therein.

1370, and its acceptance would serve the public interest. However, it is not consistent with the Ninth Amendment, issued July 28, 1964, 32 FPC 422, to said Statement inasmuch as the remaining primary term under the instant contracts is about 3 years and, therefore, we shall condition our approval to require Southwest to extend the terms of each of its contracts consistent with such amendment.

For all of the reasons set forth in our order issued July 8, 1964, in *Humble Oil & Refining Company*, Docket No. G–9287, *et al.*, 32 FPC 49, we shall require Southwest to retain the amount of refunds, with interest, ordered herein in a savings account in any bank where deposits are insured by the Federal Deposit Insurance Corporation until further order directing the nature of their disposition and also to submit within 45 days of this order to the Commission and to TETC a detailed report setting out the amount of refunds related to the instant rate schedules, the volumes of gas sold thereunder and the period covered. We shall also by separate action direct the pipeline purchaser within ten days from the receipt of such report to submit a report of its own setting forth whether it intends to pass on all or part of such refund amounts to its customers or, if it claims the right to retain any portion of the refunds, a brief statement as to the legal or equitable basis for such claim. In the event such reports indicate that the refunds will flow through to ultimate consumers or distribution companies not subject to the Commission's jurisdiction, the Commission will authorize the release of such refund sums by Southwest (unless a state regulatory authority after notification of the sum to be made available to a company subject to its regulatory jurisdiction asks us to defer releasing the funds until it can determine their ultimate disposition). In the event a pipeline purchaser from TETC (or a pipeline customer of such a pipeline) indicates that it is asserting a claim to retain substantial refund sums the Commission will by further order prescribe the procedure for determining the relative rights to such funds of such pipeline or its customers.

We find that approval of the proposed settlement, as conditioned herein would serve the public interest.

However, we desire to make it clear that our conditional approval of Southwest's offer of settlement shall not be construed as approval of any future increased rates filed in accordance with its reservation of the right to file increases to cover future tax increases as provided in its offer of settlement, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Southwest's rates and rate schedules.

The Commission orders:

(A) The offer of settlement filed with the Commission by Southwest, August 3, 1964, is hereby approved in accordance with the provisions of this order.

(B) Southwest shall file, within 30 days from the date of issuance of this order, executed contractual amendments to its FPC Gas Rate Schedule Nos. 5 and 6, eliminating the present price escalation provisions therefrom as specified in its offer of settlement and extending the terms of the contracts to August 3, 1969 in accordance with the Ninth Amendment to the Policy Statement No. 61–1. The contractual amendments shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Southwest shall compute the difference between the rates collected subject to refund and the related settlement rates for the period such rates were collected subject to refund, to the date of this order, together with interest as specified in the above docket to the date of this order. Southwest shall within 45 days from the date of this order submit a report to the Commission, and serve a copy on TETC setting out the amount of refund related to the subject rate

schedules (showing separately the principal and applicable interest), the basis used for such determination and the period covered.

(D) Southwest shall retain the refund amounts shown in the report required under paragraph (C) above in a savings account in any bank where deposits are insured by the Federal Deposit Insurance Corporation, subject to further order of the Commission directing the disposition of those amounts.

(E) Upon notification by the Secretary of the Commission that Southwest has complied with the terms and conditions of the order, the rate and charge of 16.7756¢ per Mcf at 15.025 psia for sales under Southwest's FPC Gas Rate Schedule Nos. 5 and 6, as specified in its offer of settlement, shall be effective as of the date of issuance of this order, and the above designated proceeding shall be deemed terminated insofar as Southwest's FPC Gas Rate Schedule Nos. 5 and 6 are concerned.

(F) The acceptance by the Commission of Southwest's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Southwest, including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman, L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

HYDROELECTRIC PROJECT LICENSES—EXPIRATION—RECAPTURE AND RELICENSING, DOCKET NO. R-250

ORDER NO. 288

ESTABLISHING PROCEDURES FOR RECAPTURE OR RELICENSING OF HYDROELECTRIC PROJECTS

(Issued October 6, 1964)*

This is a proceeding to amend our General Rules and Regulations under the Federal Power Act to establish procedures for recapture or relicensing of hydroelectric projects upon the expiration of licenses. Because the Commission since its organization in 1920 has usually issued licenses for the fifty-year maximum term provided in section 6 of the Federal Power Act, the first year for expiration of numerous licenses is 1970.[1] As shown below, our obligations with respect to recapture or relicensing commence well before the license for a project expires This rulemaking is intended to provide the basis for orderly and expeditious discharge of this Commission's obligations under sections 14 and 15 of the Federal Power Act both before and after such licenses expire.

Upon the expiration of a license, the United States under section 14 of the Federal Power Act may take over, maintain, and operate the project by paying the licensee's net investment, not to exceed the project's fair value, plus certain severance damages.[2] If the United States does not exercise this right of recapture, the Commission under section 15 may relicense the project, either to the original or a new licensee. Until it does so, it may issue annual licenses to the original licensee on the terms of the expired license.

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*Published in the Federal Register on October 14, 1964 (29 F.R. 14106). Rehearing denied by order issued December 4, 1964.

[1] Licenses for 2 projects of over 2,000 horsepower installed capacity expire in 1968; 25 in 1970; 25 from 1971 through 1974; and 25 from 1975 through 1979. Thus, 75 licenses for such projects expire in the first decade after the Commission's 50th anniversary.

[2] The United States at any time may take over a project by condemnation.

The notice of proposed rulemaking in this docket, issued on November 6, 1963 (28 Fed. Reg. 12175), proposed the following procedures for Commission's discharge of its obligations under these provisions. During each of the 5 years before a license expired, the Commission would give notice of the expiration in its Annual Report and in the Federal Register. At the beginning of this notice period, the Commission would solicit from interested Federal agencies their recommendations on recapture. It also would ask the licensee for its plans for future development and use and would accept the comments of other interested parties. The licensee would have an opportunity to respond to any agency comments recommending recapture. After oral argument, if appropriate, the Commission would send to Congress at least 2 years before the license expired its recommendation on recapture, accompanied by the Federal agencies' and licensee's submissions plus the estimated cost to the United States of recapture. If Congress authorized recapture, the Commission would give the licensee 2 years' notice, fix compensation, and provide for transfer to the United States of the project properties. The Commission would require the licensee or any other party to apply for any new license at least a year before the existing license expired.

In response to the notice of proposed rulemaking, we received comments from the Secretary of the Interior, American Public Power Association, Northwest Public Power Association, National Rural Electric Cooperative Association, Edison Electric Institute, and 19 licensees. We have given close attention to these 24 responses. Discussed below are the more significant comments and proposals and our action in response hereto.

The three trade associations representing publicly-owned or cooperative electric utilities maintain that Congress in section 14 of the Federal Power Act delegated the authority to recapture projects, but they disagree as to who is the recipient of the authority. According to the American Public Power Association and the National Rural Electric Cooperative Association, Congress conferred this power upon the Commission; according to the Northwest Public Power Association, upon the President.

We believe that the language and legislative history of section 14 do not support the contentions made by three associations. This section reads in pertinent part:

> Upon not less than two years' notice in writing from the Commission the *United States* shall have the right upon or after the expiration of any license to take over and thereafter to maintain and operate any project . . . [Emphasis added.]

In our opinion, this language, while reserving recapture rights to the United States, neither expressly nor implicitly delegates the power to exercise these rights to the Commission, the President, or any officer or agency of the Executive Branch.

Throughout the act, whenever Congress delegated authority, it expressly designated the recipient. Thus, in section 16 (16 U.S.C. 809), immediately following the sections on recapture and relicensing, the President is authorized to order the United States' take-over of any licensed projects "for the purpose of manufacturing nitrates, explosives, or munitions of war, or for any other purpose involving the safety of the United States, to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes . . ." Other sections of the act also expressly delegate authority to the President,[2] as well as to the Ex-

[2] Sections 1 and 2 (16 U.S.C. 792, 793).

ecutive departments generally,[4] and specific cabinet officers,[5] including the Secretary of the Interior.[6]

Moreover, the legislative history of sections 14 and 15 demonstrates Congress' intent to retain control of hydroelectric policy to be applied upon expiration of licenses. Many Congressmen in 1920 apparently thought that within the succeeding 50 years Congress would enact general legislation establishing procedures and standards for recapture and relicensing.[7]

In fact, of course, Congress has not taken any further action on recapture or relicensing. It might have delegated to us the power to authorize recapture, but it has not done so. Neither has it delegated the power to any other Federal authority. The power resides where it has always resided, in Congress, and in the absence of further legislation can only be exercised by action on a case-by-case basis as individual licenses expire.[8]

The Secretary of the Interior, admitting that only Congress may act to approve recapture and that the Commission may make recommendations to Congress on recapture, says "only that the Commission should not be the primary agency to make recommendations to Congress on the behalf of the Executive Branch of the Government." We recognize, of course, that we cannot speak for the Executive Branch and do not formulate Executive policy with respect to recapture. But in the light of the fact that the Commission has regulated licensed projects for decades and is required under section 14 to give notice before a project is recaptured, to determine the net investment and severance damages of the project, and to relicense the project if it is not recaptured, the Commission's duty to assist Congress in the question of whether to recapture can hardly be questioned. See also sections 7(b), 304(a) and 307(a) of the act (16 U.S.C. 800(b), 825(c), 825(f)).

We believe that we would be derelict in our duty if we did not keep Congress informed when licenses become subject to recapture and supply it with necessary factual information and expert analysis upon which it can make an informed judgment as to whether to exercise its recapture powers.

We have provided for securing the views of interested agencies of the Federal Government and for submitting them to the Congress with our report. These agencies remain free to provide the Congress with supplementary statements of their views if they wish.

The licensees generally did not question our authority to adopt the proposed rules, but a number of them recommended various changes in the proposed procedures which generally go to its details of execution rather than its fundamental conception. We have grouped these various recommendations for discussion in the sequence in which they would apply in the recapture or relicensing process.

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[4] Section 4(c) (16 U.S.C. 797(c)).

[5] Secretary of the Army: sections 4(e), 11(a), 17(a), 18, 26 (16 U.S.C. 797(e), 804(a), 810(a), 811, 821); Secretary of Commerce (since transferred to the Secretary of the Interior): section 18 (16 U.S.C. 811); Secretary of the Department in which the Coast Guard is operating (now Secretary of the Treasury): section 18 (16 U.S.C. 811); Attorney General: sections 13 and 26 (16 U.S.C. 806, 820).

[6] Section 10(e) (16 U.S.C. 803(e)).

[7] *E.g.*, 59 Cong. Rec. 1438 (1920) (remarks of Senator Norris). See also Hearings Before the House Committee on Water Power, 65th Cong., 2d Sess. 32, 469 (1918). Similar statements were made with regard to the General Dam Act of 1910 (36 Stat. 593): H.R. Rept. 1160, 61st Cong., 2d Sess. 2 (1910); 45 Cong. Rec. 5684 (1910).

[8] Even if some authority could be spelled out of some general delegation to the President or an agency of the Executive Branch (and none of the respondents cite any such authority), it would be rendered virtually nugatory by the fact that recapture under the provisions of section 14 can only be accomplished upon the payment of the prescribed compensation of the licensee, which would require an appropriation by Congress.

I. *General*

A number of the licensee comments recommend that the term "take over" be substituted for "recapture," arguing that "take over," not "recapture," is used in sections 14 and 15 and that it more accurately describes what is involved. We believe that "recapture" has become virtually a term of art for the rights reserved to the United States under section 14. Although not used in the statute, the term appears in the hearings, reports, and debates on water power legislation and has been used by the courts. More importantly, "recapture" accurately describes the object of section 14—that the United States have an opportunity at the end of the license term to retake the project site upon the payment of the specified compensation. "Take over," on the other hand, suggests expropriation, which is not what section 14 provides.

II. *Gathering Information*

One licensee proposes that the governor and the appropriate agencies of the state or states in which the project is located be notified of all proceedings before the Commission. We have adopted this proposal.

Three licensees ask that the Commission solicit the licensee's statement concerning the effect of recapture upon its financial condition the dividends paid its stockholders, the rates charged its customers, and the taxes collected by the local, state, and Federal governments. Since such materials among others may be germane to the question whether a project should be recaptured, they should be filed for our consideration.

Four licensees ask that Federal agencies and other interested parties serve the licensee with their submissions. Two of these add that the staff should serve the licensee with any report which it might make to the Commission. A third states that the Commission's recommendation to Congress should be sent to the licensee. We have altered the rulemaking to provide that: (1) all formal submissions will be served upon the licensee, and (2) a copy of the Commission's recommendation to Congress will be sent to the licensee. However, the staff reports to the Commission prior to its determination of the recommendation to be submitted to Congress are internal agency memoranda which, like other such documents, will not normally be made public.

Some of the comments suggest that the licensee be allowed to respond to the recommendations of interested parties other than agencies.[9] One says that the licensee should have an opportunity to amend its plans in response to agency recommendations. Another requests an opportunity to respond to the Commission's recommendation before it is submitted to Congress. We have altered the rule to expressly permit the licensee to respond to any comments recommending recapture. In formulating our recommendation to Congress, we of course will consider any timely-filed amendments to the licensee's plans for future development and use of the project. Since the licensee, if it takes exception to the Commission's recommendation, will be free to state its views to the appropriate Congressional committees, we believe that we need not afford the licensee an opportunity to respond to the recommendation before it is sent to Congress.

Thirteen parties ask for a provision for a hearing; some of these believe that a hearing should or must be granted at the licensee's request. When the Commission gathers information for recommending legislation to Congress, there is no statutory or Constitutional requirement that it provide a hearing for in-

[9] As it appeared in the notice, the rulemaking expressly permitted response to "agency comments recommending recapture" but said nothing about response to other comments.

terested parties, though it may in its discretion do so. We believe that any automatic provision for a hearing either of an evidentiary nature or by way of oral argument would not be appropriate, and would tend to delay our reports to Congress unduly, but of course we reserve the right to provide for an evidentiary hearing where it appears that it would be useful. We will hold oral argument at the request of the licensee whenever an interested Federal agency has requested the Commission to recommend recapture to Congress.

III. *Recommendation to Congress*

Nine parties suggest that, in addition to the materials specified in the notice of proposed rulemaking, the Commission send to Congress: (1) recommendations of parties other than Federal agencies, (2) staff reports to the Commission, (3) licensee's response to others' recommendations, (4) licensee's estimated claim for compensation, (5) a transcript of any hearings, and (6) a digest of the record. We have altered the rules which we are here adopting to provide that the Commission's recommendation to Congress will be accompanied by all the submissions of interested Federal agencies and the licensee plus such other material of record as in the Commission's judgment might be useful to Congress.

IV. *Giving Notice*

Section 14 provides that the Commission shall give the licensee "not less than 2 years' notice" of recapture of its project by the United States. This language, as many of the licensees point out, authorizes the Commission to give a period of longer notice; some suggest that this period should be as long as necessary for the licensee to find a replacement for the generating capacity of the recaptured project; others merely stated that more than 2 years would generally be necessary.

Five licensees suggest that when more than 2 years is required to replace the recaptured project, the Commission both recommend to Congress and itself provide an appropriate longer notice: If Congress' and the Commission's periods are not the same, the licensee should be given the longer of the two. Finally, a suggestion is made that the notice period should run, not from Congress' authorization for recapture of the project, but from its appropriation of funds. The comment in question notes that if the notice period runs from recapture, the licensee is put in a quandry: it risks either the building of a replacement facility which may never be needed or the losing of a project before a replacement facility is available.

If Congress recaptures a project, it may fix the date for transferring the project properties to the United States. If Congress does not specify a date, the Commission, we believe, is authorized under section 14 to specify the date and to give sufficient notice to allow the licensee to secure an alternate source of power. Accordingly, we have altered the rulemaking to provide that when Congress recaptures a project without fixing the date, the Commission will give appropriate notice of not less than 2 years. We think that under section 14 notice must be given from Congress' authorization of recapture rather than its appropriation of funds for compensation. It is clear that once Congress has authorized recapture the basic question has been decided and the subsequent appropriation, which must await the Commission's precise determination under section 14 of the recapture payment, presumably will follow in due course.

V. *Fixing Compensation*

Ten licensees ask that compensation for recaptured projects licensed before the amendment of section 14 in 1935 be fixed by the procedures specified in the

original section rather than in the amended section. The original section provided that a United States District Court fix compensation if the licensee and the Commission could not agree. The amended section provides that the Commission fix compensation after notice and opportunity for hearing.[10] The parties contend that the original section controls for pre-1935 licensees because of section 6, providing that licenses may not be altered without the licensee's consent, and section 28, providing that amendments of the act will not affect previously issued licenses or the licensee's rights thereunder.

The legislative history shows that the amendment of section 14 in 1935 was in response to *Keller* v. *Potomac Electric Power Company*, 261 U.S. 428 (1923), which was thought to cast doubt on the constitutionality of a District Court's determining compensation for recapture.[11]

Subject to certain limitations not here in point, Congress has discretion to provide the civil procedure for the enforcement of substantive rights. Constitutional or statutory provisions against retroactive legislation do not bar Congress from changing the procedure for vindicating such rights. Since the designation of a forum for fixing compensation in accordance with a statutorily prescribed standard is manifestly a matter of procedure, sections 6 and 28, which bar changes in substance, do not prevent Congress from providing that the Commission will fix the compensation for all recaptured projects, including those licensed at the time a different procedure was in effect.

VI. *Transfer of the Project to the United States*

Two licensees request an assurance that the licensee need not transfer the project to the United States until payment according to a final adjudication under the provisions of section 313 of the Federal Power Act for appeal to the courts of Commission orders. Under section 14 of the act, transfer of the project is to occur upon tender of compensation as fixed by the Commission. We believe that this provision clearly disposes of the effective date of recapture. Obviously, a licensee may claim a higher payment, but the licensee clearly does not have any automatic right to delay application of recapture while litigation to determine whether a sum greater than that fixed by the Commission is pending in the courts.

A number of parties request that all reference to applications for annual licenses be deleted because section 15 provides that the Commission automatically will issue such licenses after expiration of the original license until the project is recaptured or a new license is issued. We have altered the rule to make clear that if, upon expiration of the original license, Congress has not authorized recapture or the Commission has not issued a new license, the Commission will issue annual licenses pending consideration of an application by the original licensee for a new license.

For the reasons set forth above and upon consideration of the entire record in this proceeding, *the Commission finds:*

It is appropriate and in the public interest in administering Part I of the Federal Power Act to establish procedures with respect to the recapture or

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[10] A comparative print of the pertinent part of section 14's 1935 amendment reads: "The net investment of the licensee in the project or projects so taken and the amount of such severance damages, if any, shall be determined by agreement between the Commission and the licensee, and in case they cannot agree, by proceeding in equity instituted by the United States in the district court of the United States in the district which any such project may be located: *by the Commission after notice and opportunity for hearing.* [Underlined words are deletions; italicized words are additions.]

[11] S. Rep. No. 621, 74th Cong., 1st Sess. 46 (1935); H.R. Rept. No. 1318, 74th Cong., 1st Sess. 25 (1935). See also: Hearings on 1935 Public Utility Act Before House Interstate and Foreign Commerce Committee, 74th Cong., 1st Sess. 390, 487–488 (1935).

relicensing of projects upon expiration of their licenses by amending our General Rules and Regulations under the Federal Power Act as follows.

Under the authority of the Federal Power Act, especially sections 14, 15, and 309 (16 U.S.C. 807, 808, 825h) *the Commission orders:*

(A) Part 2, General Policy and Interpretations, Chapter I of Title 18 of the Code of Federal Regulations, is amended by adding a new section 2.6 to read as follows:

§ 2.6 Procedure for recapture or relicensing of licensed projects. (See Part 16 of this chapter)

(a) Starting in 1970, numerous licenses for projects subject to recapture will expire. So that Congress may have an adequate opportunity to decide whether, upon expiration of licenses, the United States will recapture any of these projects under section 14, and so that the licensees and others may have adequate notice and opportunity to file timely applications for a new license under section 15, the Commission each year will publish in its annual report and in the Federal Register a table showing the projects subject to recapture during the succeeding five years. The table will list these licenses according to their expiration dates and will contain the following information: (1) license expiration date; (2) licensee's name; (3) project number; (4) type of principal project works licensed, *e.g.*, dam and reservoir, powerhouse, transmission line; (5) location (by state and stream; also by city or county when appropriate); and (6) installed capacity.

(b) Five years before a license expires for a project subject to recapture the Commission will solicit from the Secretaries of Army, Interior, Agriculture, Health, Education, and Welfare, and other appropriate Federal agencies recommendations and supporting information, to be furnished within a year, concerning recapture or relicensing the project. The agencies will be asked to demonstrate how any recommended recapture action will serve their respective programs and policies. The Commission simultaneously will solicit, also for submission within a year, the licensee plans for future development and use of the project and its statement concerning the effect of recapture upon its financial condition, the dividends paid its stockholders, the rates charged its customers, and taxes collected by local, state, and Federal governments. All formal submissions to the Commission will be served upon the licensee. An opportunity will be afforded to the licensee to respond to any comments recommending recapture. The Commission will hear oral argument at the request of the licensee whenever an interested Federal agency has requested that the Commission recommend recapture. After considering these various documents and hearing oral argument, if any, the commission will forward to Congress at least 2 years before the license expires its recommendation, with a copy to the licensee, as to whether the project should be recaptured by the United States, accompanied by all submissions to the Commission by Federal agencies and the licensee plus such other material of record as in its judgment might be useful to Congress.

(c) Should Congress authorize recapture, the Commission immediately will give the licensee notice as Congress directs or as appropriate, but not less than 2 years, and, unless Congress otherwise provides, will direct the licensee to present to the Commission within a specified period a claim for compensation consistent with the provisions of section 14 of the Federal Power Act. It also will require, unless Congress otherwise provides, that upon tender of compensation as fixed by the Commission the licensee transfer

to the United States, in such manner as the Commission may direct, possession and title to the project properties.

(d) If Congress authorizes recapture of a project, the Commission will dismiss any pending application for a new license for the project. In addition, the Commission in its discretion may dismiss any application for a new or annual license which is not filed at least a year before the license expires, and any such application so dismissed will be eligible for refiling only after a decision on any timely filed application. If at the end of a license term Congress has not authorized recapture, the Commission may proceed to issue a new license for the project and, pending consideration of an application by a licensee for a new license, will issue annual licenses to the licensee. [Secs. 14, 15, 309 (16 U.S.C. 807, 808, 825h)]

(B) Part 16, Chapter I of Title 18 of the Code of Federal Regulations, is amended by amending §§ 16.1 and redesignating it 16.2, deleting § 16.2 and adding new §§ 16.1, 16.4, and 16.5. As so amended Part 16 will read as follows:

Part 16—Application for License for Project Under License Which Expires on Specified Date

§ 16.1 Purpose and coverage.

This part implements the general procedure, as set out in § 2.6 of this chapter, for relicensing projects upon expiration of the license in the event that Congress does not elect to recapture the project for the United States. This part, however, applies as well as to relicensing of projects not subject to recapture.

§ 16.2 Contents.

Unless otherwise specified, any licensee or other applicant for a new or annual license shall submit an original and ten conformed copies of the application, duly subscribed and verified under oath, and all accompanying documents, together with one additional conformed copy for each interested State Commission. The application shall set forth in appropriate detail the following information in the order indicated:

(a) The exact name of the applicant.

(b) The license number of the project.

(c) The location of the project.

(d) The date on which the license expires.

(e) If the licensee is a corporation, a list of the officers and directors.

(f) The name, title, and post-office address of the person to whom correspondence in regard to the application shall be addressed.

(g) A brief description of the project works and operations of the project.

§ 16.3 Additional information.

The Commission may require additional information when it appears to be pertinent in a particular case.

§ 16.4 Project alterations.

Where an applicant for a new license intends to make changes or additions to the project works of a project, they shall be fully described in the application and shown on any accompanying exhibits.

§ 16.5 Filing date.

Any application for a new or annual license filed later than one year before the expiration date of the license may, in the Commission's discretion, be dis-

missed without prejudice and will be eligible for refiling only after a decision on any timely filed application.

[Secs. 14, 15, 309 (16 U.S.C. 807, 808, 825h)]

(C) The amendments prescribed herein will be effective from November 1, 1964.

(D) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

GRAEAGLE LAND AND WATER COMPANY, PROJECT NO. 1302

ORDER ACCEPTING SURRENDER OF LICENSE

(Issued October 7, 1964)

Application was filed on May 15, 1964, by Graeagle Land and Water Company (Applicant) under Section 6 of the Federal Power Act (Act) for surrender of its license for major Project No. 1302 located at the outlet of Long Lake, a headwater of Gray Eagle Creek which in turn is a tributary of Feather River, and affecting lands of the United States within the Plumas National Forest in Plumas County, California.

According to the application, no further power was generated after July 8, 1963. Long Lake will be used solely for storing water for domestic, industrial and irrigation purposes, and Applicant intends to apply for a Special Use Permit from the Forest Service following Commission acceptance of surrender of the license.

The Forest Service, which transmitted the application for surrender to the Commission, has advised that the power generation was stopped as of July 8, 1963, that the project works had been removed, and that the project area had been restored to a condition satisfactory to the Service.

Annual charges under the license have been paid through December 31, 1963, and Applicant's copy of the license was returned with the application.

The Commission finds:

Acceptance of surrender of the license for the project is appropriate.

The Commission orders:

Surrender of the license for Project No. 1302 is hereby accepted, effective as of December 31, 1963.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOUTH BELOIT WATER, GAS AND ELECTRIC COMPANY, PROJECT NO. 2373

ORDER ISSUING LICENSE (MINOR)*

(Issued October 7, 1964)

Application was filed on May 29, 1963, by South Beloit Water, Gas and Electric Company (Applicant) of Madison, Wisconsin, for a license under Section 4(e) of the Federal Power Act (Act) for constructed minor Project No. 2373, known

*Rehearing denied by order issued February 17, 1965, 33 FPC 275.

as the Rockton Plant, located on Rock River in the Village of Rockton, Winnebago County Illinois.

A water power project has been in operation at this location for over a hundred years. The present power generating facilities were constructed in 1928, and 1929. In its order issued August 10, 1964, 32 FPC 575, for Project No. 2346, the Commission found that the Rock River from its mouth to at least Janesville is a navigable waterway of the United States. The Rockton Plant is situated below Janesville. For the reasons set forth in Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of April 1, 1962, and a termination date of December 31, 1993.

The Secretary of the Army and the Corps of Engineers, have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project, certain considerations in the interest of fish and wildlife resources.

The Department of Health, Education, and Welfare has advised that there are no known pollution or vector control problems created or intensified by the project, and none is anticipated.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Illinois, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(2) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(3) The project does not effect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(4) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(5) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 1,600 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(6) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

Section 4(b), except the second sentence thereof; (4)(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to South Beloit Water, Gas and Electric Company (Licensee) of Madison, Wisconsin, under Sections 4(e) and 10(i) of the Act, for a period effective as of April 1, 1962, and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2373, located on Rock River, a navigable water of the United States, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2373 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined.

(ii) A rockfill overflow type dam 1000 feet long, with concrete covering; five 10 by 14 feet tainter gates at head of canal; powerhouse of brick superstructure 31 by 64 feet long; a siphon spillway built integrally with the powerhouse passes excess flow in canal; powerhouse contains 2 water wheels, one a 1050 horsepower operates under a normal head of 11 feet, the other a 750 horsepower operates under a normal head of 10.5 feet, and are connected to two Westinghouse generators 750 kva and 625 kva, respectively: the total capacity is 1200 kw; and all other structures, fixtures, equipment or facilities used or useful in the operation and maintenance of the project and located on the project area; and all rights and interests therein, the possession of which is necessary in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–9 (July 1, 1964) entitled "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States" (32 FPC 577), which terms and conditions, designated as Articles 1 through 11, are attached hereto, and made a part hereof; and subject to the following special condition set forth herein as an additional article:

Article 12. The Licensee shall pay to the United States the following annual charge:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, $80.00.

(D) The terms and conditions of the Act which it has been found above to be in the public interest to waive, are hereby excluded from the license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

WISCONSIN POWER & LIGHT COMPANY, PROJECT NO. 2347

ORDER ISSUING LICENSE (MINOR)*

(Issued October 7, 1964)

Application was filed on March 1, 1963, by Wisconsin Power & Light Company (Applicant) of Madison, Wisconsin, for a license under Section 4(e) of

*Rehearing denied by order issued February 17, 1965, 33 FPC 275.

the Federal Power Act (Act) for constructed minor Project No. 2347, known as the Janesville Central Plant, located on the Rock River, in the City of Janesville, Rock County, Wisconsin.

A project has been in operation at the present site for over 50 years. The present facilities were constructed in 1926 and 1927. In its order issued August 10, 1964, 32 FPC 575, the Commission found that the Rock River from its mouth to at least Janesville is a navigable waterway of the United States. For the reasons set forth in Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of April 1, 1962 and a termination date of December 31, 1993.

The Secretary of the Army and the Corps of Engineers, in reporting on the application, advised that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project, certain conditions in the interests of fish and wildlife resources.

The Department of Health, Education and Welfare has reported that there have been no apparent water supply, water quality, or vector control problems created or intensified by the project, and none is anticipated.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Wisconsin, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(2) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(3) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(4) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(5) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 670 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(6) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

> Section 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to Wisconsin Power & Light Company (Licensee) of Madison, Wisconsin, under Sections 4(e) and (10(i) of the Act, for a period effective as of April 1, 1962, and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2347, located on Rock River, a navigable water of the United States, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is hereby incorporated herein as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2347 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined.

(ii) a 206 feet long overflow type timber and concrete dam, sluice with needles between powerhouse and dam; a 79 feet 4 inches by 27 feet 6 inches brick and concrete structure powerhouse containing two Leffel turbines rated at 384 horsepower each and connected to two 312.5 kva alternators and all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, and all rights and interests the possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–9 (July 1, 1964) entitled "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States" (32 FPC 577), which terms and conditions, designated as Articles 1 through 11, are attached hereto and made a part hereof; and subject to the following special condition set forth herein as an additional article:

Article 12. The Licensee shall pay to the United States the following annual charge:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, $34.00.

(D) The terms and conditions of the Act which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

WISCONSIN POWER & LIGHT COMPANY, PROJECT NO. 2348

ORDER ISSUING LICENSE (MINOR)

(Issued October 7, 1964)

Application was filed on March 1, 1963 by Wisconsin Power & Light Company (Applicant) of Madison, Wisconsin, under Section 4(e) of the Federal Power Act (Act) for constructed minor Project No. 2348, known as the Beloit Plant, located on Rock River, in the City of Beloit, Rock County, Wisconsin.

The project with the present head of 9 feet, has been in operation for at least 90 years. The present powerhouse facilities were constructed in 1927 and 1928. In its order issued August 10, 1964, 32 FPC 575, the Commission found that the Rock River from its mouth to at least Janesville is a navigable waterway of the United States. The Beloit Plant is situated below Janesville. For the reasons set forth in Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of April 1, 1962 and a termination date of December 31, 1993.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project, certain conditions in the interests of fish and wildlife resources.

The Secretary of the Army and the Corps of Engineers, in reporting on the application, advised that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of Health, Education and Welfare has reported that the project will not have any adverse effect on matters affecting that Department.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Wisconsin and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(2) Public notice of the filing of the application has been given. No protest or petitions to intervene have been received. No conflicting application is before the Commission.

(3) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 500 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

> Section 4(b) except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10 (c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair values.

The Commission orders:

(A) This license is hereby issued to Wisconsin Power & Light Company (Licensee) of Madison, Wisconsin, under Sections 4(e) and 10(i) of the Act,

for a period effective as of April 1, 1962 and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2348, located on Rock River, a navigable water of the United States, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2348 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined.

(ii) A 287 feet long concrete dam with stop logs on a portion of the crest, needles on another section. Two tainter gates 30 feet by 15 feet 9 inches high. A powerhouse approximately 37 feet by 34 feet 6 inches. The powerhouse contains a 380 kw unit operating under a normal head of 9 feet and all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, and all rights and interests therein, the possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–9 (July 1, 1964) entitled "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States" (32 FPC 577), which terms and conditions, designated as Articles 1 through 11, are attached hereto and made a part hereof; and subject to the following special condition set forth herein as an additional article:

Article 12. The Licensee shall pay to the United States the following annual charge:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, $25.00.

(D) The terms and conditions of the Act, which it has been found herein to be in the public interest to waive, are hereby excluded from the license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgement of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITY OF WRANGELL, ALASKA, PROJECT NO. 2313

ORDER EXTENDING PERIOD OF PRELIMINARY PERMIT

(Issued October 7, 1964)

Application was filed on July 29, 1964 by the City of Wrangell, Alaska, permittee for proposed Project No. 2313, for 1-year extension of the preliminary permit issued for a period of 2 years, effective as of January 1, 1963.

The permittee advises that the proposed Mill Creek and Virginia Lake Hydroelectric Project is being studied under the permit and is in the planning stages, and that all cooperative undertakings with the involved fishery agencies and Forest Service will be complied with during the planning stages under the permit.

The Commission finds:

It is not inconsistent with the public interest to extend the period of the preliminary permit, as hereinafter provided.

The Commission orders:

The period of the preliminary permit for proposed Project No. 2313 is hereby extended for a period of 1 year through December 31, 1965.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE ATLANTIC REFINING COMPANY, DOCKET NOS. G-9283 AND G-9284, ET AL.[1]

ORDER APPROVING RATE SETTLEMENT PROPOSAL, SEVERING AND TERMINATING PROCEEDINGS AND PRESCRIBING REFUNDS

(Issued October 8, 1964)

There is before us for consideration a Motion for Approval of Settlement Proposal, Termination of Rate Proceedings, and for Shortened Procedure Certification filed on May 7, 1964, as amended on July 31, 1964, by Atlantic Refining Company (Atlantic) encompassing the rates for 124 of Atlantic's currently effective FPC Gas Rate Schedules. Comments have been filed by some of the parties to these proceedings, all of which have been given due consideration. In summary, the settlement proposal as filed by Atlantic provides:

(1) Settlement rates, including tax reimbursement, equal to or less than the Commission's applicable area ceilings with two exceptions hereinafter discussed;

(2) Atlantic waives the right to file for contractually authorized increase rates until August 1, 1967, for all of the rate schedules involved in the settlement. However, Atlantic reserves the right to file for any increased rates, if contractually authorized, up to the applicable area-rate levels established by any order or rule of the Commission, or to file for any contractually authorized increase in tax reimbursement;

(3) Atlantic will delete any favored nation and price redetermination clauses contained in its Rate Schedule Nos. 5, 48, 49, 124, 148, 152 and 159, and additionally will delete the periodic pricing provisions in its Rate Schedule Nos. 6, 32, 125, 151, 181, 187 and 246;

(4) Refunds with interest at the applicable rates, under rate schedules where collection was made subject to refund, of the difference between the revenues actually collected and those which would have been collected at the settlement rate, in each instance, commencing with December 1, 1961, to the date of issuance of this order for all of Atlantic's rate schedules.

(5) Exclusion from the settlement proposal of sales in the Permian Basin; 25 sales related to previous offers of settlement accepted by the Commission; 1 sale to another producer whose resale rate is under suspension; 5 sales consolidated in certificate proceedings that are presently before the Commission and

[1] The additional dockets involved herein are set forth in Appendices A, B, and C, attached hereto.

those matters relating to Rate Schedule Nos. 118, 147 and 150 together with their pending Section 4(e) proposed rate increase in Docket No. G–17741.[2]

With respect to refunds, the parties to the settlement conference utilized cost of service studies and revenues based on contract rates to determine Atlantic's revenue-cost relationship. These studies indicate that it is appropriate that we require that refunds should be computed for sales made on and after December 1, 1961. Applicable interest shall be paid on all of the refunds through July 31, 1964. Such refunds will be approximately $4,766,470, exclusive of interest. Atlantic's future revenues will be decreased approximately $3,216,000 annually as a result of the settlement.

The purchasers of gas under the various rate schedules to which this settlement proposal relates are all natural gas pipe-line companies subject to our jurisdiction under the Natural Gas Act, and many of such purchasers in turn have customers who are natural gas pipelines. Some of these pipeline customers of Atlantic or Atlantic's customers are required under express provisions of outstanding orders of this Commission to flow-through to their customers all or any part of the refunds they may receive from Atlantic as a result of this settlement; others may choose so to do in the absence of such express provisions. For all of the reasons set forth in our order in *Humble Oil & Refining Company*, Docket Nos. G–9287 and G–9288, *et al.*, 32 FPC 49 order issued July 8, 1964, we shall require Atlantic to retain the amounts of refunds ordered herein until further order directing the nature of their disposition[3] and also to submit within 45 days of this order to the Commission and each customer a detailed report setting out, by purchasers, the amount of refund related to each rate schedule, the volume of gas sold thereunder and the period covered. We shall also by separate action direct each of the pipeline purchasers within 10 days from the receipt of such report, to submit a report of their own setting forth whether they intend to pass on all or part of such refund amounts to their customers and the names of such customers and amounts of refund each would receive, or, if they claim the right to retain any portion of the refunds, a brief statement as to the legal or equitable basis for such claim. In the event such reports indicate that the refunds will flow through to ultimate consumers or distribution companies not subject to the Commission's jurisdiction, the Commission will authorize the release of such refund sums by Atlantic (unless a state regulatory authority after notification of the sum to be made available to a company subject to its regulatory jurisdiction asks us to defer releasing the funds until it can determine their ultimate disposition). In the event a pipeline purchaser from Atlantic (or a pipeline customer of such a pipeline) indicates that it is asserting a claim to retain substantial refund sums the Commission will by further order prescribe the procedure for determining the relative rights to such funds of such pipeline or its customers.

Settlement rates which are exceptions to the applicable area ceiling are proposed by Atlantic for sales to Tennessee Gas Transmission Company (TGT) and to United Fuel Gas Company (United Fuel) in South Louisiana.[4] The

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[2] Atlantic does not propose a settlement of the 4(e) proceedings involving Rate Schedule Nos. 118, 147 and 150, or the termination of any refund obligations thereunder but will supersede the existing rates of 23.55¢ per Mcf with a rate of 17.5¢ per Mcf to be effective August 1, 1964.

[3] Exempted from this requirement are the refunds to be made to Colorado Interstate Gas Company, El Paso Natural Gas Company and Arkansas Louisiana Gas Company, since the amount of refunds to those companies is *de minimis*.

[4] TGT and United Fuel were each represented at the settlement conferences and each actively participated therein.

sale to TGT is made under Atlantic's FPC Gas Rate Schedule No. 3 in the Bayou Sale Field, St. Martin Parish. Atlantic proposes to add substantial reserves under this schedule. In 1958 Atlantic dedicated 333 Bcf of natural gas to TGT from specific reservoirs in the field. Subsequently, it has developed approximately 83 Bcf of additional reserves which it will dedicate to TGT. Additionally, it will renegotiate its contract to eliminate the favored nation and price redetermination provisions therefrom; provide for a 1¢ per Mcf price escalation through 1981; extend the make-up period to February 26, 1971; provide for no increase in TGT's take or pay obligation under the contract until January 1, 1968, and increase the "swing" provision from 100% to 125% of deliverability. The circumstances surrounding this sale to TGT are similar to those we considered regarding a sale made by *Cities Service Production Company* in our order approving its general rate settlement in Docket No. G–9510, *et al.*, 28 FPC 1114 (order issued December 26, 1962) and we there approved an exception to the applicable area ceiling. Therefore we here approve Atlantic's proposed reduction in its presently effective rate from 22.8333¢ to the settlement rate of 17.5¢ per Mcf.

The sale to United Fuel is made under Atlantic's FPC Gas Rate Schedule No. 63 in the Midland Field, Acadia Parish. This sale is made under a contract dated January 5, 1953, and is for a 20 year period. Between 1956 and 1961 Atlantic has added approximately 64 Bcf of natural gas by dedication of reserves to this contract. Subsequent to 1956 Atlantic increased the area dedication adding new productive horizons which increased the reserves by approximately 352 Bcf of gas. This additional dedication of reserves and acreage subsequent to our assumption of regulation of independent producers caused us to grant an exception to the applicable area ceiling in the general rate settlement in *Gulf Oil Corporation, et al.*, Docket No. G–9520, *et al.*, 29 FPC 837 (order issued April 25, 1963) and for the same reasons we approve Atlantic's proposed reduction of the presently effective rate of 21.1¢ to 19¢ per Mcf.

The settlement proposal includes rates for which issuance of related permanent certificates is pending, some of which are for sales presently being made under temporary certificates.[5] We shall set such applications for abridged hearing in accordance with Section 7 of the Natural Gas Act, providing that the settlement rates shall be the initial rates.

Additionally, included in the settlement proposal is a pending certificate application for a sale by Atlantic in Texas Railroad Commission District No. 4 to South Texas Natural Gas Gathering Company under Atlantic's FPC Gas Rate Schedule No. 283 in the Schmidt Field. This sale is presently involved in the *Turnbull & Zoch Drilling Co. (Operator), et al.*, proceedings, Docket No. G–17960, which are presently in hearing before a presiding examiner. Testimony and evidence have been introduced regarding such sale, and we deem it proper, in this instance, to omit the sale from the settlement and make the rate contingent upon the final order issued in such proceeding.

On August 14, 1964, the Pennsylvania Public Utility Commission (PUC) filed its comments in answer to Atlantic's amended motion. PUC's comments regarding Atlantic's proposal are similar to those considered by us in *Humble (supra)* and we there set forth our reasons for approval of that general rate settlement. The same reasons pertain here. We consider the reduction and stability in rates for the moratorium period gained by each of the settlements we have approved to be of great value to the public. As we noted in Humble, each settlement is approved subject to the applicable area rate proceedings. Pending

[5] Docket Nos. G–9980, CI60–459, CI61–291, CI61–482 and CI63–1490.

final disposition of these proceedings certainty is gained in large measure by settlement. Our approval of Atlantic's proposal results in Atlantic refunding approximately 56% of the amounts it has collected subject to refund above the settlement rates and the reduced rates of approximately $2,892,000 annually will constitute disallowance of approximately 65% of the increased rates currently being collected in Section 4(e) proceedings. In addition, approximately $324,000 annual reduction will result from reduction of rates under two sales being made under temporary certificates and five sales where the settlement rates are reduced below the "last firm rate."

We believe that the principles underlying the present settlement proposal are consistent with these utilized in previous major independent producer rate settlements.

Our action herein should not be construed as constituting approval of any future rate increases, if any, that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in future proceedings, including area rate or similar proceedings, involving Atlantic's rates and rate schedules.

The Commission finds:

The proposed settlement of the subject proceedings on the basis described, herein, as more fully set forth in the Settlement Proposal filed by Atlantic on May 7, 1964, as amended July 31, 1964, is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act, that it be approved and made effective as hereinafter ordered, and good cause exists for approving the settlement rates, for severing and terminating certain proceedings and providing for refunds.

The Commission orders:

(A) The settlement of these proceedings on the basis of the settlement proposal, filed by Atlantic on May 7, 1964 and as amended on July 31, 1964, is approved.

(B) The applicable settlement rates set out in Appendix A hereto are approved, and such rates shall be effective as of September 1, 1964 except for Rate Schedule Nos. 118, 147 and 150 wherein the rates shall be effective as of August 1, 1964.

(C) The approved settlement rates shall be applicable during the moratorium period herein provided for to all sales of natural gas from all acreage dedicated as of the date of issuance of this order under each of the rate schedules currently on file with the Commission whether such sales are made by Atlantic, its successors or assignees.

(D) Atlantic shall compute the difference between the rates collected subject to refund and the related settlement rates or rate not subject to refund whichever rate is the greater for the period from December 1, 1961, to the date of this order, together with interest as specified in each docket to July 31, 1964. Atlantic shall within 45 days from the date of this order submit a report to the Commission, and serve a copy on each of the purchasers involved, setting out by purchasers the amount of refunds related to each rate schedule (showing separately the principal and applicable interest), the bases used for such determination and the periods covered.

(E) Atlantic shall retain the amounts shown in the report required under paragraph (D) above, subject to further order of the Commission directing the disposition of those amounts, *provided*, however, Atlantic shall within 90 days from the date of this order, (1) refund with interest as specified in each

docket computed to July 31, 1964, the difference between the rates collected subject to refund and the related settlement rates, on and after December 1, 1961, to the date of this order for all of such of Atlantic's Rate Schedules, where the rates were collected subject to refund for sales of natural gas to Colorado Interstate Gas Company, El Paso Natural Gas Company and Arkansas-Louisiana Gas Company and (2) report to the Commission in writing, the amount of refunds made to Colorado Interstate Gas Company, El Paso Natural Gas Company and Arkansas-Louisiana Gas Company showing separately the amount of principal and interest so paid, and the bases used for such determination, together with releases from its purchasers showing receipt of the refunds in conformity with the settlement proposal as approved herein.

(F) If Atlantic elects to commingle these retained refunds with its general assets and use them for its corporate purposes, it shall pay interest thereon at the rate of 6% per annum on all funds thus available from November 25, 1964, to the date on which they are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission.

(G) If Atlantic elects to deposit the retained refunds in a special escrow account, Atlantic shall tender for filing on or before November 25, 1964, an executed Escrow Agreement, conditioned as set out below accompanied by certificate showing service of a copy thereof upon each of its jurisdictional customers. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Atlantic and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(1) Atlantic, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such Agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable only for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursment shall be made out of the escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the trust account for the quarterly period.

(H) The pending certificate proceedings in Docket Nos. G–9980, CI60–459, C161–291, C161–482 and C163–1490 set out in Appendix B hereto shall not be

terminated on the basis of the approval of the settlement proposal, but shall be determined after hearing in accordance with Section 7 of the Natural Gas Act.

(I) Within 90 days from the date of this order, Atlantic shall make such filings under its rate schedules as are required to make effective the terms of the settlement proposals.

(J) Upon full compliance by Atlantic with all the terms and provisions of this order, the Section 4(e) proceedings listed in Appendix A hereto, except those related to Rate Schedule Nos. 118, 147 and 150, and the Section 5(a) proceedings in Docket Nos. G–9283 and G–9284 shall terminate.

(K) Upon termination of the Section 4(e) proceedings listed in Appendix C hereto, in accordance with Paragraph (J) above, said proceedings shall be severed from the consolidated proceedings in Docket Nos. AR61–2, AR64–1, and AR64–2, respectively; the Section 7(c) proceedings listed in Appendix C are hereby severed from their respective consolidated proceedings, and the consolidation order issued September 23, 1960, in Docket No. G–9283, *et al.*, is rescinded.

(L) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Atlantic, the Commission staff, or any affected party hereto, in any proceedings now pending, including area rate or similar proceedings, or hereafter instituted by or against Atlantic or any other companies, person or parties affected by this order.

APPENDIX A

THE ATLANTIC REFINING COMPANY, ET AL.

DOCKET NO. G–9283, ET AL.

FPC GRS No.	FPC rate area and pressure base field	Purchaser	Docket numbers		Rates—c/Mcf at area pressure base (inclusive of tax reimbursement)		
			Certificate	Rate	Not subject to refund	In effect subject to refund	Settlement rate
	Texas RR Comm. Dist. No. 1 at 14.65 psia						
7	Jake Hamon	Tenn. Gas T. Co	G–3894	G–19659	12.12268	17.24347	14.0
237	San Miguel Creek	Trans. G.P.L. Corp	CI62–363		14.189		14.189
269	San Miguel Creek	Trans. G.P.L. Corp	CI63–1197		[4]5.00		5.00
	Texas RR Comm. Dist. No. 2 at 14.65 psia						
40	Clayton	Nat. Gas P. Co	G–3894		9.5209		9.5209
41	Greta	Trans. G.P.L. Corp	G–3894		[1]9.1102		9.1102
			G–4659				
42	Mission Valley, *et al*	Trans. G.P.L. Corp	G–3894		8.89089		8.89089
44	Burnell-N. Pettus	United G.P.L. Co	G–3894		14.00		14.00
45	Cabeza Creek	United G.P.L. Co	G–3894		13.2002		13.2002
46	S. Cabeza Creek	United G.P.L. Co	G–3894		13.2002		13.2002
47	Boyce-Poehler, *et al*	United G.P.L. Co	G–3894		13.2002		13.2002
			G–13355				
144	Clayton	Nat. Gas P. Co	G–10354		12.20		12.20
152	Cologne	Tenn. Gas T. Co	G–10354	G–17365, RI64–600	10.80887	[3]15.11402	[5]14.60
186	McFaddin	United G.P.L. Co	G–15231		13.1664		13.1664
190	Appling	Coastal States Gas Producing Co	G–16836		12.1152		12.1152
194	N. Mission Valley	Texas Eastern	G–17870		10.80		10.80
214	New Refugio	Tenn. Gas T. Co	CI60–426	RI–64–418	[4]14.00	(6)	14.00
247	Clayton	Nat. Gas P. Co	G–3219		9.5209		9.5209
254	Clayton	Nat. Gas P. Co	G–10551		13.20		13.20
259	Dunn	Texas Eastern	G–18927		12.20		12.20
268	Karon	Texas Eastern	CI63–890		12.00		12.00
278	Houdman	Texas Eastern	CI64–48		[4]12.00		12.00

See footnotes at end of table.

APPENDIX A—continued

THE ATLANTIC REFINING COMPANY, ET AL.—continued

DOCKET NO. G–9283, ET AL.—continued

FPC GRS No.	FPC rate area and pressure base field	Purchaser	Docket numbers		Rates—c/Mcf at area pressure base (inclusive of tax reimbursement)		
			Certificate	Rate	Not subject to refund	In effect subject to refund	Settlement rate
	Texas RR Comm. Dist. No. 3 at 14.65 psia						
32	South Hyatt	Tenn. Gas T. Co	G–3894	G–17121	13.27857	[4][6] 15.95016	[33] 15.00
				RI–64–600			
124	Magnet-Withers	Tenn. Gas T. Co	G–9325	G–17291	13.49751	[6] 16.16947	14.60
				RI64–600			
200	Palacios	Florida Gas Trans	G–11186	RI62–464	*17.50	18.50	16.00
215	Englehart	Tenn. Gas T. Co	CI60–459(T)	RI64–424	*16.16947	(7)	16.00
218	West Nona Mills	Trunkline Gas. Co	CI61–107		*14.75		14.75
270	South Spanish Camp	Valley Gas Trans	CI63–1222		*14.00		14.00
	Texas RR Comm. Dist. No. 4 at 14.65 psia						
5	Mustang Island	Tenn. Gas T. Co	G–3894	G–19847	[3] 12.12268	[3] 15.26187	[33] 14.60
				RI60–301		[3] 17.24374	
6	N. Minnie Bock	Tenn. Gas T. Co	G–3894	G–19847	11.90337	14.87589	15.00
				RI60–301		17.24347	
39	Hagist Ranch	Nat. Gas P. Co	G–3894		9.5209		9.5209
43	Odem	Trans. G.P.L. Corp	G–3894		8.001795		8.001795
48	Triple "A"	United G.P.L. Co	G–3894	RI61–127	7.5960	15.00	14.60
49	Red Fish Bay-M.I	United G.P.L. Co	G–3894	G–13583	12.660	14.80	14.60
				RI63–171		17.74782	
125	Seven Sisters	Tenn. Gas T. Co	G–9366	G–19659	*12.12268	17.24347	[3] 15.00
148	Tabasco	Tenn. Gas T. Co	G–10354	G–19847	*12.12268	17.24347	14.60
151	West Mission	Tenn. Gas T. Co	G–10354	G–19658	*12.12268	17.24347	15.00
159	Hagist Ranch	Nat. Gas P. Co	G–10715	G–12954	12.80	14.1344	14.60
				RI63–66		15.00	
198	McGill Ranch	Florida Gas Trans	G–10369	RI62–462	*16.50	17.50	[11] 15.00
199	East Aransas Pass	Florida Gas Trans	G–11041	RI62–464	*17.0+T.R.	18.	15.00
201	East Corpus Christi Bay	Florida Gas Trans	G–10086	RI62–462	*16.5+T.R.	17.5	15.00
224	N.E. Thompsonville	Nat. Gas P. Co	CI61–482(CT)		*18.0		[12] 15.00
241	LaGloria	Trans. G.P.L. Corp	G–3287		8.890883		8.890883
242	LaGloria	Nat. Gas P. Co	G–3288		10.81979		10.81979
246	Hagist Ranch	Nat. Gas P. Co	G–3280	RI63–66	14.1344	15.00	[3] 15.00
271	East Plymouth	Banquet Gas Co	CI63–400		*7.00		7.00

	Texas RR Comm. Dist. No. 6 at 14.65 psia						
24	North Lansing	Ark. La. Gas Co.	G-3894		12.5541		12.5541
181	Carthage	Texas Eastern	G-13975	G-16647	*14.4	14.60	[9] 15.00
				G-19537		14.80	
				RI61-128		15.00	
				RI62-78		15.20	
				RI-63-135		15.40	
				RI64-185		15.60	
187	Willow Springs	Texas Eastern	G-15403	G-16647	[18] 13.90	[18] 14.10	[9] 15.00
				G-19537		[18] 14.30	
				RI61-128		[18] 14.50	
				RI62-78		[18] 14.70	
				RI63-135		[18] 14.90	
				RI64-185		15.60	
	Texas RR Comm. Dist. No. 10 at 14.65 psia						
285	Kiowa Creek & Bechthold	Northern Nat. Gas Co.	CI64-947		*17.00		17.00
	Oklahoma—Other at 14.65 psia						
52	West Edmond	Cities Ser. Gas Co.	G-3894		10.50		10.50
163	North Norman	Cities Ser. Gas Co.	G-11028	RI63-213	11.00	12.00	11.00
169	South Eureka	Cities Ser. Gas Co.	G-12318	G-20278	[14] 11.25	[14] 12.25	[14] 11.25
225	Woodward Area (See Oklahoma-Panhandle Area).	Mich. Wisc. P.L. Co.	CI61-752		*[15] 15.0+Btu		[15] 15.0+Btu
236	Burns	Ark. La. Gas Co.	CI62-214	RI63-358	*12.00	13.00	12.00
264	Avard & Lenora	Panhandle Eastern P.L. Co.	CI62-1511		*[16] 15.0+Btu		[16] 15.0+Btu
274	N.E. Trail	Panhandle Eastern P.L. Co.	CI63-1491		*[17] 15.0+Btu		[17] 15.0+Btu
	Oklahoma Panhandle at 14.65 psia						
133	Guymon-Hugoton	Nat. Gas P. Co.	G-9980	G-12461	*16.00	16.20	16.00
				G-15027		16.40	
				G-18208		16.60	
				RI60-218		16.80	
				RI61-448		17.00	
				RI62-398		17.20	
				RI63-400		[13] 17.80	
170	Mocane	Colo. Inter. Gas Co.	G-12358		*[16] 15.0+Btu		[16] 15.0+Btu
172	S. E. Camrick	Nat. Gas P. Co.	G-12787	G-14735	*16.2	16.40	16.20
				G-17988		16.60	
				RI60-145		16.80	
				RI61-374		17.00	
				RI62-310		17.20	
				RI63-359		[19] 17.40	
				RI64-644			
173	Laverne	Colo. Inter. Gas Co.	G-12988	RI63-66	*[16] 15.0+Btu	[16] 16.0+Btu	[16] 15.0+Btu
174	Mocane (S.W. Camp Creek)	Northern Nat. Gas Co.	G-13908	RI62-212	*[16] 15.0+Btu	[16] 16.0+Btu	[16] 15.0+Btu
[21] 203	N.W. Doby Springs	Mich. Wisc. P.L. Co.	G-18708		*[20] 17.0+Btu		[20] 17.0+Btu

See footnotes at end of table.

APPENDIX A—continued

THE ATLANTIC REFINING COMPANY, ET AL.—continued

DOCKET NO. G-9283, ET AL.—continued

FPC GRS No.	FPC rate area and pressure base field	Purchaser	Docket numbers		Rates—c/Mcf at area pressure base (inclusive of tax reimbursement)		
			Certificate	Rate	Not subject to refund	In effect subject to refund	Settlement rate
	Oklahoma Panhandle at 14.65 psia—Continued						
205	Guymon-Hugoton	Kans. Neb. Nat. Gas Co.	G-18859	G-19659 RI61-131 RI62-77 RI63-88 RI64-179	*16.40	16.60 16.80 17.00 17.20 17.40	16.40
[21] 206	Highland	El Paso Nat. Gas Co.	G-17571				[22]
213	N.E. Woodward	Cities Ser. Gas Co.	CI60-320		*16.00		16.00
216	Guymon-Hugoton	Northern Nat. Gas Co.	CI60-511	RI64-418	*[23] 16.50		16.50
219	N.E. Elmwood & Griggs	Transwestern P. Co.	CI61-291(T)		*17.00		17.00
223	N.W. Dower	Nat. Gas P. Co.	CI61-718	RI62-310 RI63-359	*17.00	17.20 [24] 17.40	17.00
225	Woodward Area (See Oklahoma-Other)	Mich. Wisc. P.L. Co.	CI61-752		*[18] 14.0+Btu		[18] 17.0+Bru
250	S.E. Liberal	Panhandle Eastern P.L. Co.	G-3875	G-17311	14.00	15.00	14.00
263	Mocane-Laverne	Panhandle Eastern P.L. Co.	CI62-1497		*17.00		17.00
[25] 267	N.W. Lovedale	Cities Ser. Gas Co.	CI63-819		*16.00		16.00
[26] 273	N.W. Midwell	Panhandle Eastern P.L. Co.	CI63-1490(CT)		*[17] 17.0+Btu		[17] 17.0+Btu
280	N.W. Dower	Nat. Gas P. Co.	CI64-206		*17.00		17.00
285	Ivanhoe	Northern Nat. Gas Co.	CI64-947		*17.00		17.00
	Kansas at 14.65 psia						
51	Hugoton	Cities Ser. Gas Co.	G-3894		10.7195		10.7195
127	N.W. Sharon & Blunk	Cities Ser. Gas. Co.	G-9393	G-20305	*12.00	13.00	12.00
175	McKinney	Northern Nat. Gas Co.	G-13126	RI62-199	*14.00	15.00	14.00
234	N. Harper Ranch & Sitka	Northern Nat. Gas Co.	CI62-105		*16.00		16.00
	Wyoming at 15.025 psia						
50	Riverton Dome	Northern Utilities	G-3894		12.00		12.00
50-11	Riverton Dome	Kans. Neb. Nat. Gas Co.			13.00		13.00
252	Worland	Montana-Dakota Utilities Co.	G-3873		13.00		13.00
256	Elk Basin	Montana-Dakota Utilities Co.	G-3996		8.00		8.00

	San Juan Area—New Mexico at 15.025 psia						
281	Blanco-Mesa Verde	El Paso Nat. Gas Co	G-3894		[28] 13.0000	[29] 13.0551	[30] 13.0000
[27] (16)							
178	South Blanco	El Paso Nat. Gas Co	G-13635	RI64-269	13.00	12.0495	[31] 13.00
179	Aztec	El Paso Nat. Gas Co	G-13637	RI64-269	13.00	12.0495	[31] 13.00
192	Bisti Gallup	El Paso Nat. Gas Co	G-17809	RI64-269	13.00	13.0536	[31] 13.00
249	Fulcher-Kutz	El Paso Nat. Gas Co	G-3762		11.0466	----------	[32] 12.0509
251	Fulcher-Kutz	El Paso Nat. Gas Co	G-3874		11.0466	----------	[32] 13.0509
279	Basin-Dakota	Sou. Union Gath. Co	CI64-207	RI64-275	10.00	10.04125	[33] 13.00
	San Juan Area—Colorado at 15.025 psia						
180	Ignacio-Blanco	El Paso Nat. Gas Co	G-13674		13.00	----------	[34] 13.00
253	Piceance Creek	El Paso Nat. Gas Co	G-10233		11.00	----------	11.00
	North Louisiana at 15.025 psia						
2	North Ruston	Miss. Riv. Fuel Corp	G-3894		13.7042	----------	13.7042
53	Ada	Ark. La. Gas Co	G-3894		13.4533	----------	13.4533
54	North Ruston	Ark. La. Gas Co	G-3894		14.720	----------	14.720
56	Vixen	Humble Gas T. Co	G-3894	G-13145	*10.00	15.00	15.75
				G-13145		16.00	
				G-15719		16.50	
				RI63-7		18.50	
59	Sibley	United G.P.L. Co	G-3894		12.5252	----------	12.5252
64	Sentell	Ark. La. Gas Co	G-4090		13.9613	----------	13.9613
167	Bethany-Longstreet	Ark. La. Gas Co	G-11905		12.8713	----------	12.8713
171	Cadeville	United G.P.L. Co	G-12484		13.50	----------	13.50
176	Hico-Knowles	Tex. Gas Trans. Corp	G-13257		18.25	----------	18.25
182	Locust Ridge	Phillips Pet. Co	G-14402		14.50	----------	14.50
188	Terryville	Tex. Gas Trans. Corp	G-15541		18.25	----------	18.25
202	Ada	United G.P.L. Co	G-18572		*18.25	----------	18.25
221	Terryville	Tex. Gas. Trans. Corp	CI61-660		*18.75	----------	18.75
227	Calhoun	Tex. Gas Trans. Corp	CI61-1245		*18.75	----------	18.75
228	Vixen	Ark. La. Gas Co	CI61-1284		*18.50	----------	18.50
231	Cartwright	Tex. Gas Trans. Corp	CI61-1439		*18.75	----------	18.75
266	Cheniere Brake	Ark. La. Gas Co	CI63-638		*18.33	----------	18.33
272	West Vixen	Ark. La. Gas Co	CI63-1437		*17.00	----------	17.00
	South Louisiana at 15.025 psia						
3	Bayou Sale	Tenn. Gas T. Co	G-3894	G-16033	10.7263	10.9763	17.50
4	Midland	Tenn. Gas T. Co	G-3894	G-16723	10.7263	22.8333	15.75
				G-16033		10.9763	
				G-16723		22.8333	
55	North Tepetate	Tex. Gas Trans. Corp	G-3894	G-16127	14.50	18.5	15.75
57	Lewisburg & N. Lewisburg	Tex. Gas Trans. Corp	G-3894	G-11844	11.6467	19.9360	15.75
				G-15719		20.8110	
				RI61-335		20.9360	

See footnotes at end of table.

APPENDIX A—continued

THE ATLANTIC REFINING COMPANY, ET AL.—continued

DOCKET NO. G–9283, ET AL.—continued

FPC GRS No.	FPC rate area and pressure base field	Purchaser	Docket numbers		Rates—c/Mcf at area pressure base (inclusive of tax reimbursement)		
			Certificate	Rate	Not subject to refund	In effect subject to refund	Settlement rate
	South Louisiana at 15.025 psia—Continued						
63	Midland	United Fuel Gas Co.	G–3765	G–9443	17.50	17.40	19.00
				G–11247		17.80	
				G–13440		18.20	
				G–15719		18.95	
				G–16518		19.10	
				G–16518		19.35	
				G–19536		19.50	
				RI61–128		19.90	
				RI62–78		20.30	
				RI63–92		20.70	
				RI64–185		21.10	
[36] 118	Palmetto	Trans. G.P.L. Corp.	G–9154	(32)	17.50	23.55	17.50
147	Live Oak	Trans. G.P.L. Corp.	G–10354	(32)	17.50	23.55	17.50
150	Midland	Trans. G.P.L. Corp.	G–10354	(32)	17.50	23.55	17.50
155	E. Lake Palourde	Tex. Gas Trans. Corp.	G–8809		21.75		20.625
195	Live Oak	Trans. G.P.L. Corp.	G–18070	G–19922	17.50	18.50	17.50
211	Saturday Island	Sou. Nat. Gas Corp.	C160–264		*19.175		19.175
257	Jeanerette	Tex. Gas Trans. Corp.	G–16151	RI62–276	20.75	21.75	20.625
260	South Pass	Tenn. Gas T. Corp.	G–19138	RI61–485	19.50	23.60	19.50
166	Bourg	United Fuel Gas Co.	G–11904	G–12159	[37] 17.00	17.80	17.00
				G–13440		18.20	
				G–15719		18.70	
				G–16518		19.10	
				G–19536		19.50	
				RI61–131		19.90	
				RI62–77		20.30	
				RI63–93		20.70	
				RI64–179		21.10	

*Initial Rate.
(CT) Conditioned temporary authority.
(T) Temporary authority issued. Permanent certificate not issued.
(A) Application for certificate. Permanent certificate not issued.

[31] Supplement No. 3 to Rate Schedule No. 203 consolidated in Sunray DX proceeding; omitted from Settlement Proposal.
[32] Settlement Rate pursuant to terms and conditions of FPC Opinions No. 390 and 390-A.

[1] Includes 0.21931¢/Mcf for dehydration by seller.
[2] Filed for 17.7806¢/Mcf; effective 7-20-64 in RI64-600. (18.0¢-.21931¢ dehydration charge by buyer.)
[3] Filed for 15.0¢/Mcf; effective 6-1-64 in RI64-418.
[4] 16.01780¢/Mcf less 0.21931¢/Mcf for dehydration plus 0.15167¢/Mcf tax reimbursement equals 15.95016¢/Mcf.
[5] Filed for 19.33333¢/Mcf, including tax reimbursement, less 0.21931¢/Mcf for dehydration equals 19.11402¢/Mcf; effective 7-20-64 in RI64-600.
[6] Filed for 19.33333¢/Mcf, including tax reimbursement; effective 7-20-64 in RI64-600.
[7] Filed for 16.95016¢/Mcf, including tax reimbursement, plus 0.21931¢/Mcf for dehydration, equals 17.16947¢/Mcf, effective 6-1-64, in RI64-424. Consolidated in RR Comm. Dist. No. 3 proceedings.
[8] Includes tax reimbursement and dehydration charge by seller.
[9] Settlement Rate for term of contract.
[11] No producing properties currently active.
[12] Pursuant to terms of settlement proposal.
[13] Prices reduced 0.5¢/Mcf for amortization.
[14] Prices reflect 0.75¢/Mcf dehydration charge by buyer.
[15] Btu adjustment operates proportionally downward and at 1/100¢/Mcf/Btu upward from 1,000 Btu/cf., maximum upward Btu adjustment at 1,200 Btu/cf.
[16] Btu adjustment operates proportionately upward and downward from 1,000 Btu/cf.
[17] Btu adjustment operates proportionately upward and downward from 1,000 Btu/cf; maximum upward Btu adjustment at 1,200 Btu/cf.
[18] Filed for 17.6¢/Mcf. Suspended 10-10-64 in RI64-705. FPC Order dated 4-29-64.
[19] Filed for 17.6¢/Mcf. Suspended to 8-22-64 in RI64-644.
[20] Btu adjustment operates at 1/100¢/Mcf/Btu upward and downward from 1,000 Btu/cf. Maximum upward Btu adjustment at 1,200 Btu/cf.
[22] Filed for 17.5¢/Mcf. Suspended to 6-1-64 in RI64-418.
[24] Filed for 17.6¢/Mcf. Suspended to 8-26-64 in RI64-644.
[25] Settlement Rate applicable to application adding acreage filed 3-2-64 with the Federal Power Commission.
[26] Subject to conditions in temporary authorization issued 8-5-63 in CI63-1490.
[27] Rate Schedule No. 281 superseded Rate Schedule No. 16.
[28] 13.0¢/Mcf effective 7-17-59 per supplement No. 1 to Rate Schedule No. 16 (Mesaverde Formation gas only).
[29] Filed for 13.0551¢/Mcf. Suspended to 6-23-64 in RI64-546 (Mesaverde Formation gas only).
[30] Rate Schedule No. 281 includes price for Pictured Cliffs Formation gas at 12.0500¢/Mcf. No Pictured Cliffs gas production.
[31] 13.0¢/Mcf including tax reimbursement.
[32] Pictured Cliffs gas. Liquid payment provisions of contract to operate to gross price of 13.0¢/Mcf.
[33] 13.0¢/Mcf includes tax reimbursement. Settlement rate subject to 3.0¢/Mcf line amortization charge by buyer pursuant to contractual arrangements.
[34] Price increase application filed 11-21-63. Suspended to 6-1-64 in RI64-454.
[35] Docket No. G-17741. Pursuant to the terms of the settlement offer, this docket is not terminated and will remain consolidated with Docket No. AR61-2 et al.
[36] Depleted. Rate schedule canceled 7-18-63. Supplement No. 3 subject to refund in Docket No. G-17741.
[37] Initial price of 17.0¢/Mcf certificated by FPC order dated 11-27-63; suspension dockets subject to refund.
[38] Rate includes tax reimbursement and is subject to .21931¢ dehydration charge by buyer.

APPENDIX B

THE ATLANTIC REFINING COMPANY, ET AL.

Pending Certificate Application and Amendments

Rate schedule—Supp. No.	Area field	Purchaser	Date of contract	Docket No.	Initial price	Settlement price
	Texas RR Comm. Dist. No. 3 at 14.65 psia					
215	Englehart	Tenn. Gas T. Co.	3-16-60	CI60-459 [1]	16.16947	[1] 16.00
	Texas RR Comm. Dist. No. 4 at 14.65 psia					
224	N.E. Thompsonville	Nat. Gas P. Co.	9- 1-60	CI61-482 [2]	18.00	[2] 15.00

See footnotes at end of table.

APPENDIX B—continued

THE ATLANTIC REFINING COMPANY, ET AL.—continued

Pending Certificate Application and Amendments—Continued

Rate schedule—Supp. No.	Area field	Purchaser	Date of contract	Docket No.	Initial price	Settlement price
	Oklahoma-Panhandle at 14.65 psia					
133–11	Guymon-Hugoton	Nat. Gas P. Co.	1– 6–56	G–9980 [3]	16.00	[3] 16.00
219	N.E. Elmwood & S.E. Griggs	Transwestern P. Co.	7–25–60	CI61–291 [4]	17.00	[4] 17.00
219–1	N.E. Elmwood & S.E. Griggs	Transwestern P. Co.	7–25–60	CI61–291 [5]	17.00	[5] 17.00
273	N.W. Midwell	Panhandle Eastern	4–17–63	CI63–1490 [6]	17.0+Btu	[6] 17.0+Btu

[1] T.A. 4–26–60 (consolidated in Dist. 3 proceedings).
[2] Cond. T.A. at 18.0¢—FPC Order 11–25–60.
[3] Addition of Acreage—T.A. 12–4–59.
[4] T.A. Granted 12–13–60.
[5] Addition of Acreage—T.A. 4–7–61.
[6] Cond. T.A.—8–5–63 (new contract).

APPENDIX C

THE ATLANTIC REFINING COMPANY, ET AL., DOCKET NO. G–9283, ET AL.

CONSOLIDATED DOCKETS

Texas Gulf Coast area dockets consolidated in AR64–2			South Louisiana area dockets consolidated in AR61–2 South Louisiana			Hugoton-Anadarko area dockets consolidated in AR64–1 Oklahoma-Panhandle		
Docket Nos.	GRS Nos.	Sup. Nos.	Docket Nos.	GRS Nos.	Sup. Nos.	Docket Nos.	GRS Nos.	Sup. Nos.
RR C Dist. No. 1			G–16723	3	4	G–12461	133	5
			G–16723	4	7	G–15027	133	7
G–19659	7	4	G–16127	55	6 and 7	G–18208	133	9
			G–11844	57	6	RI60–218	133	13
			RI61–335	57	9	RI61–448	133	15
			G–13440	63	4	RI62–308	133	16

RR C Dist. No. 2

G-17365	152	2
RI64-600	152	3
RI64-418	214	1

RR C Dist. No. 3

G-17121	32	7
RI64-600	32	8
G-17291	124	4
RI64-600	124	5
RI62-464	200	10
RI64-424	215	1

RR C Dist. No. 4

G-19847	5	5
RI60-301	5	6
G-19847	6	7
RI60-301	6	8
RI61-127	48	8
G-13583	49	6
RI63-171	49	8
G-19659	125	2
G-19847	148	3
G-19658	151	1
G-12954	159	1 and 2
RI63-66	159	4
RI62-462	198	8
RI62-464	199	9
RI62-462	201	8
RI63-66	246	9
G-16518	63	7
G-19536	63	10
RI61-128	63	12
RI62-78	63	14
RI63-92	63	15
RI64-185	63	16
G-19922	195	3
RI62-276	257	2
RI61-485	260	1
G-12159	166	
G-13440	166	4
G-16518	166	6
RI61-131	166	9
RI62-77	166	10
RI63-93	166	11
RI64-179	166	12

Section 7(c) Docket Consolidated in H. L. Hawkins, et al., Docket No. G-18077, et al., CI60-459

RI63-400	133	18
G-14735	172	2
G-17988	172	3
RI60-145	172	4
RI61-374	172	5
RI62-310	172	6
RI63-359	172	7
RI64-644	172	8
RI63-66	173	1
RI62-212	174	1
G-19659	205	1
RI61-131	205	3
RI62-77	205	4
RI63-88	205	5
RI64-179	205	6
RI64-418	216	2
RI62-310	223	1
RI63-359	223	2
RI64-644	223	3
G-17311	250	2

Oklahoma—Other

RI63-213	163	7
G-20278	169	2
RI63-358	236	4

Kansas

G-20305	127	4
RI62-199	175	4

Section 7(c) Docket Consolidated in Turnbull & Zoch, et al., Docket No. G-17960, et al., CI61-482

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP64-306

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT

(Issued October 8, 1964)

On June 23, 1964, as amended and supplemented on July 9 and July 27, 1964, respectively, Cities Service Gas Company (Applicant), First National Building, Oklahoma City 1, Oklahoma, filed in Docket No. CP64-306, an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission to abandon facilities and for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the transportation of natural gas in interstate commerce to the Lakeview Alfalfa Dehydrator Plant of National Alfalfa Dehydrating and Milling Company (National) in Douglas County, Kansas, all as more fully set forth in the application.

Applicant in order to continue to serve the present and future requirements of the Lakeview plant proposes to construct and operate a tap on its Lawrence Power Plant 16-inch pipeline, and a 3-inch pipeline extending 8,000 feet from that point to the Lakeview plant, together with metering and regulating facilities at the terminal point thereof. Applicant proposes to sell and deliver on an interruptible basis up to an estimated maximum day of 800 Mcf of natural gas, the estimated natural gas requirements of the existing and future proposed alfalfa dehydrator plants of National near Lakeview, Douglas County, Kansas.

Applicant has been selling volumes of natural gas to National (or its predecessors) since March 1947 for use in its Lakeview plant, with deliveries being made at Applicant's metering and regulating station for further transportation by National through National's pipeline to its said plant. Due to the deterioration of National's line, and at National's request for additional service the facilities herein proposed are necessary.

Applicant proposes to reclaim existing metering and regulating facilities proposed to be abandoned presently located at the point of connection between Applicant's Lawrence Power Plant 16-inch pipeline and National's present 3-inch pipeline in the SE¼ of the SW¼ of Section 14, Township 12 South, Range 19 East, in Douglas County, Kansas, upon completion of the facilities proposed herein.

The total estimated cost of the proposed facilities (with allowance for a salvage credit of $1,800) is $14,380, and will be defrayed from treasury cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, as supplemented and amended, has been filed.

At a hearing held on October 1, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplements and amendment submitted in support of the authorizations sought herein, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1948, in Docket No. G-298 (4 FPC 471).

(2) The facilities proposed to be abandoned by Applicant, as hereinbefore described and as more fully described in the application, supplement and amendment filed in the proceeding are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and permission and approval therefor should be granted as hereinafter ordered.

(4) The proposed construction and operation of facilities, and the transportation and sale of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application, supplement and amendment filed in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The aforesaid proposed construction and operation of facilities, and the transportation and sale of natural gas in interstate commerce are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, as more fully described in the application, supplement and amendment in this proceeding, are hereby granted.

(B) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the construction and operation of facilities, and the transportation and sale of natural gas to National of a volume not to exceed 800 Mcf daily, as hereinbefore described, all as more fully described in the application, supplement and amendment thereto, upon the terms and conditions of this order.

(C) The certificate issued by paragraph (B) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(D) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

(E) The facilities hereby authorized shall be constructed and placed in actual operation, and the transportation of gas authorized in paragraph (B) above shall commence, as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations within 6 months of the date on which this order issues.

(F) The certificate issued by paragraph (B) above is granted on the express condition that the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Cities Service Gas Company for firm resale service to its customers.

262-497—67——63

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

EAST TENNESSEE NATURAL GAS COMPANY, DOCKET NO. CP65-43

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 8, 1964)

On August 10, 1964, East Tennessee Natural Gas Company (Applicant) filed in Docket No. CP65-43 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas to Elk River Public Utility District (Elk River), an existing customer, at a new delivery point near Tullahoma, Tennessee, for resale to Arnold Engineering Development Center (AEDC). Applicant further proposes to construct and operate approximately 0.4 mile of 8-inch lateral line and a metering and regulating station at the point of delivery (the terminus of said lateral), all as more fully set forth in the application.

Elk River has advised Applicant that it will construct approximately 8.5 miles of 8-inch line and appurtenant facilities at an estimated cost of $250,000 to serve the gas requirements of AEDC, an experimental testing center of the U.S. Air Force, which will use gas to heat large volumes of air in connection with its testing programs. AEDC's firm requirements are estimated at 500 Mcf of gas per day at 14.9 psia (506 Mcf at 14.73 psia). Applicant proposes to provide an additional volume of 9,000 Mcf of natural gas on an interruptible basis to meet AEDC's total requirements up to 9,500 Mcf per day.

The estimated cost of construction of Applicant's proposed facilities is $40,000, which cost will be defrayed out of general funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on October 8, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) The Applicant, East Tennessee Natural Gas Company, a Tennessee corporation having its principal place of business in Knoxville, Tennessee, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 30, 1948, in Docket No. G-889 (7 FPC 5).

(2) The proposed construction and operation of facilities and sale and delivery of natural gas by Applicant to Elk River Public Utility District, as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and sale and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's com-

pliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the sale and delivery of natural gas to Elk River Public Utility District, as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within sixty days of the date on which this order issues.

(D) The facilities authorized by the certificate issued by paragraph (A) above shall not be utilized to transport more than 500 Mcf of firm gas daily and 9,000 Mcf of interruptible gas daily to AEDC.

(E) Applicant shall file with the Commission a new service agreement with Elk River showing the additional volumes of natural gas to be sold and delivered to AEDC.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE SUPERIOR OIL COMPANY, DOCKET NO. G-6067

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued October 8, 1964)

On August 10, 1964, The Superior Oil Company (Superior) filed a motion for reconsideration of the Commission's Opinion No. 437 and accompanying order issued July 23, 1964, 32 FPC 241, in the above-entitled matter, in which the Commission granted Superior's motion to substitute supply sources under a previously issued certificate upon condition that the initial price be not greater than 18.5 cents per Mcf, upon a further condition with respect to modification of the take-or-pay-for provision of Superior's contract, and upon condition that there be a moratorium upon all price increases until the final determination in Docket No. AR61-2 (the applicable Area Rate Proceeding) or until July 1, 1967, whichever is earlier. Superior states that its motion is made "in lieu of a petition for rehearing under Section 19(a) for the reason that successful judicial review of this order, because of the delay incident to such course, would be of no practical benefit".

The motion for reconsideration presents no new argument or citation of authority beyond what was presented and carefully considered by the Commission in this proceeding and in the area in-line rate proceeding dealing with contracts prior to January 1, 1963 (*Union Texas Petroleum, et al.*, Opinion No. 436), 32 FPC 254. Upon full reconsideration, we believe the order of July 23, 1964, was correct, and should be adhered to, for the reasons stated in Opinion No. 437.

The Commission finds:

No new facts or principles of law have been presented on this motion for reconsideration which either were not fully considered by the Commission prior to its order herein or, having been now considered, warrant further hearing, modification, reconsideration, or revocation of said order.

The Commission orders:

The motion for reconsideration filed herein by The Superior Oil Company be and the same hereby is denied.

OPINION NO. 436-A

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.

MEMORANDUM OPINION AND ORDER ON REHEARING MODIFYING OPINION NO. 436 AND GRANTING STAY

(Issued October 8, 1964)*

Syllabus

1. Objections not raised by exceptions to examiner's decision may not properly be raised for first time on application for rehearing. P. 953.
2. Use of in-line concept to fix initial prices results from Supreme Court's CATCO admonition to hold line against increases in initial gas prices – – it is a method Commission is bound to apply under present law. P. 953.
3. While it remains Commission policy to accord lesser weight to temporary than permanent certificates in establishment of in-line price, such policy is immaterial here since both temporary and permanent certificates indicate no change in in-line prices subsequent to 1959. P. 954.
4. In-lineness determined here on basis of prices under which substantial amount of gas moving in interstate commerce was sold within area during period in question. P. 954.
5. It has not been established that successive guideline prices in area cause any change in in-line prices. P. 954.
6. Pending resolution of conflict between U.S. Circuit Courts of Appeal, Commission must decline to accept one unfavorable decision as binding upon it. P. 955.
7. Rather than attempt to set different ceilings for different certificates, administrative efficiency and equity dictate the fixing of a common ceiling for all producers. P. 956.
8. Moratorium on excessive price increases is necessary part of holding line until just and reasonable rate can be determined. P. 956.
9. Upon rehearing, Commission *modifies* Opinion No. 436; *grants* stay in part and in all other respects *confirms* said opinion.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and David S. Black.

BLACK, *Commissioner:*

Applications for rehearing were filed to our Opinion No. 436 and Order issued July 23, 1964, 32 FPC 254, in the above-entitled proceeding by several producers

*Rehearing denied by order issued November 23, 1964, 32 FPC 1358. Set aside on *Catco* settlement issue, *sub nom. Continental Oil Co.* v. *F.P.C.*, 373 F. 2d 96 (CA10–1967; #8117). Remanded on 1.5¢ tax reimbursement issue; set aside on refund power, otherwise affirmed, *sub nom. Pan American Petroleum Corp.* v. *F.P.C.*, 376 F. 2d 161 (CA10–1967; #7912).

and by Transcontinental Gas Pipe Line Corporation (Transco). Certain producers also filed motions for stay of the various paragraphs of the order for periods varying from 60 days to the conclusion of judicial review. On August 27, 1964, 32 FPC 666, we granted rehearing in order to afford further time for consideration of the issues.

In our opinion and order we determined the initial prices required by the public convenience and necessity for the sales listed in Appendices B, C, and D to that order. Except in special circumstances applicable to individual cases, said initial price was determined to be 18.5 cents per Mcf for gas produced in the Federal domain offshore Louisiana and 20 cents per Mcf for gas subject to Louisiana severance tax, including all reimbursements and charges. The certificates were further conditioned to provide for a moratorium on the filing of price increases above 23.55 cents per Mcf for a stated period, and for possible revision of the take-or-pay requirement in each contract on the basis of the final order in the proceeding in Docket No. R–199. In those dockets where the temporary authorization contained a refund condition, the certificate order requires the immediate refund of excessive amounts previously collected. The question whether refunds should be required in those cases in which no refund condition was included in the temporary authorization was deferred pending the submission of additional briefs, statements of fact, and statements of evidence. As there indicated, no determination has yet been made as to whether refunds will be required in such cases or as to the procedure to be followed in alleging and making proof of the equities with respect to any such refunds.

Particular determinations were also made with respect to individual dockets presenting special circumstances. Insofar as these require consideration here, they will be dealt with later in this opinion.

Several of the producers now object to the use of the in-line price concept to determine initial prices. They also urge that the in-line prices were determined by improper standards and that no standard was established in advance of our determination to enable them to make an adequate presentation to the Commission. Several producers also object to including in their certificates a condition for a moratorium against price increases and a condition for the future alteration of the take-or-pay provisions of their contracts. Objection is also made to the Commission's determination that it has power to order refunds in dockets where the temporary authorization contained no refund condition. Some of these objections now presented were not raised by exceptions to the presiding examiner's decision and may not properly be raised for the first time on an application for rehearing. The conditions with respect to a moratorium on price increases and to the prospective alteration of the take-or-pay provisions of filed contracts are in accordance with the established policy of this Commission. The use of the in-line price concept to fix initial prices is a result of the Supreme Court's admonition to this Commission in the *Catco* case to hold the line against increases in the initial price of gas. It is the method of fixing initial prices which we believe are bound to apply in the present state of the law.

The method used by the Commission in establishing the in-line prices applicable in this proceeding has apparently not been understood by a number of producers. Rehearing has been requested on the ground that the Commission has improperly used in-line prices established in prior cases, thus depriving some producers of a determination based upon the evidence in this proceeding. This, however, was not the basis of our determination. We have determined the in-line price for years prior to 1960 upon the evidence in this case. The fact that the evidence

was substantially the same as that submitted in prior cases and that we reached the same result does not mean that we failed to consider the evidence. The previous cases were cited as precedents for the action here taken, as any decision of this Commission may be cited as a precedent applicable in similar circumstances.

Some producers attack our determination on the ground that insufficient weight was given to the prices under temporary certificates. The weighted averages of temporary certificates in the periods subsequent to 1959 do not indicate that there has been any substantial change for those periods as compared with a similar period prior to that time. While it remains a policy of the Commission that temporary certificates are to be accorded lesser weight than permanent certificates in the establishment of an in-line price, this policy is immaterial in our determination in this case. Both temporary and permanent certificates indicate no change in the in-line prices subsequent to 1959.

Some producers protest that, in compiling the weighted averages set forth in the opinion, certain prices were excluded. Such was not the case. All prices which were in the record were included in compiling the weighted averages for permanent and temporary certificates, respectively, as may be verified by mathematical computation.

There has been no failure to provide standards to enable the producers to present proof with respect to the in-line prices. As we have done consistently, we have determined the in-line prices on the basis of prices under which a substantial amount of gas moving in interstate commerce was sold within the area during the period in question.

Objection has been made to the division of the period after 1959 into three segments comprising, respectively, the time prior to the issuance of the first guideline price applicable in southern Louisiana, the period falling between the issuance of the first guideline price and the second guideline price issued with respect to that area, and the period subsequent to the issuance of the second guideline price. Selection of these periods is characterized as arbitrary. On the other hand, the Commission's determination of the in-line price is attacked on the ground that insufficient weight was given to these guideline prices. The selection of these periods was not made arbitrarily, but because the issuance of each of these guidelines was an event which conceivably could have had an effect on the prices in the area. Accordingly, we examined the prices before and after the issuance of each guideline to determine whether its effect might have caused a change in the in-line price in the area. We determined that, while the guideline prices have had the effect of eliminating some of the excesses, it has not been established that the guidelines caused any change in the in-line prices.

If, however, we accept the contention that these periods should not be used for the compilation of weighted averages in the determination of in-line prices, but, rather, that weighted averages should be compiled (and the in-line prices determined) on the basis of the calendar years 1960, 1961, and 1962, it would give no aid to the producers' argument. In fact, the weighted averages would be somewhat lower for the calendar years 1961 and 1962 than for the most nearly corresponding periods actually used—October 26, 1960, to October 31, 1961, and November 1, 1961, to the end of 1962.

In requesting rehearing, the producers have reiterated their arguments that error was committed in excluding certain evidence. We have fully considered this matter in reaching our initial decision. We have again considered the

arguments advanced by the producers in this respect, including their citation of authority not available at the time of our original decision. After such consideration, we adhere to our previous views.

Producers have cited, in support of their exceptions, *Callery Properties, Inc.* v. *F.P.C.* (CA5, August 14, 1964). In that case, the Circuit Court of Appeals for the Fifth Circuit held invalid a moratorium on price increases as a condition to the issuance of a permanent certificate, and ruled that refunds of amounts collected could not be ordered except to the extent these amounts are shown to be in excess of a just and reasonable price. The court further held that the Commission was in error in excluding economic and cost evidence similar to that rejected in this proceeding. We are now seeking review of this decision which is in conflict with the views of other circuit courts as well as this Commission by certiorari to the United States Supreme Court. (See *Public Service Commission of New York* v. *F.P.C.*, 329 F. 2d 242 (CADC-1964), cert. den. 377 U.S. 963.) Pending resolution of the conflict between circuits we must decline to accept this decision as binding upon us.

There remain for consideration a number of matters raised in individual dockets. Further examination of the terms of settlement applicable in the case of Docket Nos. CI62–135, CI62–137, CI62–146, and CI62–147 convinces us that the conditions set forth in paragraphs (D) and (E) of the presiding examiner's proposed order should not be applied in said cases, as other conditions are specified in the settlement. This order will so provide.

J. C. Trahan, Drilling Contractor, Inc., and Shoreline Exploration, Inc., are concerned with the wording of the previous order, which would require them to refund the difference between their rates as presently certificated and the applicable rates to be determined in the area rate proceeding, AR61–2, or other applicable proceeding. They urge that a condition that the rate to be determined in the later proceedings shall be binding, whether or not they are parties to any such proceeding, is beyond the Commission's power and denies due process of law. They do not question the purpose of the prior order to make them responsible for refunds to the level of an area rate fixed in Docket No. AR61–2. We think they should be made parties to any proceeding affecting their rights, and will so direct should the occasion arise. The prior order will be amended to eliminate the provision that they will be bound whether or not they are parties to the applicable proceeding. However, the order should retain the reference to an applicable proceeding other than AR61–2, in the event procedural changes make this necessary.

Transcontinental Gas Pipe Line Corporation (Transco) urges that the original opinion was incorrect in concluding that no refund should be ordered at this time of any part of the amounts paid by Transco pursuant to the take-or-pay clause of its contract in Docket No. CI61–182. Transco contends that its contract indicates an intent that payment should be made at the price effective at the time of physical delivery rather than the price in effect at the time of payment pursuant to the take-or-pay clause. If so, it would follow that refund of the overpayment should be ordered now. Transco concedes that there is no provision for a refund of any portion of the take-or-pay payment in the event of a later reduction in price. It argues that the provision requiring the buyer to pay the difference in the event of a price increase between the time of payment (under the take-or-pay clause) and the time of taking delivery of the gas indicates an intent to have the price fixed as of the time of delivery.

We have examined the provisions of Transco's contract. We think that in substance they cannot be differentiated from the contract provisions in *Amerada*

Petroleum Corporation, Docket No. G–18346, and *Phillips Petroleum Company*, Docket No. G–18375. Our declaratory orders issued April 22, 1964, 31 FPC 1018, 1021, respectively, in the cited dockets are contrary to Transco's contention here. In the absence of an express provision in the contract that there is to be a refund or credit if the effective price of the gas declines between the date of payment and the date of delivery, we think no refund should be ordered at this time.

Placid Oil Company, Hassie Hunt Trust, H. L. Hunt, and Hunt Oil Company have urged that the 23.55 cents per Mcf is not the proper moratorium level. They point out that sales have taken place in the area at 23.675 and 24.05 cents per Mcf, and that any triggering must already have occurred. This argument assumes that the sole justification of the moratorium level must be that a price increase above that level will cause a triggering of favored-nation contract clauses authorizing the filing of price increases in other contracts in the southern Louisiana area whenever sales in that area are made above a specified figure. This is much too simple a portrait of the true situation. Not only are many of the favored-nation clauses limited to being triggered by price increases in areas less broad than in the entire southern Louisiana pricing area, but many of the contracts in that area provide for renegotiation on the basis of sales made to three different pipelines within specified geographical limits. It would be practically impossible to determine in advance if, when, and to what extent price escalation clauses may be activated in an area of a given price increase. A variety of indefinite price escalation clauses are found in the contracts in this area; they are both ambiguous and complex and would require the resolution of complicated factual issues on a contract-by-contract basis. Rather than attempt to set different ceilings for different certificates, both administrative efficiency and equity dictate the fixing of a common ceiling. Here we have fixed a rate which we consider to be the point above which increases would prompt a general escalation of prices in the area, and beyond which no producer may go during the period of the moratorium. We think that pending the outcome of AR61–2 it would be inconsistent with the public convenience and necessity to certificate sales authorizing higher rates.

In brief, we think a moratorium on excessive price increases is a necessary part of holding the line until a just and reasonable rate can be determined; and we think a common ceiling for all producers is more equitable and more practical than an attempt to fix individual ceilings in individual dockets.

Placid Oil Company, Hassie Hunt Trust, H. L. Hunt, and Hunt Oil Company have moved, together with their application for rehearing, to reopen the proceeding for the admission of (a) evidence rejected by the presiding examiner and (b) new evidence available after the record was closed. This evidence is specified only by reference. At page 18 of the application for rehearing, it is summarized as follows:

> Applicants' evidence shows the relative costs of production, the reason why the proposed price was required and in addition all other elements of the public interest such as supply, demand, economic, geological, engineering, exploration, and cost evidence, as well as historical price data.

Insofar as historical price evidence is relevant, it has been admitted in this proceeding; applicants have specified no new historical price evidence which we deem relevant. The other evidence incorporated by reference in applicants' motion is of the same type we have found to be inadmissible in an in-line price proceeding. The motion, accordingly, will be denied.

The determination as to whether refunds should be ordered in the dockets listed in Appendix B of our original order will require the presentation of evidence and arguments. We do not think it necessary or desirable that the issuance of permanent certificates should be delayed pending the determination of this question now that the other issues of general application in this proceeding have been decided. Accordingly, our prior order will be modified to provide that permanent certificates shall be issued in these cases, subject, however, to a condition that an agreement and undertaking be filed by each producer affected to pay the amount of any such refunds, subsequently established by order of this Commission, within 30 days after the time such order becomes final and no longer subject to judicial review. As the present order is the final order of the Commission which determines the future rates which may be collected by the producers and also finally determines other questions which certain producers have indicated will be brought to review in the courts, the way will be cleared for prompt judicial review of all matters herein finally decided.

A number of applications for rehearing include motions for stay of the ordering paragraphs of the original decision, either for a specified length of time or pending the outcome of judicial review. Stay of the provisions requiring refunds to be made will be granted, subject to the filing of agreements and undertakings by the producers in the individual dockets that payment of any refunds ordered will be made 30 days after our order becomes final and not subject to judicial review. Stay will also be granted of the filing requirements of paragraph (C) of the presiding examiner's proposed order, as amended by paragraph (A) of our original order, subject to the filing of agreements and undertakings by the producer in the individual dockets to refund with interest all amounts collected subsequent to the date of the original order in excess of the amounts determined by said order to be proper, subject to any modification thereof as a result of court review. The filing of briefs, statements of fact, and statements of evidence pursuant to the provisions of paragraph (C) of our original order will not be required until further order of this Commission. Stay of paragraphs (D) and (E) of the presiding examiner's proposed order providing for a moratorium condition on price increases and a condition for revision of the take-or-pay clause of the producers' contracts will be denied in accordance with our determination in *Amerada Petroleum Corporation*, Opinion No. 422–A, 31 FPC 1315. Stay of the other provisions of our original order is unnecessary.

We have carefully considered the other matters raised by the applications for rehearing and find that all matters there raised were considered by us prior to our original decision and order in this matter, and, after full reconsideration, we adhere to our original decision and order, except to the extent herein modified.

The Commission finds:

(1) The assignments of error and grounds for rehearing and reopening set forth in the applications for rehearing filed herein present no facts or principles of law which were not considered by the Commission when it issued its Opinion No. 436, or which, having now been considered, warrant any change in, modification of, or rehearing of such Opinion and Order, except as specified below.

(2) Good cause exists for granting in part the motions for amendment to the order herein issued on July 23, 1964, so as to stay the filings required by paragraph (A) of said order (amending paragraph (C) to the presiding examiner's proposed order), and so as to stay any action required by paragraph (B) of said order (amending paragraph (F) of the presiding examiner's proposed order) pending judicial review of said Opinion No. 436, as to all producers who file within 30 days of the effective date of this order an agreement and undertaking to be

responsible for such refunds as may be ordered by valid order of this Commission no longer subject to judicial review.

(3) The condition set forth in paragraphs (C) and (E) of the accompanying order is required by the public convenience and necessity.

The Commission orders:

(A) The completion of the acts and compliance with the requirements set forth in ordering paragraphs (A) and (B) of the order accompanying Opinion No. 436 are hereby stayed for a period of 30 days after conclusion of judicial review of said Opinion or until said order otherwise becomes final, provided, however, that with respect to all amounts herein allowed to be charged in excess of the rates prescribed in said order, each applicant shall execute and file within 30 days an agreement and undertaking to refund all such excess amounts received after July 23, 1964 (except as such amounts may be revised by judicial review or later order of the Commission), with interest at 7 percent per annum from the date of receipt to the date of payment, within 30 days of the time said order, or other applicable order of the Commission in this proceeding, becomes final and not subject to judicial review.

(B) The motions for stay in all other particulars are denied.

(C) The provisions of paragraph (C) of the order accompanying Opinion No. 436 are hereby amended to read as follows:

(C) The decision whether refunds should be ordered as a condition to the permanent certificates listed in Appendix B is deferred for subsequent determination in accordance with procedures to be established by future order of the Commission. Each certificate listed in Appendix B, if issued and accepted prior to the decision with respect to such refunds, shall contain a condition that the applicant, at the time of acceptance of the certificate, shall execute and file an agreement and undertaking to make all refunds determined to be due by later order of this Commission in this proceeding or such other proceeding as the Commission may conduct for the purpose of determining this question, not more than 30 days after said order has become final and no longer subject to judicial review, together with such interest as the Commission may direct by such final order.

(D) The certificates to be issued in Docket Nos. CI62–135, CI62–137, CI62–146, and CI62–147 shall not be subject to the conditions or requirements of paragraphs (D) and (E) of the presiding examiner's proposed order.

(E) The provisions of paragraph (D) of the order accompanying Opinion No. 436 are hereby amended to read as follows:

The certificate herein issued to J. C. Trahan, Drilling Contractor, Inc. (Operator), *et al.*, in Docket No. CI61–452 and to Shoreline Exploration, Inc., in Docket Nos. CI62–73 and CI62–102 shall contain the following condition: "The producer, although authorized to collect the initial rate herein provided, shall remain liable for, and by acceptance of this certificate agrees to remain liable for, refund (with interest) of the difference between any amounts collected by it from a purchaser (with respect to natural gas produced from the acreage covered by this certificate, whether before or after the issuance of this certificate) and the rate or rates ultimately determined to be applicable in the area by final order issued in the Area Rate Proceeding, Docket No. AR61–2, *et al.*, or such applicable proceeding as the Commission may order."

(F) In all other respects Opinion No. 436 and the accompanying order are confirmed.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

WISCONSIN POWER & LIGHT COMPANY, PROJECT NO. 2346

ORDER DENYING APPLICATION FOR REHEARING

(Issued October 8, 1964)

On September 9, 1964, the Wisconsin Power & Light Company (Applicant) filed application under Section 313(a) of the Federal Power Act for rehearing on the Commission's license order issued August 10, 1964, 32 FPC 575, with respect to Applicant's constructed minor hydroelectric Project No. 2346 with an installed capacity of 430 horsepower, known as the Monterey Plant located on Rock River, in the city of Janesville, Rock County, Wisconsin. Applicant alleges two errors on the part of the Commission in issuing this order.

The first error alleged by Applicant is that Paragraph (B)(1) of the order issuing license[1] fails to sufficiently describe the limits of the project boundaries because the project map, Exhibit K, submitted in accordance with Section 131.6 of the Regulations contained only the general location of the project without specifying the project boundaries. Applicant apparently is concerned because it assumed that the provisions of Section 14 of the Federal Power Act, under which the United States may take over the project works at the end of the license period at a cost defined in that section, applied to this project. It is Applicant's view that the indefiniteness as to project boundaries when considered in the light of Section 14 creates a cloud upon the title to lands adjacent to, but not a part of the project.

As a practical matter, Applicant cannot be aggrieved by any possible vagueness in the definition of the project boundaries because the Commission's order issuing a license for the project makes clear in Finding No. 7 and ordering paragraph (D) that the Commission has waived the provisions of Section 14, except insofar as the power of condemnation is reserved, as authorized in Section 10(i) of the Power Act with respect to projects of not more than 2,000 horsepower installed capacity. Consequently, the project may be taken over by the United States only with the consent of the licensee or upon condemnation; and in either event the lands and project works to be taken over would be subject to definition at that time and would not depend upon any present definition of the project boundaries. Due to the waiver of Section 14 and other sections of the Act, the Commission followed its usual procedure in this case by neither approving nor disapproving the Applicant's map, Exhibit K. However, the Applicant may, if it wishes to define the location of the project works and the project boundary in more detail, file a revised Exhibit K with the Commission containing as much detail as it deems necessary and desirable.

Applicant alleges that the second error arises from the failure of the application for license to describe in detail the ownership of the water power made available by the dam, which is part of the project works, with the result that Applicant believes there has been a failure of hearing upon the rights of other proprietors having an interest in the water power as determined by court action in 1881. Applicant states that rehearing is sought for the purpose of giving notice to those owners and having their rights with respect to the license determined.

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[1] (B) Project No. 2346 consists of:

(1) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined.

The Applicant's failure to detail the water power rights of third parties in its application for license did not deprive the owners of any water power rights from its project and of any right to notice or hearing. The Commission gave public notice of this application for a minor project license by publication in the *Federal Register* and the notice was mailed to the Public Service Commission of Wisconsin, the Board of Supervisors of Rock County and the Mayor of Janesville. None of the owners of any water power rights has raised any question about those rights. In any event, Sections 21 and 27 of the Federal Power Act protect against interference with any vested water rights by the licensee without the payment of just compensation.

The Commission finds:

The assignments of error or grounds for rehearing set forth in the application for rehearing filed by the Applicant on September 9, 1964, on the Commission's order issued on August 10, 1964, present no facts or principles of law which were not considered by the Commission when it issued its aforesaid order, or which having now been considered warrant change or modification of the said order.

The Commission orders:

The Wisconsin Power & Light Company's application filed on September 9, 1964, for rehearing of the Commission's order issued August 10, 1964, in Project No. 2346 is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

BALTIC OPERATING COMPANY AND CITIES SERVICE GAS COMPANY, DOCKET NO. CP64-311

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT

(Issued October 9, 1964)

On June 26, 1964, Baltic Operating Company (Baltic) and Cities Service Gas Company (Cities Service) filed in Docket No. CP64-311 a joint application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Cities Service to acquire and operate certain facilities now owned and operated by Baltic; to construct, operate and reclaim certain metering and regulating facilities and to continue the service presently rendered by Baltic by means of the facilities proposed to be acquired, and, further, for authority permitting Baltic to abandon the facilities to be acquired by Cities Service and the service rendered by means thereof all as more fully set forth in the joint application.

Specifically, Cities Service proposes to acquire and operate 20,445 feet of Baltic's 3-inch pipeline located in Alfalfa County, Oklahoma, and Barber County, Kansas, extending from the present purchase connection with Cities Service's Pampa 20-inch line to the present point of sale and connection with United Gas Service Company's 3-inch line, south of Kiowa, Kansas, and 4,082 feet of 6-inch pipeline and 1,420 feet of 2-inch pipeline located in Ottawa County, Oklahoma, and Cherokee County, Kansas, extending from the present point of interconnection with Cities Service's Picher 6-inch line to the present point of interconnection with the 6-inch line of Baxter Springs Gas Company, east of Treece, Kansas.

Baltic presently utilizes the above-described lines to render service to the two distributing companies, United Gas Service Company and Baxter Springs Gas Company. Cities Service proposes to continue service to said companies.

Additionally, Cities Service proposes to construct and operate new town border metering and regulating stations for Kiowa and Treece and to reclaim the existing stations.

Cities Service will pay Baltic $621.26 for the subject facilities. Said payment is the original cost less accumulated depreciation. The cost of the town border stations for Kiowa and Treece is $6,540 and $2,590, respectively.

Applicants state that the proposed project will result in lower rates to the two distribution companies presently served by Baltic since said companies will be purchasing directly from Cities Service at Cities Service's rates.

The application indicates that upon completion of the proposed acquisition Baltic will be liquidated.

After due notice no petition to intervene, notice of intervention or protest to the granting of the joint application has been filed.

At a hearing held on October 1, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the joint application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Baltic Operating Company, an Oklahoma corporation, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G–261 (3 FPC 864).

(2) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(3) The facilities hereinbefore described, as more fully described in the joint application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction, acquisition and operation thereof and the transportation and sale of natural gas by Cities Service are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The proposed construction, acquisition and operation of the subject facilities and the proposed transportation and sale of natural gas by Cities Service are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Cities Service is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Cities Service's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (d)(2), (d)(3) and (e) of Section 157.20 of such Regulations.

(7) The facilities and service to be abandoned, as hereinbefore described, are subject to the jurisdiction of the Commission and the abandonment of such

facilities and service is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(8) Such abandonment by Baltic, as hereinbefore described, is permitted by the public convenience and necessity and an order authorizing and approving same should be issued as hereinafter ordered.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Cities Service Gas Company, to construct, acquire, operate and reclaim the subject facilities and to sell and deliver natural gas, as hereinbefore described, all as more fully described in the joint application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Cities Service's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (d)(2), (d)(3) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized to be acquired, constructed and operated shall be acquired, completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 3 months from the date on which this order issues.

(D) Permission for and approval of the abandonment by Baltic of the facilities and service hereinbefore described, all as more fully described in the joint application in this proceeding, be and the same are hereby granted.

(E) Baltic shall advise the Commission of the date of said abandonment within 10 days of the date thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, DOCKET NO. CP64-310

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued October 9, 1964)

Central Illinois Public Service Company (Applicant) filed in Docket No. CP64-310 on June 24, 1964, an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Panhandle Eastern Pipe Line Company (Panhandle Eastern) to establish physical connection of its transmission facilities with the proposed facilities of, and to sell natural gas to Applicant for distribution and resale in Milton, Illinois, all as more fully set forth in the application.

Applicant proposes to construct and operate a distribution system in Milton, Illinois, as well as 2¼ miles of 2-inch gas transmission line extending from a proposed metering and regulating station of Panhandle Eastern to Applicant's regulator station in the town of Milton.

Approvals of this proposal were issued by Milton and by the Illinois Commerce Commission on March 13, 1964, and June 2, 1964, respectively. Annual and peak day requirements of Applicant for the initial three year period are estimated to be:

Volumes in Mcf

	1st year	2d year	3d year
Peak day	148	211	225
Annual	15,800	22,385	23,680

The total estimated cost of the transmission and distribution facilities for the project is $59,816, which will be defrayed from Applicant's funds.

On July 30, 1964, Panhandle Eastern filed an answer to the application stating it does not object to the issuance of an order providing for the installation of a required tap on its line and for the sale of up to 225 Mcf of natural gas daily provided Applicant proceeds expeditiously with the project and executes an appropriate gas sales contract designating Milton as an additional delivery point with a volume of 225 Mcf per day and a delivery pressure of 300 psig.

Due notice of the filing of the subject application and opportunity for hearing thereon have been given by publication in the Federal Register on September 11, 1964 (29 F.R. 12856). No protest, petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(2) Applicant, Central Illinois Public Service Company, an Illinois corporation having its principal place of business in Quincy, Illinois, is a corporation legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Panhandle Eastern to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant with Panhandle Eastern in accordance with the Commission's Regulations, up to 225 Mcf per day of natural gas for distribution and resale as hereinbefore described.

(4) The requirement that Panhandle Eastern serve Applicant, as hereinafter ordered, will not (a) place an undue burden upon Panhandle Eastern, (b) require Panhandle Eastern to enlarge its transportation facilities, or (c) impair Panhandle Eastern's ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Panhandle Eastern for distribution in Milton, Illinois, and environs within one year from the date of the issuance of this order.

The Commission orders:

(A) Panhandle Eastern Pipe Line Company be and is hereby directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, Central Illinois Public Service Company as herein described, and to sell and deliver up to 225 Mcf of natural gas daily to Applicant under a service agreement to be executed by Applicant with Panhandle Eastern in accordance with the Commission's Regulations, for transportation, distribution and resale as hereinbefore described. Such service shall be rendered pursuant to Panhandle Eastern's presently filed appropriate rate schedule.

(B) Panhandle Eastern shall report to the Commission, in writing the date of commencement of service to Applicant within 15 days after such service begins.

(C) Applicant shall be prepared to receive service as directed herein within 1 year from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

MOUNTAIN FUEL SUPPLY COMPANY, DOCKET NO. CP65-8; SOCONY MOBIL OIL COMPANY, INC., DOCKET NOS. CI61-18, CI64-1221; BELCO PETROLEUM CORPORATION, DOCKET NO. G-16503

FINDINGS AND ORDER AFTER STATUTORY HEARING, PERMITTING AND APPROVING ABANDONMENT, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, AMENDING CERTIFICATE AUTHORIZATIONS AND ACCEPTING CERTAIN RELATED FPC GAS RATE FILINGS

(Issued October 9, 1964)

On July 7, 1964, Mountain Fuel Supply Company (Mountain Fuel) filed in Docket No. CP65-8 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by assignment to Socony Mobil Oil Company, Inc. (Socony), Mountain Fuel's interest in a natural gas lease in the Hogsback Unit, Sublette County, Wyoming, in which Socony is the operator, all as more fully set forth in the application. Notice of Mountain Fuel's application was published in the Federal Register on September 11, 1964 (29 F.R. 12857).

Socony filed in Docket No. CI64-1221 its application for certificate authorization to sell the natural gas produced from the interest acquired by the aforementioned assignment from Mountain Fuel Supply Company, together with gas produced from an interest acquired from Belco Petroleum Corporation, to said Mountain Fuel Supply Company pursuant to a rate filing designated as Socony Mobil Oil Company, Inc. FPC Gas Rate Schedule No. 352, as supplemented. Notice of Socony's application was published in the Federal Register on May 7, 1964 (29 F.R. 6031).

Socony also filed in Docket No. CI61-18 an application to delete a part of the authorization outstanding in that docket to remove therefrom certain acreage in Sweetwater County, Wyoming, likewise assigned to Mountain Fuel Supply Company. Notice of this partial abandonment application was published in the Federal Register on June 23, 1964 (29 F.R. 7956).

The above applications are the result of an exchange of properties between Mountain Fuel and Socony for the purpose of eliminating the small interest of Mountain Fuel in the Hogsback Unit in which Socony is the operator, and eliminating the small interest of Socony in the Pioneer Unit in which Mountain Fuel is the operator. No cash or payment arrangement is involved in the transaction.

No petition to intervene, notice of intervention or protest to the granting of any of the three subject applications has been timely filed.

At a hearing held on October 8, 1964, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications and exhibits, submitted in support of the respective authorizations sought herein, and upon consideration of the record,

(1) Applicant, Mountain Fuel Supply Company, a Utah corporation having its principal place of business in Salt Lake City, Utah, is a "natural-gas company"

The Commission finds:

within the meaning of the Natural Gas Act as heretofore found by the Commission in its determination of October 15, 1940, in Docket No. G–154 (2 FPC 288, 292).

(2) Applicant, Socony Mobil Oil Company, Inc., a New York corporation having its principal place of business in New York, New York, is engaged in the sale of natural gas in interstate commerce for ultimate public consumption, subject to the jurisdiction of the Commission, and is therefore a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(3) The natural gas interest proposed to be abandoned by Mountain Fuel, as hereinbefore described and as more fully described in the application in Docket No. CP65–8, is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act and such abandonment should be permitted and approved as hereinafter ordered.

(4) The sale of natural gas by Socony, as hereinbefore described and as more fully described in the application in Docket No. CI64–1221, will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sale by Socony, together with the continued operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The proposed sale by Socony, together with the continued operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Applicant, Socony, is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificate authorizations heretofore granted to Belco Petroleum Corporation in Docket No. G–16503 and to Socony in Docket No. CI61–18 be amended as hereinafter ordered.

(8) Certain related FPC gas rate filings should be accepted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by Mountain Fuel Supply Company as hereinbefore described and as more fully described in the application in Docket No. CP65–8 are hereby granted.

(B) A certificate of public convenience and necessity be and the same is hereby issued, upon the terms and conditions of this order, authorizing the sale of natural gas by Socony Mobil Oil Company, Inc., of natural gas in interstate commerce for resale, together with the continued operation of any facilities subject to the jurisdiction of the Commission necessary for such sale, all as hereinbefore described and as more fully described in the application in Docket No. CI64–1221.

(C) The certificate granted by paragraph (B) above is not transferable and shall be effective only so long as Socony continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(D) The grant of the certificate issued by paragraph (B) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is

without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Socony. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contract herein involved. Nor shall the grant of the certificate aforesaid for service to the particular customer involved imply approval of all of the terms of the aforesaid contract, particularly as to the cessation of service upon termination of said contract, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificate aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of the sale of natural gas subject to said certificate.

(E) The certificate authorization heretofore granted to Belco Petroleum Corporation in Docket No. G–16503 is hereby amended by deleting therefrom the authorization to sell natural gas from the acreage acquired by Socony from Belco by assignment dated August 13, 1963.

(F) The certificate authorization heretofore granted to Socony in Docket No. CI61–18 is hereby amended by deleting therefrom the authorization to sell natural gas from the acreage assigned by Socony to Mountain Fuel on January 1, 1963.

(G) In all other respects, the respective certificate authorizations in Docket Nos. G–16503 and CI61–18 shall remain in full force and effect.

(H) The related rate filings listed below are hereby accepted for filing, subject to all applicable Commission Regulations under the Natural Gas Act on the date on which this order issues:

Docket No.	Rate schedule designation	Description and date of document
CI61–18	Supplement No. 3 to Socony Mobil Oil Company, Inc., FPC Gas Rate Schedule No. 298.	Notice of Cancellation, 6/3/64.
CI64–1221	Socony Mobil Oil Company, Inc., FPC Gas Rate Schedule No. 352.	Contract, 1/20/64.
	Supplement No. 1 to above	Assignment, 8/26/63.
	Supplement No. 2 to above	Assignment, 8/13/63.
	Supplement No. 3 to above	Letter Agreement, 3/12/64.

(I) The grant of the certificate issued by paragraph (B) above is hereby conditioned upon Socony's amending its basic contract of January 20, 1964, by deleting therefrom the indefinite pricing provision which is in conflict with Section 154.93 of the Commission's Regulations under the Natural Gas Act.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PAN AMERICAN PETROLEUM CORPORATION, ET AL., DOCKET NO. RI63–481, ET AL.[1]

ORDER DEFERRING ACTION PENDING A STATE COURT DETERMINATION

(Issued October 9, 1964)*

On May 27, 1963, Pan American Petroleum Corporation (Pan Am) tendered for filing various proposed increased rates reflecting contractual reimbursement

[1] Additional proceedings involved in this order are listed in the appendix attached hereto.

*Order issued December 3, 1964, denying rehearing, 32 FPC 1394.

for the full 2.55% tax paid under the April 1, 1963, New Mexico Oil and Gas Emergency School Tax Act.[3] The buyer, El Paso Natural Gas Company (El Paso), has protested such rate filings contending that Pan Am is entitled to additional contractual reimbursement based on 0.55% of the tax paid as a new or increased tax. El Paso asserts that a proper interpretation of the Oil and Gas Emergency School Tax Act as it existed before April 1, 1963, and after April 1, 1963, indicates that an additional or increase in tax of 0.55% and not 2.55% was levied. In an answer filed June 24, 1963, Pan Am asserts that El Paso's interpretation of the tax legislation is incorrect and argues that a proper interpretation supports its filings. By order issued June 26, 1963, in Docket No. RI63–481, as amended by order issued July 31, 1963, Pan Am's rate filings were suspended until June 28, 1963.[3] In the June 26 suspension order it was stated that any hearing with regard to such rate changes would concern itself with the legality of the filings as well as with the justness and reasonableness of the rates.[4]

On April 13, 1964, El Paso was served with a complaint filed by Pan Am in the District Court of Lea County, State of New Mexico.[5] Such complaint requests a declaratory order which would determine and establish the right of Pan Am to contractual reimbursement based on the 2.55% tax paid under the April 1, 1963, Tax Act as a new tax or an increase in tax. The case is presently pending before the District Court of Lea County. El Paso has answered Pan Am's complaint stating, *inter alia*, that the courts of New Mexico do not have jurisdiction over the subject matter, but that if the court has jurisdiction it must declare that the proper reimbursement is based upon a 0.55% tax calculation.

In view of this claim of primary jurisdiction we believe that it is advisable for us to set forth our views on the procedure we intend to follow herein. A principal contention made by El Paso in support of its jurisdictional claim is that since the sales in question are subject to the jurisdiction of this Commission then we have exclusive jurisdiction over questions raised in the Pan Am action. As indicated in our June 26, 1963, suspension order there is a threshold question as to the contractural basis for the filings by Pan Am as well as the broader question regarding the justness and reasonableness of the rates. While we do not doubt that we have the power to resolve this threshold question, as well as the question of the justness and reasonableness of the increased rate, since determination of the threshold question presents a question which turns on an interpretation of state statutes and since a state court of New Mexico has pending before it litigation which should result in the interpretation of such statutes, it is appropriate for us to exercise our discretionary power in this matter by deferring action in Docket No. RI63–481 pending state court action.[6] By deferring action

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[3] A large number of other increased rate filings purporting to arise under the April 1, 1963, New Mexico Oil & Gas Emergency School Tax, and involving the same problem presented in Docket No. RI63–481, have been made by Pan Am and the other producers. Such increased rates have also been suspended. See the attached appendix for the list of proceedings in which the other filings have been suspended.

[3] Pursuant to the filing of an acceptable agreement and undertaking Pan Am's rates were made effective as of June 28, 1963.

[4] By order issued November 18, 1963, in the Docket No. RI63–481, El Paso was permitted to intervene.

[5] The title of the action is "*Pan American Petroleum Corporation*, a Corporation, Plaintiff, v. *El Paso Natural Gas Company*, a Corporation, Defendant," in the District Court of Lea County, State of New Mexico, No. 22727.

[6] This is not a case where federal law conflicts with or might supersede state law. The threshold contract question presented must be decided under state law. Moreover, it is clear that if the state courts of New Mexico had already finally determined the state law question the Commission would be obligated to follow their view, and that if the state courts subsequent to a Commission determination were to reach a contrary determination then the Commission upon proper application would prospectively revise its determination.

on the question of the legality of the rate filings pending a state court determination we are, of course, in no way implying that the ultimate determination as to the justness and reasonableness of the subject rates is not within the exclusive jurisdiction of this Commission.

We shall also defer action in the proceedings listed in the appendix since they also involve the same issue.[1]

The Commission orders:

Action by this Commission regarding the legality of the proposed increased rate filings suspended in Docket No. RI63-481 and in the proceedings listed in the appendix is hereby deferred pending final determination of the complaint filed by Pan American in the District Court of Lea County, State of New Mexico.

APPENDIX

Docket No.	Company	Rate schedule	Supplement No.
RI63-452	Phillips Petroleum Company (Operator), *et al*	32	25
		33	12
		65	11
		274	3
		337	4
RI63-453	Phillips Petroleum Company (Operator)	64	12
		243	14 and 15
RI63-454	Phillips Petroleum Company	151	6
RI63-481	Pan American Petroleum Corporation	124	6
		291	1
		320	1
		93	4
		110	16
		319	1
		371	19
		109	8
		222	8
		234	4
		249	5
		271	5
		302	2
		370	18
RI63-482	Sunray DX Oil Company	109	3
		62	8
		189	5
		142	4
		101	4
		64	7
RI63-483	Pan American Petroleum Corporation (Operator), *et al*	199	10
		195	14
		163	10
		136	19
RI63-487	Pan American Petroleum Corporation (Operator)	117	19
RI63-488	Sunray DX Oil Company	161	5
RI64-3	Sinclair Oil & Gas Company	8	19
		170	3
		180	1
		215	1
		6	2
		4	3
		65	8
		71	4
		83	4
		5	2
RI64-4	Phillips Petroleum Company	66	6
RI64-5	Continental Oil Company (Operator), *et al*	85	16
RI64-6	Pan American Petroleum Corporation	110	19
RI64-28	The Pure Oil Company	28	4
		59	5
RI64-29	Continental Oil Company (Operator), *et al*	92	12
		109	10
		214	12
		104	12
		85	18

[1] In taking this action we recognize that some of these proceedings may also involve contractual questions other than those discussed herein.

APPENDIX—continued

Docket No.	Company	Rate schedule	Supplement No.
RI64-30	Continental Oil Company	163	4
		198	1
		199	2
		208	3
		221	3
RI64-31	Amerada Petroleum Corporation	1	24
		27	6
		31	9
		55	6
		56	11
		57	8
		62	7
		69	4
		72	5
RI64-32	The British-American Oil Producing Company	48	5
		45	2
RI64-50	Humble Oil & Refining Company (Operator), *et al*	31	12
RI64-51	N. B. Hunt	9	3
		1	7
RI64-52	Lamar Hunt	5	3
		1	7
RI64-58	Amerada Petroleum Corporation	50	5
		2	4
		49	5
		76	3
RI64-59	Pan American Petroleum Corporation (Operator), *et al*	195	16
RI64-60	Standard Oil Company of Texas, a Division of California Oil Company.	44	1
		33	1
		34	8
		35	8
		28	7
		29	3
		37	2
RI64-61	Standard Oil Company of Texas, a Division of California Oil Company (Operator), *et al.*	36	8
RI64-62	Hidalgo Gas Production Corporation	3	1
RI64-63	W. H. Hunt	1	7
RI64-74	W. H. Hunt	6	3
RI64-88	Standard Oil Company of Texas, a Division of California Oil Company (Operator), *et al.*	36	11
RI64-89	Delhi-Taylor Oil Corporation	19	3
		23	3
		47	4
		53	2
		32	9
		33	1
		50	4
		51	3
		45	2
		28	1
		31	1
RI64-91	Pubco Petroleum Corporation	3	2
		4	26
		2	2
		1	25
		7	2
RI64-92	Pubco Petroleum Corporation (Operator), *et al*	13	11
RI64-94	Pan American Petroleum Corporation	382	5
RI64-95	Gulf Oil Corporation	47	5
		202	3
		190	6
		38	2
		244	1
		240	1
		56	3
		118	7
		144	2
		16	15
RI64-96	Gulf Oil Corporation (Operator), *et al*	150	4
RI64-97	Pan American Petroleum Corporation	376	4
RI64-130	Texaco Inc.	30	7
		31	5
		246	1
		254	1
		210	1
		28	5
		29	5
		22	4
		27	5
RI64-131	Texaco Inc. (Operator), *et al*	26	12

APPENDIX—continued

Docket No.	Company	Rate schedule	Supplement No.
RI64-132	Shell Oil Company	33	11
		34	12
		40	7
		95	7
		108	6
RI64-133	Shell Oil Company (Operator), *et al*	41	18
RI64-143	Texaco Inc	290	5
RI64-145	Pubco Petroleum Corporation	5	3
		9	4
		10	6
		11	6
RI64-146	Pubco Petroleum Corporation (Operator), *et al*	8	9
RI64-147	Union Texas Petroleum, a Division of Allied Chemical Corporation (Operator), *et al*	45	3
		47	7
		65	1
		49	10
		52	7
		26	4
RI64-148	Pan American Petroleum Corporation (Operator), *et al*	199	13
RI64-149	Union Texas Petroleum, a Division of Allied Chemical Corporation, *et al*	22	7
		38	4
		39	6
		53	1
RI64-175	Penrose Production Company (Operator), *et al*	1	4
RI64-191	The Atlantic Refining Company	20	15
RI64-192	Pan American Petroleum Corporation	377	11
		378	11
RI64-241	Pan American Petroleum Corporation, *et al*	199	14
RI64-242	Shell Oil Company	184	8
		253	3
RI64-271	The Atlantic Refining Company	10	5
RI64-272	The Atlantic Refining Company	11	6
		15	8
		17	7
		18	9
		19	7
		139	5
		243	8
		245	4
		275	1
		20	16
RI64-298	Pan American Petroleum Corporation	320	2
RI64-299	Pan American Petroleum Corporation (Operator), *et al*	117	21
RI64-357	Forest Oil Corporation	5	3
RI64-381	Sunray DX Oil Company	109	4
RI64-382	W. P. Carr	2	11
		1	6
RI64-385	Humble Oil & Refining Company	161	4
RI64-386	Continental Oil Company	208	4
		221	4
		199	4
RI64-388	Pan American Petroleum Corporation	109	9
		222	9
		371	20
		302	4
		382	6
RI64-389	Pan American Petroleum Corporation (Operator), et *al*	199	15
		117	22
RI64-390	Sunray DX Oil Company	161	6
		189	6
		238	2
RI64-395	Continental Oil Company	198	3
RI64-482	Delhi-Taylor Oil Corporation	19	4
		23	4
		47	5
		52	4
		53	3
RI64-483	Sinclair Oil & Gas Company (Operator), *et al*	272	6
RI64-484	Delhi-Taylor Oil Corporation	14	6
		28	2
		31	2
		45	3
		51	4
		33	2
RI64-485	Union Texas Petroleum, a Division of Allied Chemical Corporation (Operator), *et al*	45	4
		65	4
RI64-487	Gulf Oil Corporation	47	6
RI64-489	Sinclair Oil & Gas Company (Operator), *et al*	289	3
RI64-490	Schermerhorn Oil Corporation, *et al*	7	2
RI64-491	Union Texas Petroleum, a Division of Allied Chemical Corporation (Operator), *et al*	26	5
RI64-492	Amerada Petroleum Corporation	50	6
RI64-493	Sinclair Oil & Gas Company	276	4
RI64-494	Thomas D. Bailey, *et al*	1	4

APPENDIX—continued

Docket No.	Company	Rate schedule	Supplement No.
RI64-503	Union Texas Petroleum, a Division of Allied Chemical Corporation, *et al.*	53	2
RI64-522	The British-American Oil Producing Company	45	3
		48	6
RI64-523	Pan American Petroleum Corporation	291	3
RI64-532	Pan American Petroleum Corporation	124	8
		302	5
RI64-533	Pan American Petroleum Corporation (Operator), *et al.*	163	12
		195	18
RI64-537	Pubco Petroleum Corporation	4	27
		7	4
RI64-541	Pubco Petroleum Corporation	1	26
		2	3
		3	3
		5	4
		9	5
		10	7
		11	7
		7	7
RI64-544	Pubco Petroleum Corporation (Operator), *et al.*	8	10
		13	13
RI64-584	W. P. Carr	1	7
RI64-585	Standard Oil of Texas, a Division of California Oil Company.	33	2
		44	2
RI64-587	W. P. Carr	2	12
RI64-591	Standard Oil of Texas, a Division of California Oil Company.	37	3
RI64-630	Northeast Blanco Development Company (Operator), *et al.*	1	6
RI64-655	Standard Oil of Texas, a Division of California Oil Company.	29	4
RI64-736	Tenneco Oil Company (Operator), *et al.*	26	2
RI64-737	Tenneco Oil Company	38	2
		50	2
RI64-746	Tenneco Oil Company (Operator), *et al.*	36	2
RI64-804	Sunray DX Oil Company	62	10
		101	6
		142	6
		64	9
RI65-8	The Atlantic Refining Company	275	2
		245	5
		243	9
		139	6
		11	7
		15	9
		17	8
		18	10
		19	8
		20	17
		20	18
RI65-9	The Atlantic Refining Company (Operator)	10	6
RI65-16	Forest Oil Corporation	5	4
RI65-17	The Pure Oil Company	59	6
		28	5
RI65-19	Amerada Petroleum Corporation (Operator), *et al.*	57	9
RI65-20	Amerada Petroleum Corporation	62	9
		72	6
		1	25
		27	7
		31	10
		55	7
		56	12
RI65-24	Humble Oil & Refining Company	28	10
		33	8
		45	9
RI65-25	Humble Oil & Refining Company (Operator), *et al.*	31	13
RI65-38	Sinclair Oil & Gas Company	71	6
		93	6
		168	3
		170	5
		215	3
RI65-42	Socony Mobil Oil Company, Inc.	76	8
RI65-51	Continental Oil Company	163	5
RI65-52	Shell Oil Company	108	7
		33	12
		95	8
		40	8
RI65-54	Shell Oil Company (Operator), *et al.*	41	20
RI65-61	Union Texas Petroleum, a Division of Allied Chemical Corporation, *et al.*	22	8
		38	5
		39	7
RI65-62	Union Texas Petroleum, a Division of Allied Chemical Corporation, (Operator), *et al.*	49	11
		52	8
RI65-73	Shell Oil Company	34	13

APPENDIX—continued

Docket No.	Company	Rate schedule	Supplement No.
RI65-75	Sinclair Oil & Gas Company	8	21
		65	10
RI65-76	Lamar Hunt	1	8
		5	4
RI65-77	N. B. Hunt	1	8
		9	4
RI65-78	W. H. Hunt	1	8
		6	4
RI65-83	Continental Oil Company (Operator), *et al.*	214	13
		85	19
		85	20
		92	13
		104	13
		109	11
RI65-87	Joseph E. Seagram & Sons, Inc. d/b/a Texas Pacific Oil Company.	13	15
		17	6
		38	6
		41	7
		56	10
		57	9
RI65-88	Joseph E. Seagram & Sons, Inc. d/b/a Texas Pacific Oil Company (Operator), *et al.*	28	9
		40	14
		42	17
		43	8
		44	10
		58	25
		59	10
RI65-108	Sinclair Oil & Gas Company (Operator), *et al.*	265	10
RI65-109	Pan American Petroleum Corporation (Operator), *et al.*	136	20
RI65-111	Pan American Petroleum Corporation	110	22
		249	6
RI65-115	Texaco Inc.	254	3
		28	7
		29	7
		30	9
		31	7
		246	3
RI65-117	Pan American Petroleum Corporation	234	5
		271	6
RI65-132	Standard Oil Company of Texas, a Division of California Oil Company.	23	9
		34	9
		35	9
RI65-134	Standard Oil Company of Texas, a Division of California Oil Company (Operator), *et al.*	36	14
RI65-140	McAlester Fuel Company	2	5
RI65-148	Schermerhorn Oil Corporation (Operator), *et al.*	1	6
		2	3
RI65-149	Schermerhorn Oil Corporation, *et al.*	4	3
RI65-150	Schermerhorn Oil Corporation	11	4
RI65-185	Phillips Petroleum Company (Operator).	64	13
		243	16
RI65-186	Phillips Petroleum Company	66	7
RI65-187	Phillips Petroleum Company (Operator), *et al.*	32	26
		33	13
RI65-202	Tenneco Oil Company (Operator), *et al.*	1	2
		17	3
		37	2
		45	2
		47	2
		69	2
		57	2
RI65-203	Tenneco Oil Company	21	3
		39	2
		51	2
		120	4
		121	3
		124	4
		126	2
RI65-205	Phillips Petroleum Company	151	7
RI65-206	Phillips Petroleum Company (Operator), *et al.*	65	12
		274	4

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP65-18

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 9, 1964)

On July 17, 1964, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP65-18, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a compressor station and 6.6 miles of 16-inch pipeline, all as more fully set forth in the application.

Specifically, Applicant requests authority to construct and operate a 2,200 horsepower compressor station in Morton County, Kansas, and to construct and operate 6.6 miles of 16-inch pipeline connecting the proposed station with Applicant's existing supply lines. The proposed compressor station will enable Applicant to maintain deliverability of the present gas supply into its main line. The Kansas-Hugoton Field has been producing for a number of years and well pressures have been declining. The proposed compressor station is required to offset this decline in field pressure. The new station will permit Applicant to maintain peak day deliverability and to fully utilize yearly allowables of its gas supply from this area, both of which are essential to the maintenance of normal operations.

The estimated total cost of the proposed facilities is $900,000 and will be financed by funds derived from internal sources.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

At a hearing held on October 8, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G-254 (4 FPC 1081).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Panhandle Eastern Pipe Line Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 90 days from the date of the issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

SOUTHERN NATURAL GAS CO., DOCKET NO. CP65-5

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 9, 1964)

On July 6, 1964, as supplemented on August 5, 1964, Southern Natural Gas Company (Applicant) filed in Docket No. CP65-5 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities necessary for the sale and delivery of natural gas, on a firm and interruptible basis, to the Oliver Electrical Manufacturing Co. (Oliver) for use by the latter in its plant near Vicksburg, Mississippi, all as more fully set forth in the application, as supplemented, on file with the Commission and open to public inspection.

Specifically, Applicant proposes to tap its Vicksburg branch line, construct and operate 2.4 miles of 4½-inch tap line from said tap to the Oliver plant site and to construct and operate a measuring station at the terminus of said tap line.

Oliver's estimated peak day and annual natural gas requirements are 600 Mcf and 108,700 Mcf, respectively.

Applicant and Oliver have entered into a contract, dated June 17, 1964, providing for the sale of up to 600 Mcf of natural gas per day. Of this volume 40 Mcf will be on a firm basis and the remainder on an interruptible basis. Further, firm and interruptible gas will be sold at rates of 42 cents per Mcf and 35 cents per Mcf, respectively.

The total estimated cost of the proposed facilities is $65,980, which cost will be financed from cash on hand.

Oliver will manufacture electrical transmission line equipment at its Vicksburg plant and natural gas will be utilized for firing galvanizing and forging furnaces, as well as for space heating.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, as supplemented, has been filed.

At a hearing held on October 8, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G–296 (3 FPC 822).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) The certificate issued hereinafter should be granted on the express condition that the interruptible service authorized hereinafter should be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Applicant for firm resale service to its customers.

(7) The certificate issued hereinafter should not entitle Oliver to whom firm deliveries are authorized hereinafter to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of resale customers desiring to acquire additional gas to meet any future increases in their requirements.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Southern Natural Gas Company, to construct and operate the proposed facilities and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (1), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and the transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 2 months from the date on which this order issues.

(D) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Applicant for firm resale service to its customers.

(E) This certificate shall not entitle Oliver to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP64-32

FINDINGS AND ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 9, 1964)

By Commission order issued August 10, 1964, 32 FPC 571, in Docket No. CP64-32 Texas Gas Transmission Corporation (Applicant) was authorized, among other things, to construct and operate facilities necessary for new delivery points for three existing customers, The Ohio Fuel Gas Company, Western Kentucky Natural Gas Company and Indiana Natural Gas Corporation. The original application, filed on July 31, 1963, and the first two amendments thereto were noticed on July 7, 1964. On July 29, 1964, Applicant filed a third amendment which is the subject of this order. Since the third amendment was filed subsequent to the notice of July 7, 1964, it could not be included in said notice and disposed of by the order of August 10. Consequently, said third amendment will be treated herein as an application to amend the order of August 10, 1964, and will be referred to hereinafter as such.

By the subject application, Texas Gas requests authorization to construct and operate a side valve and meter in Lawrence County, Illinois, for delivery of gas to Illinois Gas Company (Illinois Gas) for resale in the Village of Birds and the Community of Pinkstaff, Illinois, and environs, and a side valve and meter in Sullivan County, Indiana, for delivery of gas to Ohio Valley Gas, Inc. (Ohio Valley), for resale in the Community of Hymera, Indiana. The application shows the estimated annual deliveries at the Lawrence County and Sullivan County points to be 26,000 Mcf and 20,500 Mcf, respectively. Applicant states that no increase in the contract demands of either Illinois Gas or Ohio Valley is proposed for the subject additional service.

The total estimated cost of the proposed facilities is $7,750, which cost will be financed from cash on hand.

Due notice of the application and opportunity for hearing thereon has been given by publication in the Federal Register on September 3, 1964, (29 F.R. 12565). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued August 10, 1964, in Docket No. CP64–32 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued August 10, 1964, in Docket No. CP64–32 be and the same is hereby amended by authorizing Applicant to construct and operate the proposed facilities to establish new delivery points for two existing customers, Illinois Gas and Ohio Valley, all as hereinbefore described and as set forth in the application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CONCORD ELECTRIC COMPANY, PROJECT NO. 1903

ORDER DETERMINING NET CHANGE IN ACTUAL LEGITIMATE ORIGINAL PROJECT COST; ACCRUED DEPRECIATION; AND PRESCRIBING ACCOUNTING THEREFOR

(Issued October 12, 1964)

Concord Electric Company, Licensee for Project No. 1903,[1] filed statements, pursuant to Section 4.1 of the Commission's Regulations under the Federal Power Act, claiming for the period from January 1, 1960 through December 31, 1961, project additions and retirements resulting in (1) a $9,411.26 net increase in project cost over the previously determined amount of actual legitimate original cost of the project, $939,735.28 as of December 31, 1959,[2] and (2) a total claimed actual legitimate original cost of the project as of December 31, 1961 of $949,146.54. The claimed net increase of $9,411.26 results from claimed and recorded project gross additions and gross retirements of $9,791.62 and $380.36, respectively, as more specifically shown in the attached Schedule I.

Licensee also from time to time recorded upon its books of account amounts in its reserve for accrued depreciation applicable to in-service project properties resulting in an accumulated provision for depreciation applicable to the project of $351,173.01 as of December 31, 1961, as more specifically shown in the attached Schedule III.

The Commission's staff made a field examination of the books and records of Licensee and other data for the purpose of ascertaining the correctness of the above claimed and recorded project cost changes for the period from January 1, 1960, to December 31, 1961, inclusive, and the recorded amounts of accrued depreciation applicable to project properties as of December 31, 1961.

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[1] The project is located on the Merrimack River in Concord, New Hampshire. The license, authorizing the operation and maintenance of the constructed project was issued pursuant to Section 4(e) of the Federal Power Act, effective for a period beginning January 1, 1938, and terminating June 30, 1970.

[2] See Commission order issued June 26, 1961 (25 FPC 1211).

Following that examination, an agreement, subject to Commission approval, was reached between the staff and representatives of Licensee with respect to certain proposed adjustments consisting of: (1) a decrease in claimed and recorded project cost changes in the net amount of $3,363.35 for the period from January 1, 1960, through December 31, 1961; (2) an increase in recorded project depreciation reserve as of December 31, 1961, in the net amount of $404,565.93; and (3) the accounting disposition of the foregoing amounts.

The proposed accounting disposition of all amounts involved in the proposed adjustments are shown in the attached Schedules II and III.

Based upon the proposed adjustments, the staff recommends and Licensee concurs, that the Commission determine: (1) the net increase or change in project cost for the period from January 1, 1960, through December 31, 1961, to be $6,047.91, comprised of gross additions of $6,428.27 less gross retirements of $380.36; (2) the actual legitimate original cost of the project as of December 31, 1961, to be $945,783.19, classified by primary plant accounts as shown in the attached Schedule I; and (3) the reserve for accrued depreciation of the project as of December 31, 1961, to be $755,738.94, classified by functional groups as shown in the attached Schedule III.

By letter dated January 2, 1964, Licensee confirmed its agreement with respect to the proposed adjustments, accounting dispositions, and resulting project costs and project depreciation reserve.

The New Hampshire Public Utilities Commission was advised by letter of this Commission dated March 17, 1964, of the proposed adjustments, including the accounting dispositions, the resulting project costs, and the resulting project depreciation reserve, all as recommended by this Commission's staff and agreed to by Licensee as set forth above. By letter dated March 21, 1964, that Commission indicated no objection to the foregoing.

The Commission finds:

(1) Licensee, by its tentative agreement to the proposed adjustments, including the accounting dispositions, the resulting project costs, and the resulting project depreciation reserve, and its letter dated January 2, 1964, and the New Hampshire Public Utilities Commission, by its letter dated March 21, 1964, have obviated the necessity for notice and opportunity to protest provided by Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

(2) The foregoing adjustments, including the accounting dispositions, as proposed by the staff and agreed to by the Licensee, are reasonable and appropriate for the purposes of the Federal Power Act, and, therefore, should be approved and directed as hereinafter provided.

(3) The net increase or change in the actual legitimate original cost of Project No. 1903 for the period from January 1, 1960, through December 31, 1961, is $6,047.91, comprised of gross additions of $6,428.27 less gross retirements of $380.36, and the resulting actual legitimate original cost of the project as of December 31, 1961, is $945,783.19, classified by primary plant accounts as shown in the attached Schedule I.

(4) The reserve for accrued depreciation applicable to in-service project properties of Project No. 1903 is $755,738.94 as of December 31, 1961, classified by functional groups as shown in the attached Schedule III.

The Commission orders:

(A) The provisions of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments, including the accounting dispositions, as proposed by the staff and agreed to by the Licensee, are hereby approved and directed to be made by Licensee.

(C) Licensee, to the extent that it has not already done so, shall (a) establish and maintain control and subsidiary project plant accounts for Project No. 1903 showing the debit amount of $6,047.91 as the net increase or change in the project cost for the period from January 1, 1960, through December 31, 1961, and the total debit balance of $945,783.19 as the actual legitimate original cost of the project as of December 31, 1961, all as more specifically shown in the attached Schedule I, classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees, effective January 1, 1961, and (b) establish and maintain a reserve for accrued depreciation applicable to in-service project properties of Project No. 1903 showing the total credit balance of $755,738.94 as of December 31, 1961, classified by functional groups as shown in the attached Schedule III.

(D) Licensee shall within 90 days from the issuance of this order file with the Commission three certified copies of its adjusting journal entries showing compliance therewith.

SCHEDULE I

CONCORD ELECTRIC COMPANY—PROJECT NO. 1903, SEWALLS FALLS

SUMMARY BY DETAILED PLANT ACCOUNTS OF APPROVED PROJECT COSTS AS OF DEC. 31, 1959

CLAIMED CHANGES FOR THE PERIOD FROM JAN. 1, 1960, TO DEC. 31, 1961, WITH ADJUSTMENTS THERETO, AND ALLOWED BALANCES AS OF DEC. 31, 1961

Account		Approved[1] original cost as of Dec. 31, 1959	Changes from Jan. 1, 1960 to Dec. 31, 1961			Allowed original cost as of Dec. 31, 1961
No.	Description		As claimed	Adjustments	As adjusted	
(1)	(2)	(3)	(4)	(4)	(6)	(7)
	Hydraulic production plant					
330	Land and land rights	$86,295.42				$86,295.42
331	Structures and improvements	92,304.54	($380.36)		($380.36)	91,924.18
332	Reservoirs, dams and waterways	412,535.66	505.70	($500.00)	5.70	412,541.36
333	Water wheels, turbines and generators	107,497.61				107,497.61
334	Accessory electric equipment	51,508.28				51,508.28
335	Miscellaneous power plant equipment	10,936.11				10,936.11
338	Roads, railroads and bridges	932.68	983.30		983.30	1,915.98
	Total hydraulic production plant	742,010.30	1,108.64	(500.00)	608.64	742,618.94
	Transmission plant					
350	Land and land rights	12,078.03				12,078.03
351	Clearing land and rights-of-way	1,332.80				1,332.80
352	Structures and improvements	21,552.29				21,552.29
353	Station equipment	125,050.78	4,960.99	(2,863.35)	2,097.64	127,148.42
354	Towers and fixtures	3,199.92				3,199.32
355	Poles and fixtures	21,657.76	1,247.93		1,247.93	22,905.69
356	Overhead conductors and devices	20,080.69	2,093.70		2,093.70	22,174.39
	Total transmission plant	204,952.27	8,302.62	(2,863.35)	5,439.27	210,391.54
101	Total electric plant in service	946,962.57	9,411.26	(3,363.35)	6,047.91	953,010.48
271	Contributions in aid of construction—Federal	(7,227.29)				(7,227.29)
	Total actual legitimate original cost	939,735.28	9,411.26	(3,363.35)	6,047.91	945,783.19

[1] By Commission order issued June 26, 1961.
( ) Denote credit.

SCHEDULE II

CONCORD ELECTRIC COMPANY—PROJECT NO. 1903 (SEWALLS FALLS)

ADJUSTMENTS OF RECORDED AND CLAIMED CHANGES IN PROJECT PLANT ACCOUNTS AND ACCOUNTING DISPOSITION THEREOF, FOR THE PERIOD FROM JAN. 1, 1960, TO DEC. 31, 1961

Number	Description	Adjustments		
		Total	Adj. No. 1 maintenance charges capitalized	Adj. No. 2 transfer to nonproject plant
(1)	(2)	(3)	(4)	(5)
101	Electric plant in service—project No. 1903—Sewalls Falls:			
332	Reservoirs, dams and waterways	($500.00)	($500.00)	
353	Station equipment	(2,863.35)		($2,836.35)
	Total	(3,363.35)	(500.00)	(2,863.35)
	Accounting Disposition			
101	Electric plant in service—nonproject:			
353	Station equipment	2,863.35		2,863.35
426	Other income deductions	500.00	500.00	
	Total	3,363.35	500.00	2,863.35

( ) Denote credit.

SCHEDULE III

CONCORD ELECTRIC COMPANY—PROJECT NO. 1903, SEWALLS FALLS

SUMMARY BY FUNCTIONAL GROUPS OF ACCUMULATED PROVISION FOR DEPRECIATION OF ELECTRIC PLANT IN SERVICE AS RECORDED, ADJUSTMENTS AND ALLOWED BALANCE AS OF DEC. 31, 1961

	Accumulated provision for depreciation as of Dec. 31, 1961		
	Recorded	Adjustment[1]	Allowed
Accumulated provision for depreciation:			
Hydraulic production	$253,231.59	$379,107.67	$632,339.26
Transmission	97,941.42	25,458.26	123,399.68
Total	351,173.01	404,565.93	755,738.94

[1] To be disposed of by a debit in like amount to nonproject accumulated provision for depreciation.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP65-16

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 12, 1964)

On July 14, 1964, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP65-16 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing

the construction and operation of approximately 350 feet of 8-inch lateral, a side tap and metering facilities on Applicant's Amarillo line at the outlet of Applicant's Beatrice Compressor Station, Gage County, Nebraska, and the transportation of natural gas in interstate commerce to the proposed ammonia plant of Phillips Petroleum Company (Phillips) for fuel and use as raw material in said plant, all as more fully set forth in the application.

Applicant proposes to sell and deliver to Phillips for use in its plant for fuel and use as raw material the following estimated volumes of natural gas (Mcf 14.65 psia):

Annual volumes

	1964	1965	1966	1967
Construction gas	6,200	37,800		
Firm gas		59,700	109,500	109,500
Off-peak gas		4,248,000	5,368,000	5,457,000
Total sales	6,200	4,345,500	5,477,500	5,566,500

Peak day volumes

	1964-65	1965-66	1966-67	1967-68
Construction or firm gas	300	300	300	300

The contract between Applicant and Phillips provides for an interim sale of volumes of natural gas up to 300 Mcf daily during the construction and testing period, scheduled to end June 15, 1965. Upon commencement of regular operations Phillips will purchase 300 Mcf of firm gas daily and up to 26,000 Mcf of off-peak gas daily during the off-peak season from April 1 to November 30 each year.

The cost of the proposed facilities is estimated to be $18,600, which will be defrayed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on October 8, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorizations sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 28, 1947, in Docket No. G-771 (6 FPC 353).

(2) The proposed construction and operation of facilities and transportation of natural gas by Applicant as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities and transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the transportation of natural gas as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months of the date on which this order issues.

(D) The certificate issued hereby shall not entitle the industrial customer (Phillips) to whom firm deliveries are authorized (not to exceed 300 Mcf daily) herein to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(E) The facilities authorized by the certificate issued hereby shall not be utilized to transport to Phillips volumes of natural gas in excess of 300 Mcf daily on a firm basis and more than 26,000 Mcf daily on an interruptible and off-peak basis from April 1 to November 30 of each year.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PACIFIC POWER & LIGHT COMPANY, PROJECT NO. 1927

ORDER DETERMINING NET CHANGES IN ACTUAL LEGITIMATE ORIGINAL PROJECT COST AND PRESCRIBING ACCOUNTING THEREFOR

(Issued October 12, 1964)

Pacific Power & Light Company, Licensee for Project No. 1927,[1] and its predecessor, California Oregon Power Company, from time to time filed statements, pursuant to Section 4.1 of the Commission's Regulations under the Federal Power Act, claiming for the period from January 1, 1958, through December 31, 1962, a net increase in the actual legitimate original cost of the

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[1] The project is located on the North Umpqua River in Douglas County, Oregon, affecting lands of the United States within Umpqua National Forest. It may be described as the North Umpqua Project. The license authorizing the construction, operation and maintenance of the project was issued pursuant to Section 4(e) of the Federal Power Act, for a 50-year period, effective as of January 30, 1947, to the California Oregon Power Company. By Commission Order issued June 16, 1961, the transfer of the license, as amended, to Pacific Power & Light Company was approved.

project of $904,209.02, resulting in a claimed and recorded actual legitimate original cost of the project as of December 31, 1962, of $58,792,184.67.[2]

The Commission's staff conducted a field examination of the licensee's books and records for the purpose of determining the accuracy of licensee's claimed and recorded project cost changes and resulting project cost as of December 31, 1962. As a result of this examination, staff proposed, subject to Commission approval, a reduction of $20,474.87 and a reclassification within project plant accounts of $3,885.75 in the claimed and recorded project costs for the period from January 1, 1958, through December 31, 1962, all as shown more specifically in the attached Schedules I and II.

The proposed accounting dispositions of the amounts involved in the proposed adjustments are shown in the attached Schedule II.

By letter dated January 27, 1964, Licensee confirmed its agreement with the proposed staff adjustments and resulting project costs, as set forth above.

The Public Utility Commissioner of Oregon was advised by letter of the Regional Office dated January 31, 1964, as to the proposed staff adjustments and resulting project costs, and indicated no objection thereto in his reply dated February 13, 1964.

The Commission finds:

(1) Licensee, by its acceptance of the proposed adjustments including the accounting disposition and resulting project costs, and the Oregon Public Utility Commissioner by his concurrence, have obviated the necessity for notice and opportunity to protest provided in Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

(2) The proposed adjustments, including the reclassifications and accounting dispositions, are reasonable and appropriate for the purposes of the Federal Power Act and, therefore, should be approved and directed as hereinafter provided.

(3) The net increase or change in the actual legitimate original cost of the project for the period from January 1, 1958, through December 31, 1962, is $883,734.15, and the resulting legitimate original cost of Project No. 1927 as of December 31, 1962, is $58,771,709.80 classified by plants and primary plant accounts as shown in the attached Schedule I.

The Commission orders:

(A) The provisions of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments, including the accounting dispositions, proposed by the staff and agreed to by the Licensee, are hereby approved and directed to be made by the Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and subsidiary plant accounts showing the debit balance of $58,771,709.80 as the actual legitimate original cost of Project No. 1927 as of December 31, 1962, all as more specifically shown in the attached Schedule I, classified by plants and primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(D) Licensee shall within 90 days from the issuance of this order file with the Commission three certified copies of its adjusting journal entries showing compliance therewith and submit two additional copies to the Regional Accountant at San Francisco, California.

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[2] Article 28 of the license provides for Commission determination of the actual legitimate original cost of the original project and of any addition thereto or betterment thereof. The Commission determined the actual legitimate original cost of the project to be $57,887,975.65, as of December 31, 1957, by its order issued June 30, 1960 (23 FPC 896).

SCHEDULE I

PROJECT NO. 1927 (NORTH UMPQUA)

PACIFIC POWER & LIGHT COMPANY

Summary by subsidiary plant accounts of approved project cost as of Dec. 31, 1957, claimed changes for the period from Jan. 1, 1958, through Dec. 31, 1962, with adjustments thereto, and allowed balances as of Dec. 31, 1962

Account No.	Account Title	Approved original cost as of Dec. 31, 1957 [1]	Changes from Jan. 1, 1958 through Dec. 31, 1962			Allowed original cost as of Dec. 31, 1962
			As claimed	Adjustments	As allowed	
		(1)	(2)	(3)	(4)	(5)
	TOKETEE PLANT					
	Hydraulic production plant					
(4) 331 (321)	Structures and improvements	$531,533.46	$1,735.26		$1,735.26	$533,268.72
332 (322)	Reservoirs, dams, and waterways	5,198,924.31	5,000.00	($5,000.00)		5,198,924.31
333 (323)	Water wheels, turbines, and generators	1,349,793.61	1,677.09		1,677.09	1,351,470.70
334 (324)	Accessory electric equipment	205,117.00	22,756.24		22,756.24	227,873.24
335 (325)	Miscellaneous power plant equipment	32,979.71				32,979.71
336 (326)	Roads, railroads, and bridges	40,104.78	(1,376.11)		(1,376.11)	38,728.67
	Total hydraulic production plant	7,358,452.87	29,792.48	(5,000.00)	24,792.48	7,383,245.35
	Transmission plant					
352 (342)	Structures and improvements	92,758.44				92,758.44
353 (343)	Station equipment	323,120.51				323,120.51
	Total transmission plant	415,878.95				415,878.95
	Total Toketee Plant	7,774,331.82	29,792.48	(5,000.00)	24,792.48	7,799,124.30
	SLIDE CREEK PLANT					
	Hydraulic production plant					
331 (321)	Structures and improvements	386,613.37	377.97		377.97	386,991.34
332 (322)	Reservoirs, dams, and waterways	2,859,340.30	4,891.98		4,891.98	2,864,232.28
333 (323)	Water wheels, turbines, and generators	658,911.16	4,181.44		4,181.44	663,092.60
334 (324)	Accessory electric equipment	100,403.10	(1,101.78)		(1,101.78)	99,301.32

335 (325)	Miscellaneous power plant equipment	2,914.39				2,914.39
336 (326)	Roads, railroads, and bridges		3,885.75	(3,885.75)		
	Total hydraulic production plant	4,008,182.32	12,235.36	(3,885.75)	8,349.61	4,016,531.93
	Transmission plant					
353 (343)	Station equipment	115,710.52	562.39		562.39	116,272.91
	Total Slide Creek Plant	4,123,892.84	12,797.75	(3,885.75)	8,912.00	4,132,804.84
	SODA SPRINGS PLANT					
	Hydraulic production plant					
(2) 331 (321)	Structures and improvements	676,023.04	764.74		764.74	676,787.78
332 (322)	Reservoirs, dams, and waterways	2,929,303.14	2,112.99		2,112.99	2,931,416.13
333 (323)	Water wheels, turbines, and generators	621,110.14	667.19		667.19	621,777.33
334 (324)	Accessory electric equipment	100,848.10	4,291.38		4,291.38	105,139.48
335 (325)	Miscellaneous power plant equipment	6,993.94				6,993.94
	Total hydraulic production plant	4,334,278.36	7,836.30		7,836.30	4,342,114.66
	Transmission plant					
353 (343)	Station equipment	95,826.98				95,826.98
	Total Soda Springs Plant	4,430,105.34	7,836.30		7,836.30	4,437,941.64
	FISH CREEK PLANT					
	Hydraulic production plant					
331 (321)	Structures and improvements	316,707.32	333.27		333.27	317,040.59
332 (322)	Reservoirs, dams, and waterways	2,889,043.55	11,090.48		11,090.48	2,900,134.03
333 (323)	Water wheels, turbines, and generators	428,928.35	25,670.05		25,670.05	454,598.40
334 (324)	Accessory electric equipment	71,196.80	857.42		857.42	72,054.22
335 (325)	Miscellaneous power plant equipment	6,750.94				6,750.94
336 (326)	Roads, railroads, and bridges	191,405.31	27,751.73		27,751.73	219,157.04
	Total hydraulic production plant	3,904,032.27	65,702.95		65,702.95	3,969,735.22
	Transmission plant					
353 (343)	Station equipment	85,970.72				85,970.72
	Total Fish Creek Plant	3,990,002.99	65,702.95		65,702.95	4,055,705.94
	CLEARWATER NO. 1 PLANT					
	Hydraulic production plant					
(2) 331 (321)	Structures and improvements	470,158.72	492.09		492.09	470,650.81
332 (322)	Reservoirs, dams, and waterways	3,170,935.19	4,772.66		4,772.66	3,175,707.85

See footnotes at end of table.

SCHEDULE I—continued

PROJECT NO. 1927 (NORTH UMPQUA)—continued

PACIFIC POWER & LIGHT COMPANY—continued

Summary by subsidiary plant accounts of approved project cost as of Dec. 31, 1957, claimed changes for the period from Jan. 1, 1958, through Dec. 31, 1962, with adjustments thereto, and allowed balances as of Dec. 31, 1962—continued

Account No.	Account Title	Approved original cost as of Dec. 31, 1957 [1] (1)	Changes from Jan. 1, 1958 through Dec. 31, 1962 As claimed (2)	Adjustments (3)	As allowed (4)	Allowed original cost as of Dec. 31, 1962 (5)
	CLEARWATER NO. 1 PLANT—Continued					
	Hydraulic production plant—Continued					
333 (323)	Water wheels, turbines, and generators	$668,208.32	$16,224.20		$16,224.20	$684,432.52
334 (324)	Accessory electric equipment	133,288.79	(661.12)		(661.12)	132,627.67
335 (325)	Miscellaneous power plant equipment	6,885.33				6,885.33
	Total hydraulic production plant	4,449,476.35	20,827.83		20,827.83	4,470,304.18
	Transmission plant—Line No. 67, Clearwater No. 1 to Clearwater No. 2 Switching Station					
351 (341)	Clearing land and rights-of-way	28,950.61				28,950.61
353 (343)	Station equipment	113,896.50				113,896.50
355 (345)	Poles and fixtures	51,935.56				51,935.56
356 (346)	Overhead conductors and devices	36,924.88				36,924.88
	Total transmission plant	231,707.55				231,707.55
	Total Clearwater No. 1 Plant	4,681,183.90	20,827.83		20,827.83	4,702,011.73
	CLEARWATER NO. 2 PLANT					
	Hydraulic production plant					
331 (321)	Structures and improvements	629,820.76	754.17		754.17	630,574.93
332 (322)	Reservoirs, dams, and waterways	4,448,022.86	33,312.30		33,312.30	4,481,335.16
333 (323)	Water wheels, turbines, and generators	880,648.30	9,716.61		9,716.61	890,364.91

334 (324)	Accessory electric equipment	138,808.33	1,649.86		1,649.86	140,458.19
335 (325)	Miscellaneous power plant equipment	4,194.18	689.89		689.89	4,884.07
336 (336)	Roads, railroads, and bridges	119,067.78				119,067.78
	Total hydraulic production plant	6,229,562.21	46,122.83		46,122.83	6,275,685.04
	Transmission plant					
353 (343)	Station equipment	164,515.12				164,515.12
	Total Clearwater No. 2 Plant	6,394,077.33	46,122.83		46,122.83	6,440,200.16
	LEMOLO NO. 1 PLANT					
	Hydraulic production plant					
(9)						
331 (321)	Structures and improvements	613,841.78	(350.58)		(350.58)	613,491.20
332 (322)	Reservoirs, dams, and waterways	6,962,072.37	14,008.22		14,008.22	6,976,080.59
333 (323)	Water wheels, turbines, and generators	1,284,831.50	6,141.69		6,141.69	1,290,973.19
334 (324)	Accessory electric equipment	143,852.58	1,539.04		1,539.04	145,391.62
335 (325)	Miscellaneous power plant equipment	14,288.31	.34		.34	14,288.65
336 (326)	Roads, railroads, and bridges	334,246.84	37,937.62		37,937.62	372,184.46
	Total hydraulic production plant	9,353,133.38	59,276.33		59,276.33	9,412,409.71
	Transmission plant—Line No. 53, Lemolo No. 1 to Clearwater No. 2 switching station					
351 (341)	Clearing land and rights-of-way	208,322.41	(6,844.78)		(6,844.78)	201,477.63
353 (343)	Station equipment	175,000.27				175,000.27
355 (345)	Poles and fixtures	61,774.48				61,744.48
356 (346)	Overhead conductors and devices	60,835.92				60,835.92
	Total transmission plant	505,933.08	(6,844.78)		(6,844.76)	499,088.30
	Total Lemolo No. 1 Plant	9,859,066.46	52,431.55		52,431.55	9,911,498.01
	LEMOLO NO. 2 PLANT					
	Hydraulic production plant					
331 (321)	Structures and improvements	566,872.61	5,584.06		5,584.06	572,456.67
332 (322)	Reservoirs, dams, and waterways	8,837,539.49	142,331.26	($15,474.87)	126,856.39	8,964,395.88
333 (323)	Water wheels, turbines, and generators	1,286,056.77	1,316.27		1,316.27	1,287,373.04
334 (324)	Accessory electric equipment	111,227.08	491.15		491.15	111,718.23
335 (325)	Miscellaneous power plant equipment	6,848.39	1.64		1.64	6,850.03
336 (326)	Roads, railroads, and bridges	546,324.94	76,241.16		76,241.16	622,566.10
	Total hydraulic production plant	11,354,869.28	225,965.54	(15,474.87)	210,490.67	11,565,359.95

See footnotes at end of table.

SCHEDULE I—continued

PROJECT NO. 1927 (NORTH UMPQUA)—continued

PACIFIC POWER & LIGHT COMPANY—continued

Summary by subsidiary plant accounts of approved project cost as of Dec. 31, 1957, claimed changes for the period from Jan. 1, 1958, through Dec. 31, 1962, with adjustments thereto, and allowed balances as of Dec. 31, 1962—continued

Account No.	Account Title	Approved original cost as of Dec. 31, 1957 [1]	Changes from Jan. 1, 1958 through Dec. 31, 1962			Allowed original cost as of Dec. 31, 1962
			As claimed	Adjustments	As allowed	
		(1)	(2)	(3)	(4)	(5)
	LEMOLO NO. 2 PLANT—continued					
	Transmission plant—Line No. 55, Lemolo No. 2 to Clearwater No. 2 switching station					
351 (341)	Clearing land and rights-of-way	$1,997.25				$1,997.25
353 (343)	Station equipment	178,848.51				178,848.51
355 (345)	Poles and fixtures	12,537.68				12,537.68
356 (346)	Overhead conductors and devices	11,677.78				11,677.78
	Total transmission plant	205,061.22				205,061.22
	Total Lemolo No. 2 Plant	11,559,930.50	$225,965.54	($15,474.87)	$210,490.67	11,770,421.17
	COMMON PLANT					
	Hydraulic production plant					
(2) 331 (321)	Structures and improvements	487,347.96	209,307.94		209,307.94	696,655.90
332 (322)	Reservoirs, dams, and waterways	758.31	(3.81)		(3.81)	▶754.50
334 (324)	Accessory electric equipment		23,192.29		23,192.29	23,192.29
335 (325)	Miscellaneous power plant equipment	56,582.40	93,038.18		93,038.18	149,620.58
336 (326)	Roads, railroads, and bridges	1,076,953.21	75,042.91	3,885.75	78,928.66	1,155,881.87
	Total hydraulic production plant	1,621,641.88	400,577.51	3,885.75	404,463.26	2,026,105.14

	Transmission plant—Line Nos. 39, 42, 46, and 51, and Clearwater No. 2, Toketee and Soda Springs switching stations and spare transformers					
350 (340)	Land and land rights	128,787.19	1,287.97		1,287.97	130,075.16
351 (341)	Clearing land and rights-of-way	1,290,602.25	(12,413.30)		(12,413.30)	1,278,188.95
352 (342)	Structures and improvements	42,059.02				42,059.02
353 (343)	Station equipment	468,618.59	(8,170.78)		(8,170.78)	460,447.81
354 (344)	Towers and fixtures	8,048.01				8,048.01
355 (345)	Poles and fixtures	589,580.03	32,931.78		32,931.78	622,511.81
356 (346)	Overhead conductors and devices	861,156.20	27,036.22		27,036.22	888,192.42
359 (349)	Roads and trails	3,979.48	528.08		528.08	4,508.16
	Total transmission plant	3,392,830.77	41,200.57		41,200.57	3,434,031.34
	General plant					
397 (378)	Communication equipment	62,957.52	953.71		953.71	63,911.23
	Total Common Plant	5,077,430.17	442,731.79	3,885.75	446,617.54	5,524,047.71
	Total electric plant in service	57,890,021.35	904,209.02	(20,474.87)	883,734.15	58,773,755.50
271(265.2)	Contributions in aid of construction—Federal (Common Plant)	(2,045.70)				(2,045.70)
	Total cost of project	57,887,975.65	904,209.02	(20,474.87)	883,734.15	58,771,709.80

[1] Per Commission order issued June 30, 1960 (after classification of certain transmission facilities noted above, to specific plants and common plant).
[2] Account numbers in effect prior to Jan. 1, 1961.
( ) Denotes credit.

SCHEDULE II

PROJECT NO. 1927 (NORTH UMPQUA)

PACIFIC POWER & LIGHT COMPANY

Adjustments of claimed changes in project plant accounts and accounting disposition thereof for the period from Jan. 1, 1958, through Dec. 31, 1962

Account		Adjustments to claimed changes		
No.	Title	Total	No. 1 Elimination of claimed reduction in prior approved salvage credits	No. 2 Reclassification
		(1)	(2)	(3)
	TOKETEE PLANT			
	Hydraulic production plant			
332 (322)[1]	Reservoirs, dams, and waterways	($5,000.00)	($5,000.00)	
	SLIDE CREEK PLANT			
	Hydraulic production plant			
336 (326)	Roads, railroads, and bridges	(3,885.75)		($3,885.75)
	LEMOLO NO. 2 PLANT			
	Hydraulic production plant			
332 (322)	Reservoirs, dams, and waterways	(15,474.87)	(15,474.87)	
	COMMON PLANT			
	Hydraulic production plant			
336 (326)	Roads, railroads, and bridges	3,885.75		3,885.75
	Total adjustments	(20,474.87)	(20,474.87)	
	Accounting Disposition			
216 (271)	Unappropriated earned surplus	20,474.87	20,474.87	

[1] Account numbers in effect prior to Jan. 1, 1961.
( ) Denotes credit.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-41

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued October 12, 1964)

On August 10, 1964, Southern Natural Gas Company (Applicant) filed in Docket No. CP65-41 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon, by sale to Natco Corporation (Natco), approximately 600 feet of 6⅝-inch Cordova Branch Line and approximately 75 feet of 4½-inch pipeline leading to the Natco plant located in Section 7, Township 15 South, Range 6 West, Walker County, Alabama, all as more fully set forth in the application.

The facilities proposed to be abandoned are located on property owned by Natco and lie downstream from Applicant's meter station. It would not impair Applicant's jurisdictional operations nor adversely affect its jurisdictional customers to permit the transfer of the facilities to Natco.

After due notice, no protest, petition to intervene or notice of intervention has been filed herein.

At a hearing held on October 8, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G–296 (3 FPC 822).

(2) The facilities to be abandoned, as hereinbefore described, are subject to the jurisdiction of the Commission and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity and an order authorizing and approving same should be issued as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application in this proceeding, be and the same are hereby granted.

(B) Applicant shall advise the Commission of the date of said abandonment within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

H. L. HAWKINS & H. L. HAWKINS, JR. (OPERATOR), ET AL., G–18077, ET AL.; W. S. KILROY (OPERATOR), ET AL., G–18175; KILROY PROPERTIES, INC., CI60–478; SUN OIL COMPANY, CI60–348; CALLERY PROPERTIES, INC., G–18857; SKELLY OIL COMPANY, G–20155; PAN AMERICAN PETROLEUM CORP., CI63–677; THE SUPERIOR OIL COMPANY, G–6067

ORDER DISMISSING APPEALS FROM RULING OF PRESIDING EXAMINER AND DEFERRING CONSIDERATION OF REFUNDS

(Issued October 13, 1964)

Various appeals were filed by W. S. Kilroy (Operator), *et al.*, and Kilroy Properties, Inc.,[1] Sun Oil Company,[2] Callery Properties, Inc.,[3] Skelly Oil Company,[4] Superior Oil Company,[5] and Pan American Petroleum Corp.,[6] from rulings

[1] July 31, 1964.
[2] August 6, 1964.
[3] August 10, 1964.
[4] August 6, 1964.
[5] August 12, 1964.
[6] August 5, 1964.

of the Presiding Examiner excluding testimony and exhibits purporting to show certain "equitable considerations" which Appellants urge the Commission to consider in determining whether producers should be required to make refunds.

In addition, Sun Oil Company appeals from a ruling of the Examiner refusing to admit Sun's evidence showing its 1960 company-wide cost of finding and producing natural gas, including rate design. Sun argues that such evidence would have shown that Sun's initial contract price is less than the unit cost of finding and producing such gas and, accordingly, that the proposed contract price is required by the public convenience and necessity.

We can dispose briefly of Sun's contention as to the admissibility of cost-of-service evidence in a certificate proceeding. The courts have repeatedly sustained the Commission in conditioning certificates of public convenience and necessity on an "in line initial price" and excluding cost and other economic data concerning factors other than prices in comparable sales; *Public Service Commission of New York* v. *Federal Power Commission*, 329 F. 2d 242 (CADC–1964), cert. den., 377 U.S. 963 (1964); *California Oil Co.* v. *F.P.C.*, 315 F. 2d 652 and *Atlantic Refining Co.* v. *F.P.C.*, 316 F. 2d 677.

We are, of course, aware of the opposite result reached in *Callery Properties* v. *F.P.C.*, 335 F. 2d 1004 (CA5–1946), No. 20872. The mandate of the Court of Appeals has been stayed in that proceeding to give the Commission time to file an application for certiorari. In these circumstances we see no reason to depart from the opinions cited above. Consequently, the Examiner was correct in refusing to admit Sun's company-wide cost-of-service evidence purporting to show that the proposed contract price is required by the public convenience and necessity.

The common question in the various appeals however does not relate to evidence which would tend to support the proposed intial price, but rather to evidence showing "equitable considerations,"[7] which would bar refunds under temporary certificates which do not contain express refund conditions. Such excluded evidence consists of (1) so-called "flow-through evidence" showing that local distribution companies have retained varying percentages of refunds ordered by the Commission and; (2) cost studies showing that costs of the producer exceeded revenues. Evidence relating to both of the above categories was striken by the Presiding Examiner on motion of the staff counsel.

Pursuant to the ruling we have just issued in Sinclair Oil & Gas Company, *et al.*, Docket No. G–16760, *et al.* (Turnbull & Zoch Drilling Co. (Operator), *et al.*), it will not be necessary to pass upon the appeals herein with respect to the admissibility of evidence offered in support of "equitable considerations" as a bar to refunds. In that proceeding, we ordered that any consideration of refunds in cases where the temporary certificate does not contain an express refund condition be deferred until further order of the Commission. We shall adopt that policy in the instant proceeding although the record has been closed and evidence relating to the refund issue (except the evidence excluded by the Examiner) has already been incorporated therein. We shall direct the Examiner to restrict his findings to the issues normally relevant in an application for a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act and to defer any consideration of the refund question.

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[7] In *Public Service Commission of the State of New York* v. *Federal Power Commission*, 329 F. 2d 242, 250, the Court of Appeals referred to the "standard of equity—that is, the issue of a refund * * * turns upon equitable considerations." The Court pointed out, however, that the sole and decisive equitable consideration is not the absence of a refund requirement in the temporary certificate.

The Commission finds:

(1) The issue of whether or not refunds should be ordered to be made by applicants is moot in view of the deferral of that issue until further order of the Commission.

(2) In light of the recent order in Sinclair Oil & Gas Company, *et al.*, Docket No. G–16760, *et al.*, Turnbull & Zoch Drilling Co., Docket No. G–17960, *et al.*, issued on October 5, 1964, *supra*, p. 914, deferring consideration of any evidence with respect to refunds, it is necessary that a separate hearing on that issue be held in the instant proceeding and that the Examiner defer consideration of all evidence with respect to refunds submitted herein.

(3) It would serve no useful purpose to pass upon the various appeals with respect to equitable considerations until such time as a separate hearing is completed on the refund question.

(4) The appeal of Sun Oil Company from the ruling of the Examiner excluding cost-of-service evidence purporting to show that the initial price meets the standard of public convenience and necessity should be denied as contrary to Commission policy and court decisions.

The Commission orders:

(A) The issue as to whether or not refunds should be ordered to be made by applicants operating under temporary authorization and containing no express refund conditions in these proceedings is hereby deferred until further order of the Commission.

(B) The appeal of Sun Oil Company from a ruling of the Presiding Examiner refusing to admit its 1960 company-wide cost of finding and producing natural gas (in order to show that the proposed contract price is required by the public convenience and necessity) is hereby denied.

(C) The appeals of each of the applicants identified at page 991 of this order from rulings of the presiding examiner excluding testimony and exhibits purporting to show certain equitable considerations as a defense to the requirement of making refunds are hereby dismissed.

OPINION NO. 444

MIDWESTERN GAS TRANSMISSION COMPANY, RP61–19, RP62–7; NATURAL GAS PIPELINE COMPANY OF AMERICA, RP63–6

OPINION AND ORDER DETERMINING COST OF SERVICE ISSUES AND REDUCING RATES

(Issued October 13, 1964)*

Syllabus

1. Issue as to proper treatment of depreciation in computing Midwestern's tax allowance for future rates remanded to Examiner for further hearing and decision. P. 996.
2. Pending final determination of depreciation question, Commission utilizes straight line depreciation in determining pipeline's tax allowance, subject to further reduction prospectively to reflect use of liberalized depreciation if such method is finally deemed appropriate. P. 996.
3. Commission *determines* gas rates on basis of 50% income tax rate now in effect, *defers* consideration of use of 48% rate. P. 997.

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*Initial decision appears on p. 1012.

4. Commission's long-standing practice has been to deduct contributions in aid of construction from rate base. P. 998.
5. Accumulated deferred taxes are in nature of contributions in aid of construction, represent free capital contributions collected from customers, and as such should be deducted from rate base. P. 998.
6. Over-all rate of return of 6.5% found just and reasonable. P. 1000.
7. While resulting return of 9.26% on common equity is lower than that approved for other pipelines, return on equity is not decisive; determination of proper rate of return is matter of judgment which cannot be reduced to mathematical proportions nor turn on a formulistic computation of return on equity—clearly the effect of pyramiding is to enhance return to parent's stockholders. P. 1000.
8. Appropriate level of sales to Michigan Wisconsin to be used in computing Midwestern rates *discussed*. PP. 1001–1002.
9. There is no sound basis for use of parity with U.S. dollars in costing pipeline's Canadian gas. P. 1002.
10. Cost of pipeline's Canadian gas for purpose of fixing rates at this time should reflect average cost of Canadian dollar over 20-month period following test year. P. 1002.
11. Pipeline granted option to file increased or reduced rates geared to upward and downward changes in cost of Canadian dollars; this experimental provision, which departs from general rule of not permitting automatic changes in pipeline rates, is a limited exception made here because of unique circumstances. P. 1003.
12. In proceeding arising under Section 5(a) of the Natural Gas Act, Commission *determines* cost of service and *reduces* rates.

Commissioner O'Connor *concurring*.

George R. Perrine, Harry S. Littman and *Melvin Richter* for Midwestern Gas Transmission Company

Clarence H. Ross, Charles C. McDugald and *William W. Brackett* for Natural Gas Pipeline Company of America

Charles V. Shannon, Louis Flax and *Paul S. Davis* for Michigan Wisconsin Pipe Line Company

John J. Melaniphy and *J. J. Danaher* for City of Chicago

Jerome J. McGrath and *Thomas C. Williams* for Fuels Research Council, Inc., National Coal Association, United Mine Workers of America, Mid-West Coal Producers Institute, Inc., and Upper Lake Docks Coal Bureau, Inc.

W. F. Spurrier for North Central Public Service Company

Mark W. Putney for Iowa Power and Light Company

A. R. Renquist for Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

Edward J. Hartman for Iowa-Illinois Gas & Electric Company

Clarence H. Ross, Charles C. McDugald, William W. Brackett and *Richard Babcock* for The People Gas Light and Coke Company

Glen H. Bell for Wisconsin Southern Gas Company, Inc., and Wisconsin Fuel & Light Company

Justin A. Stanley and *Robert A. Helman* for Northern Illinois Gas Company

John F. Gaston for Iowa Electric Light & Power Company

Robert S. Hunt and *James Van Vliet* for Illinois Power Company

Joseph T. Morrow and *Edmund A. Schroer* for Northern Indiana Public Service Company

Charles R. S. Anderson for Iowa Southern Utilities Company

Barnabas F. Sears and *Hamilton K. Beebe* for Midwestern Coal Producers Institute

Julius Meier and *Milton Grossman* for the Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman, L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

Ross, *Commissioner:*

This is a consolidated Section 5(a) rate proceeding involving cost of service issues with respect to Midwestern Gas Transmission Company (MGT), and rate design issues with respect to MGT and Natural Gas Pipeline Company of America. Only the cost of service issues with respect to MGT are before the Commission at this time. The presiding examiner has not yet issued an initial decision on the rate design issues. It was in the interest of bringing the cost of service issues to the Commission at the earliest possible date so that the public could have the benefit of any reduction in MGT's rates which the Commission might order that the examiner decided to issue his decision on the cost of service issues before dealing with the rate design issues.

MGT's Southern System rates are the subject of Docket No. RP61-19. Its Northern System rates are involved in Docket No. RP62-7. The examiner, in his initial decision issued April 29, 1964, found MGT's total overall cost of service to be $64,435,917, based upon its operations for the test year ending June 30, 1962, as adjusted. Of this total, the examiner found $22,348,597 to be attributable to the Northern System and $42,087,320 to the Southern System. He found MGT's total revenues to be $71,483,171, of which $24,928,037 is attributable to the Northern System and $46,555,134 to the Southern System. On this basis, he found excess revenues totalling $7,047,254—$2,579,440 on the Northern System and $4,467,814 on the Southern System. The examiner would order an immediate reduction in rates reflecting these amounts. Pending final determination of the rate design issues, he would retain the existing commodity charges on both the Northern and Southern Systems and require the entire rate reduction to be applied to the demand charge. (See Appendix 8 to examiner's decision.)

Briefs on exceptions to the examiner's decision have been filed by MGT, Northern Indiana Public Service Company (Northern Indiana), Northern Illinois Gas Company (Northern Illinois), Peoples Gas Light and Coke Company (Peoples), and the Commission's staff. Reply briefs on exceptions have been filed by MGT, Northern Indiana, Peoples, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin), Fuels Research Council, Inc., *et al.* (Coal Interveners), and staff. MGT has moved for oral argument before the Commission on its exceptions.

As can be seen from the index included in the examiner's decision, there was a long list of issues in controversy at the hearing before the examiner. The examiner has carefully set forth the positions of the parties on each of these issues and has analyzed the evidence presented. His reasons in support of his conclusions on these issues are set forth with particularity. To the extent that his conclusions have not been challenged by the briefs and replies on exceptions, we shall adopt his decision as our own. With respect to those issues in controversy on exceptions, we conclude that the following were correctly decided by the examiner and we shall adopt his decision and his reasoning on them as well: unaccounted-for loss or gain; amortization of storage development; allocation of administrative and general expense; legal expense to Illinois firm; tax treatment of right-of-way depreciation; rate of depreciation; working capital; and reduction of demand charge only pending determination of rate design. Our

determination with respect to the remaining issues in controversy on exceptions is set forth below.

Liberalized Depreciation

For the test period, MGT took advantage of liberalized depreciation in filing its tax returns. The examiner, relying on our determination in *Alabama-Tennessee Natural Gas Co.* (Docket No. G–5471, *et al.*, Opinion No. 417, issued February 3, 1964, 31 FPC 208), which was decided subsequent to the conclusion of the hearings in this case and the filing of briefs, utilized liberalized depreciation in computing MGT's tax allowance in its cost of service. However, MGT states in its brief on exceptions that its Board of Directors, on May 11, 1964, adopted a resolution authorizing and directing the utilization of straight-line depreciation in its Federal income tax returns effective January 1, 1963. In view of this directive, MGT contends that it is improper to compute its income tax allowance in fixing future rates as though it were to continue to utilize liberalized depreciation. It further contends that the Commission should not deny the use of straight-line depreciation for rate-making purposes unless the record is reopened in order to permit it to submit evidence demonstrating the reasons underlying the decision of its Board of Directors to use the straight-line method.

The question as to the proper treatment of depreciation in computing taxes for rate-making purposes is one of the most important issues in this case, making a difference of close to $2 million in MGT's total cost of service. It is appropriate, before deciding this question, that MGT be given an opportunity to present evidence to show why it has changed to straight-line depreciation, how the use of liberalized depreciation in computing taxes for rate-making purposes might adversely affect its interests, the effect of its change to straight-line depreciation on the rates to be charged its customers *vis-a-vis* the Commission's determination in Opinion No. 417, the method to be used in applying accumulated deferred taxes against its increased tax costs and any other relevant facts. Other parties and staff should also be given an opportunity to present evidence and to cross-examine and be cross-examined on this issue. Accordingly, we shall remand this issue to the examiner for future hearing and an initial decision. Meantime, to avoid delay in ordering the reduction of MGT's rates with respect to other issues in this case, we shall proceed to fix MGT's rates by utilizing straight-line depreciation in determining its tax allowance. These rates shall be subject to further reduction prospectively to reflect the use of liberalized depreciation in the tax allowance should the Commission finally determine that the liberalized method is the appropriate one to be used.

1965 Reduction of Tax Rate to 48 Percent

Under the Revenue Act of 1964, the corporate income tax rate was reduced from 52 percent to 50 percent, effective January 1, 1964. The law provides for a further reduction in the tax rate from 50 percent to 48 percent as of January 1, 1965. In a motion filed with the examiner on March 20, 1964, staff proposed that MGT's tax allowance be computed on the basis of the 50 percent tax rate. Staff further proposed that there be an automatic adjustment as of January 1, 1965, to reflect the 48 percent tax rate to become effective on that date. In answer to this motion, MGT stated that it had no objection to reflecting the reduction of the income tax rate to 50 percent, but that it would be improper to reflect, by way of future adjustment, the change in rate to 48 percent as of January 1, 1965, without also taking into consideration known changes in other

costs which will occur in 1965, such as the increase in the contract cost of gas purchased from Trans-Canada Pipe Lines, Ltd. (Trans-Canada), which will more than offset the reduction due to the lower income tax rate.

The examiner computed the income tax allowance on the basis of the 50 percent tax rate. However, in view of his treatment of the deduction for depreciation on the basis of liberalized depreciation, the net result of his computation was a zero allowance for taxes. In his judgment, the zero allowance for taxes mooted the question of a future adjustment for reduction of the tax rate to 48 percent, and he made no finding with respect to a future revision. Inasmuch as we are here computing MGT's tax allowance on the basis of straight-line depreciation pending final determination of the depreciation question, the matter of the 48 percent tax rate to become effective on January 1, 1965, is very much an issue.

This same question is presently before the Commission in another case, *i.e.*, *United Gas Pipe Line Co.*, Docket No. RP63–1. In that case we have granted further consideration of the issue on United's application for rehearing, and we have given other parties an opportunity to file answers to United's application for rehearing.[1] Pending final determination of the issue in the *United* case, we shall defer further consideration of the issue in the present case. We shall therefore determine MGT's rates at the present time on the basis of the 50 percent tax rate now in effect, reserving the question of a future adjustment.

Accumulated Deferred Taxes

The examiner found that the deferred taxes should be included in the company's capitalization at a zero cost for the purpose of computing rate of return. The Commission's purpose in *Alabama-Tennessee*, *supra*, to disallow any return on accumulated deferred taxes could be accomplished in either of two ways: by including the amount of deferred taxes in the company's capitalization at a zero cost for the purpose of determining rate of return, or by determining the rate of return without reference to accumulated deferred taxes and deducting the amount of such deferred taxes from the company's rate base. In that case we selected the latter as the method to be used in future pipeline rate cases.

Staff's brief on exceptions restates its position taken before the examiner and urges deduction of the deferred taxes from MGT's rate base. It notes that the record shows an accrual of $3,182,200 as of December 31, 1962, and that MGT's Annual Report for 1963 (Form 2) reflects a total of $4,724,500 as of December 31, 1963. Staff contends that MGT should be required to advise the Commission as to the amount of the deferred taxes currently reflected in Account 282 as allocated between the Northern and Southern Systems so that the full impact of the *Alabama-Tennessee* decision may be reflected in the Commission's order in the present case.[2]

MGT takes the position, in its brief on exceptions and reply, that no adjustment of any kind should be made for deferred accruals in its case because of the unique circumstances. It contends that its financing provided sufficient funds to construct its initial plant and the relatively small additions since initial construction; that it has had no opportunity to invest the deferred tax accruals in its plant; and that it would be improper to deprive MGT of a return

[1] Opinion No. 428–A, issued September 2, 1964, 32 FPC 687.

[2] MGT's reply brief on exceptions, referring to the discontinuation of using liberalized depreciation, effective January 1, 1963, indicated that the restated deferred tax accruals, as of December 31, 1963, are $3,569,600 rather than $4,724,500 as shown in staff's exceptions.

on capital obtained by financing and invested in plant by an adjustment for deferred taxes subsequently accrued and not invested in plant.

In view of the fact that MGT has discontinued taking liberalized depreciation, the correct amount of its accumulated deferred taxes is $3,569,600 as of December 31, 1963. In accordance with *Alabama-Tennessee, supra*, we shall deduct this sum from the company's rate base. Accumulated deferred tax dollars are in the nature of contributions in aid of construction collected by MGT from its customers without cost to itself. It has been the Commission's long-standing practice to deduct such contributions from the rate base; and having now determined that accumulated deferred taxes represent free capital contributions, such accumulations should be treated in the same manner as other contributions in aid of construction. Since it is not possible to track particular dollars of a company's assets into its rate base, we reject MGT's argument that external financing alone was used to construct its initial plant.

Rate of Return

The examiner concluded that a rate of return of 6.5 percent is reasonable and proper for MGT. This is the overall rate of return recommended by staff. MGT contended for an allowance of 7.3 percent.[3] The controversy relates to the return on equity capital which would result from the determination to be made of the overall rate of return. MGT approached this question as though the company were a wholly separate and independent enterprise. Staff and the examiner, however, approached this question on the basis of the reality of Tennessee Gas Transmission Company's parentage and control of MGT.

MGT urged the examiner to allow a return on equity of 13 percent, contending that its thin equity (19.66 percent) involved risks requiring a higher return than for other companies with a thicker equity, and that, as a relatively new venture, it could not reasonably be expected to attract capital on the same return basis as established pipelines. MGT also contended that a lesser allowance would result in low coverage of interest charges which would jeopardize its credit and impair its ability to obtain new debt capital. The examiner, however, could find no justification in the facts of this case for a higher allowance on MGT's equity, which is mostly owned by Tennessee,[4] than the 10.12 percent heretofore found to be adequate for Tennessee.[5] Finding that the staff's recommended overall rate of return would produce a return allowance of 10.46 percent on MGT's equity, more than meeting this test, the examiner concluded that an overall rate of return of 6.5 percent would be reasonable and proper. The examiner further found that this rate of return would adequately safeguard the legitimate interests of MGT's bondholders, and would not impair the company's ability to attract additional debt financing.

As seen, the examiner's finding of a 6.5 percent rate of return rested upon his conclusion that this would result in an allowance on equity of 10.46 percent. The examiner computed the 10.46 percent allowance on equity by using a capitali-

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[3] In initially certificating MGT's pipeline, the Commission based its determination on a rate-of-return allowance of 6.25 percent on the Southern System (21 FPC 653) and 6.5 percent on the Northern System (24 FPC 844). There has been no previous determination of rate of return in a rate case.

[4] MGT apparently is no longer wholly owned by Tennessee. MGT's brief to the examiner noted that Tennessee on December 10, 1963, would distribute to its shareholders one share of MGT common for each 200 shares of Tennessee common held as of November 15, 1963. MGT's brief on exceptions indicates that this distribution has resulted in ownership by others of more than 10 percent of MGT's stock.

[5] In *Tennessee Gas Transmission Co.*, 24 FPC 204, affirmed, 293 F. 2d 761 (CA 5), the Commission approved an overall rate of return of 6.125 percent for Tennessee, concluding that the resultant return on equity of 10.12 percent was fully adequate.

zation which included deferred taxes of $3,182,200 at zero cost. The examiner's departure from *Alabama-Tennessee, supra*, in so including accumulated deferred taxes in the company's capitalization has been noted already. Staff's brief on exceptions takes issue with the examiner's computation and sets forth the following calculation based on an overall rate of return of 6.5 percent:

Capital	Amount	Percent	Cost	Rate/return (percent)
Long-term debt	$59,979,000	68.88	5.88	4.050
Preferred stock	10,000,000	11.48	5.50	.631
Common equity	17,125,973	19.66	9.26	1.82
Total	87,104,973	100.00		6.50

This calculation shows that a 6.5 percent overall rate of return would produce a return on equity of 9.26 percent, not 10.46 percent as found by the examiner.

Although staff takes exception to the examiner's computation of a return on equity of 10.46 percent and to his reliance thereon in allowing an overall rate of return of 6.5 percent, staff does not object to his conclusion that 6.5 percent is the proper overall rate of return. Staff's position is that when the "double leverage" effect of MGT's affiliation with Tennessee is considered, there is sufficient reason for MGT realizing less of a return on equity than that found appropriate for Tennessee.

The examiner did not rely on the "double leverage" technique as a basis for his determination; and because he did not rely on it, he found that no purpose would be served by discussing it. Staff takes exception. The "double leverage" effect, which is sometimes known as "pyramiding," arises from the fact that MGT's equity capital is owned substantially by Tennessee, and that Tennessee's investment in MGT must be considered to represent the investment of debt dollars and equity dollars in proportion to Tennessee's capitalization ratios. Thus, the return on MGT's equity becomes the overall rate of return on Tennessee's investment in MGT; and to the extent that Tennessee's investment represents debt capital with an imbedded cost lower than this rate of return, the return to it on that portion of its investment representing equity capital is increased. Moreover, as the return on equity to MGT increases, the return on Tennessee's equity invested in MGT increases geometrically.[6] To illustrate this effect, staff presented Exhibit No. 5b. If the figures shown on that exhibit are adjusted to reflect *Alabama-Tennessee, supra*, by eliminating accumulated deferred taxes from capitalization, the return on Tennessee's equity dollars invested in MGT and the return on MGT's equity, assuming an overall rate of return to MGT of 6 percent, 6.5 percent, and 7 percent, are as follows:

Overall MGT rate of return	Allowance on MGT's equity	Allowance on Tenn's equity invested in MGT
6 percent	6.71 percent	12.06 percent.
6.5 percent	9.26 percent	21.16 percent.
7 percent	11.80 percent	30.23 percent.

[6] The "double leverage" effect is greater or less depending on the capitalization ratios of the parent company. Tennessee has a high percentage of debt capital, and a low percentage of equity capital, *i.e.*, 57.91 percent debt, 14.07 percent preferred stock, and 28.02 percent common stock. As debt increases in relation to equity, the "double leverage" effect becomes more pronounced.

It is staff's position that these figures demonstrate the special advantage that Tennessee's equity holders enjoy through Tennessee's control of MGT. Although there is no precedent for determining at what point the return to Tennessee's equity holders becomes excessive, staff apparently feels that an overall return of 6.5 percent to MGT, which is in line generally with the rate of return allowed by the Commission for other pipelines, is reasonable and proper, and will result in neither excessive returns to Tennessee's equity holders nor inadequate returns to those now publicly holding MGT shares.

MGT's brief on exceptions reiterates its position before the examiner. It argues that the examiner failed to give weight to its high cost of debt (5.88 percent) and to its thin equity (19.66 percent), and that on comparison with other pipeline companies it should receive an allowance of 13 percent on equity. With regard to its affiliation with Tennessee, MGT argues that regardless of who owns the controlling common stock, the fact remains that by financing with a thin equity the equity owner takes more risks because of the greater fixed obligations placed against future earnings of the company. MGT objects to having its allowance on equity tied to the allowance of 10.12 percent previously allowed to Tennessee because (1) the *Tennessee* case involved a record now 4 years old; (2) that case did not decide a return on equity to be applied to a combined Tennessee-Midwestern system; and (3) it is unrealistic to look at MGT as simply an expansion of Tennessee's own plant, since MGT was separately financed, its Northern System is not physically connected with Tennessee, and both its Northern and Southern Systems serve separate markets from those historically served by Tennessee. Finally, MGT contends that an equity investment in MGT is not the same as an equity investment in Tennessee; and that, although their affiliation is a relevant factor to be considered, it cannot be given the controlling weight given it by the examiner.

We are of the opinion that 6.5 percent is a just and reasonable overall rate of return for MGT, and in our judgment is adequate to meet MGT's needs in attracting capital and preserving its financial integrity. We recognize that the resulting return on MGT's common equity of 9.26 percent is lower than that approved for other pipelines; but return on equity is not decisive (see ***El Paso Natural Gas Co.***, Docket No. G–4769, *et al.*, 28 FPC 688, rehearing denied 28 FPC 952) and the determination of a proper rate of return is a matter of judgment which cannot be reduced to mathematical proportions and which cannot be made to turn upon a formulistic computation of return on equity.

MGT is controlled by Tennessee. Its equity capital was furnished by Tennessee, and there is no reason to assume that Tennessee will not continue to be its primary source of equity capital. Accordingly, in considering the attraction of capital to MGT it is necessary to look to the effect of the rate of return on Tennessee's investors. We do not believe that the 6.5 percent rate of return herein allowed for MGT will dim the luster of Tennessee's stock in the eyes of investors. As already noted, our initial certification of Midwestern's pipeline was based on a projected rate of return of 6.5 percent for the Northern System and 6.25 percent for the Southern System. These initial determinations in no way impaired the financing of Midwestern's systems and there is no indication that the attractiveness of Tennessee's common stock was reduced by its investment in MGT.

Although we do not place any particular reliance on the "double leverage" theory as a formula to be applied in such cases, staff's figures are helpful to show that the return on equity to a subsidiary is not a measure of the return to the parent's stockholders whose funds have been invested in the subsidiary. Clearly, the effect of pyramiding is to enhance the return to the parent's stockholders.

The 6.5 percent rate of return which we are here allowing is higher than that recently allowed to MGT's parent, Tennessee, and it is as high or higher than that on which MGT's systems were financed and built. In our judgment the allowance is adequate and proper, and is in accord with the principles and standards set forth by the Supreme Court in *Bluefield Water Works and Improvement Co.* v. *Public Service Commission of West Virginia*, 262 U.S. 679, and in *F.P.C.* v. *Hope Natural Gas Co.*, 320 U.S. 591.

Sales to Michigan Wisconsin

There are several issues in this case relating to the amount of MGT's revenues to be used in testing the reasonableness of MGT's rates. The most important of these issues involves MGT's Northern System sales to Michigan Wisconsin Pipe Line Co. under its CD–2 rate schedule. The amount in dispute is more than $2 million.

Relying on evidence presented by Michigan Wisconsin, the examiner found that the proper volume of gas to be attributed here to Michigan Wisconsin's purchases from MGT is either 49,217,000 Mcf or 53,443,500 Mcf, depending upon whether MGT's minimum bill is determined to be 75 percent or 87.5 percent. The minimum bill question is presently before the Commission in another MGT proceeding, *i.e.*, Docket No. RP64–8. In that case, MGT filed for an increase in its minimum bill from 75 percent to 87.5 percent to offset an increase in its take-or-pay obligation to Trans-Canada to 95 percent, which became effective December 15, 1963; and on October 16, 1963, the increase was put into effect subject to refund pending the Commission's final order in the case. To take into account the results of that proceeding, and to avoid any unnecessary windfall to MGT while at the same time protecting MGT against any unjustifiable loss should the higher minimum bill be disallowed, the examiner decided that MGT's rates should be determined on the basis of assumed Michigan Wisconsin takes of 49,217,000 Mcf, but subject to appropriate refund conditions and a requirement that MGT's rates be reduced to a level reflecting takes of 53,443,500 Mcf if the Commission approves the 87.5 percent minimum bill in Docket No. RP64–8.[7] Exceptions have been filed by both MGT and staff.

This issue of sales to Michigan Wisconsin has been one of the most controversial issues in this case. The record, however, gives substantial support to the examiner's findings with respect to the volumes of gas which Michigan Wisconsin would take at a 75 percent or 87.5 percent minimum bill, and we adopt his findings as our own.[8] In view of our order issued today in Docket No.RP64–1 approving MGT's 87.5 percent minimum bill, we find the appropriate level of sales to Michigan Wisconsin to be used in computing MGT's rates to be 53,443,500 Mcf.

With the increased sales to Michigan Wisconsin under the 87.5 percent minimum bill, the record shows that MGT would still have to pay for gas not taken from Trans-Canada in the absence of increased transfers of gas from its Northern to its Southern System under its exchange agreement with Michigan Wisconsin. That agreement permits MGT to deliver up to 30,000 Mcf per day, or 10,950,000 Mcf annually, to Michigan Wisconsin for redelivery on its South-

[7] The examiner issued his decision in Docket No. RP64–8 on July 15, 1964, *infra*, p. 1088, approving the proposed 87.5 percent minimum bill. No exceptions have been taken to the examiner's recommended order, although there have been several exceptions to certain language and subsidiary findings in his decision. We are today issuing an order adopting the examiner's decision in Docket No. RP64–8, *infra*, p. 1087.

[8] The examiner in Docket No. RP64–8 reached the same conclusions with respect to the level of MGT's sales to Michigan Wisconsin.

ern System. MGT's Exhibit No. 33, showing the effect of the 95 percent take-or-pay provision on its cost of purchased gas, indicates that MGT would seek to avoid the payment of penalties to Trans-Canada to the extent possible by increasing its transfers of Trans-Canada gas to the Southern System to the limit of its exchange agreement, and that MGT would use such exchange gas on its Southern System in place of higher cost gas purchased from Tennessee.[9] Accordingly, MGT's cost of service should reflect the full cost of the 70,737,000 Mcf which MGT is obligated to pay for under its Trans-Canada contract, and it should also reflect a reduction of its cost of gas purchased from Tennessee to the extent of the increase in exchange deliveries to the Southern System resulting from the 95 percent take-or-pay provision in the Trans-Canada contract. On the basis of sales to Michigan Wisconsin of 53,443,500 Mcf, MGT's Northern System requirements will be 60,985,092 Mcf, and the exchange required to avoid penalty under the Trans-Canada contract will be 9,751,908 Mcf.[10]

Canadian Exchange Rate

MGT's contract with Trans-Canada requires that it pay Trans-Canada for purchased gas in United States dollars "in an amount being the then equivalent of the amount so billed in lawful money of Canada." On May 2, 1962, shortly before the end of the test year, the Canadian Government pegged the Canadian dollar at 92.5 U.S. cents. In presenting their cases to the examiner, staff took the position that the cost of Trans-Canada gas to MGT should be determined by applying a 92.5 percent conversion factor, while MGT contended that this cost determination should be made on the basis of parity. The difference between staff's and MGT's treatment of this issue is over $1 million in the cost of service. The examiner adopted staff's position that the cost of gas should reflect the official rate of exchange.

MGT takes exception to the examiner's conclusion. First, it points out that the Canadian Government has permitted fluctuations of up to one percent above or below the pegged exchange rate, and that over the 20-month period immediately following the test year the average exchange rate paid has been 92.75 cents. At the very least, MGT argues, it should be permitted to recoup this 92.75-cent exchange rate. Second, MGT reiterates the testimony of its witness Nathan as to the reasonable probability that in the relatively near future the Canadian dollar not only will rise substantially above 92.5 U.S. cents, but may well reach parity with the U.S. dollar. In view of this probability, MGT contends that it should not be exposed to the risk of incurring substantial losses by virtue of increases in the value of the Canadian dollar.

There is no sound basis for the use of parity in costing the Trans-Canada gas. On the other hand, the use of the official rate of exchange would give no recognition to actual fluctuations in the exchange rate as evidenced by the 92.75-cent average cost of Canadian dollars over the 20-month period following the test year. In our judgment, the cost of MGT's Canadian gas for the purpose of fixing MGT's rates at this time should reflect the 92.75-cent average exchange rate. This average represents the actual cost of MGT's Canadian gas in U.S. dollars over a representative period, and it represents the most accurate guide to what the actual exchange will be in the future so long as the official rate is pegged at the present level.

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[9] Tennessee's minimum bill to MGT is 66.67 percent as compared to MGT's minimum bill for sales to its Southern System customers of 75 percent.

[10] MGT's requirements figure is derived from Exhibit No. 33 with appropriate adjustments to reflect the higher Michigan Wisconsin sales, a proportional increase in the gas used by the company, and the elimination of unaccounted-for losses.

In the event the official exchange rate is changed or eliminated, and the cost of Canadian dollars increases, we shall allow MGT to file revised tariff sheets to reflect each one whole percentage-point increase above the rate reflected in the tariffs effective at that time. Should MGT exercise this option to file increased rates, we shall thereafter require it to file reduced rates whenever the cost of Canadian dollars decreases by one whole percentage point below that reflected in the then effective tariffs. In this manner, if the official rate of exchange should vary significantly in the future, both upward and downward changes in the cost of Canadian dollars will be reflected in MGT's rates.[11] Consistent with our determination with respect to other reductions and changes in MGT's rates required herein, any change in rates should be reflected in the demand component of MGT's rates until further order.

We recognize that this provision, which is experimental on our part, departs from our general rule of not permitting automatic changes in pipeline rates. We are making a limited exception in this instance only because of the unique circumstances involved, *i.e.*, the exchange rate is a factor which is totally outside the influence of MGT and other natural gas companies, as well as the Commission. Moreover, we will carefully watch the working of this provision with the view to taking any corrective action that may be appropriate.

Southern System Rate Reductions

In setting forth the new rates for MGT, the examiner included under the Southern System only MGT's CDX–1 rate. Exceptions to this limitation have been filed by Northern Indiana and Northern Illinois which purchase gas from MGT under rates CD–1 and SI–1.

It seems clear that the examiner should have applied his Southern System reductions to all of MGT's rates on that system, *i.e.*, rates CD–1, CDX–1, SI–1, and SR–1.

Refunds From Tennessee

The examiner made no provision in his recommended order for passing along refunds received by MGT under the Tennessee rate settlement in Docket Nos. G–11980, G–17166, and G–19983, approved by the Commission on December 21, 1962, 28 FPC 1100. Peoples filed exceptions to this omission, contending that MGT has a continuing obligation to pass on all refunds and rate reductions received pursuant to this settlement by reason of a settlement between MGT and its Southern System customers approved by the Commission on October 30, 1963, and by reason of the Commission's order issued May 12, 1959, in Docket No. G–16841 (Opinion No. 320, 21 FPC 653). Peoples takes the position that it is desirable, and perhaps necessary, to specifically provide in the order to be issued here that MGT has an obligation to act as a conduit for refunds and rate reductions received from Tennessee.

Northern Indiana filed a reply to Peoples' proposal, agreeing generally therewith, but taking issue with the suggestion that the refunds and rate reductions should be reflected in MGT's demand charge. Northern Indiana would have the refunds and rate reductions allocated on the ratio of purchase volumes and reflected in the commodity component of MGT's rates.

We shall make appropriate provision in our order for the flow-through of refunds and rate reductions received by MGT from Tennessee. To maintain the competitive design of MGT's rates, reductions in its rates to reflect such benefits shall be incorporated in the demand component of its rates.

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[11] This provision is to give recognition only to changes in the rate of exchange applicable to MGT's purchases of Canadian gas, and not to changes in the cost of the gas itself which is fixed in Canadian dollars under the Trans-Canada contract.

Miscellaneous

MGT, in its brief on exceptions, makes note on a number of technical errors in the examiner's computation of the company's cost of service. The points noted are well taken, and we shall make the necessary corrections in our computation of MGT's cost of service.

CONCLUSION

The total overall cost of service here determined for MGT, based on its operations in the test year ending June 30, 1962, as adjusted, is $66,673,048, of which $24,061,775 is attributable to the Northern System and $42,611,273 is attributable to the Southern System. Total revenues are determined in the amount of $70,403,661, of which $25,878,111 is attributable to the Northern System and $44,525,550 is attributable to the Southern System. On this basis, MGT's excess revenues total $3,730,613: $1,816,336 on the Northern System and $1,914,277 on the Southern System.[12]

We shall require MGT, as of the date of this opinion and order, to reduce its rates so as to eliminate all excess revenues. As previously noted, the rate reduction shall be applied to MGT's demand charges and the existing commodity charges shall be retained pending final determination of the rate design questions which are still before the examiner.

The Commission further finds:

(1) MGT is a "natural-gas company" subject to the provisions of the Natural Gas Act, and the sales of natural gas for resale which are the subject of this opinion and order are sales of natural gas in interstate commerce and are subject to the jurisdiction of the Commission.

(2) MGT's just and reasonable rates in Docket Nos. RP61–19 and RP62–7 from and after the date of this opinion and order, subject to the provisions for refunds and reductions set forth in Paragraph (B) of the order below and the adjustments set forth in Paragraphs (D), (E), and (F), are as follows:[13]

Rate schedule	Demand charge	Commodity charge (cents)
Northern System:		
SR–2		56.01
CR–2	$3.77	25.01
CD–2	3.77	25.01
I–2		25.01
CRL–2	4.02	25.01
Southern System:		
CDX–1	3.03	22.0
CD–1	3.03	22.0
SR–1		46.92
SI–1		26.98

(3) MGT should be required to file substitute tariff sheets, subject to the approval of the Commission, containing the rates herein found to be just and reasonable as set forth in Paragraph (2) above.

The Commission orders:

(A) Within 45 days from the date of issuance of this opinion and order, MGT shall file substitute tariff sheets, effective as of the date of this order, satisfactory to the Commission containing the rates herein found to be just and reasonable in Docket Nos. RP61–19 and RP62–7, as set forth in Paragraph (2) of the findings above.

[12] See Appendix No. 1 attached hereto.
[13] See Appendix No. 8 attached hereto.

(B) MGT shall pass along to its Southern System customers all refunds and rate reductions received by it from Tennessee. Such refunds by MGT shall be made within 30 days after the receipt thereof by MGT and shall include any interest thereon received by MGT. Rate reductions by MGT shall be made effective as of the effective date of the Tennessee rate reductions which they reflect. The refunds and rate reductions herein required shall be distributed and effected in the following manner until otherwise ordered:

1. The principal amount of the refunds shall be distributed among MGT's Southern System customers in the ratio of the sum of their respective billing demands to the total of such sums for the period relative to which such refunds are made. In the case of CD customers, the billing demands shall include the equivalent demand billed for allowable variations. In the case of customers purchasing under single-part rate schedules, the billing demands shall be computed by (a) multiplying the volumes purchased by the commodity charge in MGT's CD–1 rate schedule, (b) subtracting this product from the revenue received by MGT from the customer during the period in question, and (c) dividing the remainder by the monthly demand charge in the CD–1 rate schedule. Interest received from Tennessee shall be distributed in the same ratio as the principal amounts of the refunds to which such interest relates.

2. Rate reductions shall be effected by reducing the level of the demand component in MGT's rate schedules. The amount of each such reduction shall be equivalent to the reduction in MGT's cost of purchased gas resulting from the reduction of Tennessee's rates, computed on the basis of the most recent 12-month period as though such reduced rates had been in effect for that period. The reduced rates thus computed shall be rounded to the nearest one cent per Mcf of billing or imputed demand.

(C) Within 30 days of making the refunds required by Paragraph (B), MGT shall report to the Commission in writing and under oath the details of its calculations resulting in the refunds together with copies of releases from each of its jurisdictional customers sharing in the refunds.

(D) The question of the depreciation to be used as a deduction in computing the tax allowance in MGT's cost of service is hereby remanded to the examiner for hearing and initial decision in accordance with the foregoing opinion. The rates herein fixed on the basis of straight-line depreciation are subject to adjustment upon further order of the Commission to reflect the Commission's final disposition of this issue.

(E) In the event the official Canadian dollar rate of exchange, which is presently fixed by the Canadian government at 92.5 cents in U.S. currency, should be changed or eliminated, and the cost of Canadian dollars increases, MGT may file revised tariff sheets to reflect each one whole percentage-point increase in the rate of exchange above the rate reflected in the tariffs then in effect. Should MGT exercise this option to file increased rates, MGT shall thereafter file reduced rates whenever the cost of Canadian dollars decreases by one whole percentage-point below the rate of exchange reflected in the then effective tariffs. In all other respects, MGT's rates shall continue to reflect the cost of service and the method of rate computation used by the Commission in this proceeding. Until further order of the Commission, any changes in MGT's rates as a result of an official change in the rate of foreign exchange shall be reflected in the demand component only.

(F) The question whether MGT should be required to file substitute tariff sheets as of January 1, 1965, reflecting the reduction in the Federal income tax

rate to 48 percent on that date is hereby reserved pending final determination of the same question in *United Gas Pipe Line Co.*, Docket No. RP63–1.

(G) With the exception of those issues specifically discussed in the foregoing opinion, and to the extent that it is consistent with this opinion and order, the examiner's decision in this proceeding, issued April 29, 1964, is hereby adopted as the decision of the Commission.

(H) Except as granted by this opinion and order, the exceptions to the examiner's decision are hereby denied.

(I) MGT's motion for oral argument on its exceptions is hereby denied.

COMMISSIONER O'CONNOR *concurring.*

APPENDIX NO. 1

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. RP61–19

COST OF SERVICE AND EXCESS GAS SERVICE REVENUES FOR 12 MONTHS ENDED JUNE 30, 1962

	Total company	Northern System	Southern System
Operating expenses:			
Other gas supply expenses	$52,227,426	$16,540,047	$35,687,379
Transmission expenses	1,654,872	761,964	892,908
Administrative and general expenses	1,177,893	562,071	615,822
Total operating expenses	55,060,191	17,864,082	37,196,109
Depreciation	3,042,054	1,515,759	1,526,295
Amortization of franchises and consents	43,999	21,898	22,101
Federal income tax	1,914,174	1,016,541	897,633
State income tax	100,615	84,000	16,615
Other taxes	1,313,393	923,936	389,457
Other gas revenues (credit)	(10,938)	(6,600)	(4,338)
Return on rate base at 6.5%	5,241,006	2,657,787	2,583,219
Total cost of service	66,704,494	24,077,403	42,627,091
Gas sales for resale	70,403,661	25,878,111	44,525,550
Excess of gas service revenues at present rates	3,699,167	1,800,708	1,898,459

APPENDIX NO. 2

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NOS. RP61–19 AND RP62–7

Rates and revenues resulting therefrom for 12 months ended June 30, 1962

Rate schedules	Billing determinants		Rates		Revenues	Cost of service
	Demand (Mcf)	Commodity (Mcf)	Demand	Commodity (cents)		
Northern System:						
SR–2		247,767		[1] 56.10	$138,997	
CR–2	51,058	750,470	$3.78	25.01	380,691	
CD–2	1,896,000	53,443,500	3.78	25.01	20,533,099	
I–2		290,856		25.01	72,743	
CRL–2	372,360	5,795,248	4.03	25.01	2,950,002	
Total Northern System	2,319,418	60,527,841			24,075,532	$24,077,403
Southern System:						
CDX–1	3,600,000	95,569,500	3.04	22.0	31,969,290	
CD–1	1,200,000	31,983,000	3.04	22.0	10,684,260	
SR–1 [4]				[2] 47.04		
SI–1 [4]				[3] 27.0		
Total Southern System	4,800,000	127,552,500			42,653,550	42,627,091
Grand total					66,729,082	66,704,494

[1] Reflects CD–2 rate level at 40% load factor.
[2] Reflects CDX–1 and CD–1 rate level at 40% load factor.
[3] Reflects CDX–1 and CD–1 rate level at 200% load factor.
[4] No sales were made during the test year under these rate schedules. Rates were designed therefor since sales are now being made. By letter dated June 28, 1963, the Commission accepted SR–1 for filing as an initial rate schedule, but conditioned acceptance to require Midwestern to revise rate to level of CD–1 rate in these proceedings at 40% load factor.

APPENDIX NO. 3

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. RP61-19

Rate base and return for 12 months ended June 30, 1962

	Total company	Northern system	Southern system
Cost of plant—average	$89,354,500	$44,516,131	$44,838,369
Less accumulated provision for depreciation and amortization	(5,154,045)	(1,848,735)	(3,305,310)
	84,200,455	42,667,396	41,533,059
Less accumulated deferred income tax [1]	(3,569,600)	(1,778,363)	(1,791,237)
New plant investment	80,630,855	40,889,033	39,741,822
Working capital—net	0	0	0
Total rate base	80,630,855	40,889,033	39,741,822
Return at 6.5%	5,241,006	2,657,787	2,583,219

[1] Allocated on the basis of cost of plant.

APPENDIX NO. 4

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. RP61-19

Computation of Allowance for Working Capital for 12 Months Ended June 30, 1962

Cash working capital:	
Operating expenses:	
Purchased gas	$52,427,917
Gas used in utility operations	(200,491)
Transmission	1,654,872
Administrative and general	1,177,893
Total operating expenses	55,060,191
Less:	
Purchased gas	52,427,917
Depreciation clearing account	112,060
Total	52,539,977
Total net operating expenses	2,520,214
Cash working capital, ⅛ of $2,520,214	315,027
Materials and supplies	117,635
Prepayments	57,271
Working capital required due to lag between payments for purchased gas and collections from customers	233,893
Gross working capital	723,826
Less 47.22% of Federal income tax	(889,751)
New Working capital	0

APPENDIX NO. 5

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. RP61-19

Computation of Federal income tax allowance for 12 months ended June 30, 1962

	Total	Northern System	Southern System
Net plant	$80,630,855	$40,889,033	$39,741,822
Working capital (preliminary)	723,826		
Rate base (preliminary)	81,354,681		
Return at 6.5%	5,288,054		
Working capital (preliminary)	723,826		
Less 47.22% of Federal income tax	889,751		
Working capital adjusted	0	0	0
Rate base adjusted	80,630,855	40,889,033	39,741,822
Return at 6.5% on adjusted rate base	5,241,006	2,657,787	2,583,219
Federal income tax computation			
Return on adjusted rate base	5,241,006	2,657,787	2,583,219
Less tax deductions:			
Depreciation per books as adjusted	(3,042,054)	(1,515,759)	(1,526,295)
Amortization per books	(43,999)	(21,898)	(22,101)
Tax depreciation on straight line basis	2,940,905	1,474,832	1,466,073
Amortization of debt discount and expense	53,980	26,488	27,492
Interest on long-term debt	3,404,000	1,670,343	1,733,657
Legal fee to T. G. Corcoran	29,906	14,316	15,590
Total	3,342,738	1,648,322	1,694,416
50% of total	1,671,369	824,161	847,208
Balance	3,569,637	1,833,626	1,736,011
Less surtax exemption	7,000	3,588	3,412
Balance	3,562,637	1,830,038	1,732,599
Return and tax $3,562,637 ÷ 50%	7,125,274	3,660,076	3,465,198
Less tax deductions	3,342,738	1,648,322	1,694,416
Taxable income	3,782,536	2,011,754	1,770,782
Tax at 50%	1,891,268	1,005,877	885,391
Less surtax exemption	7,000	3,652	3,348
Federal income tax allowance	1,884,268	1,002,225	882,043

APPENDIX NO. 6

MIDWESTERN GAS TRANSMISSION COMPANY—DOCKET NO. RP61-19

Computation of State income tax allowance 12 months ended June 30, 1962

	Federal	North Dakota	Minnesota	Wisconsin	Total northern system	Kentucky	Indiana	Total southern system	Total all States
Income before Federal and State income taxes	$3,782,536	$3,782,536	$3,782,536	$3,782,536		$3,782,536	[1] $5,095,419		
Applicable apportionment factors (from 1961 tax return) (percent)		0.3952	10.827	25.8967		5.5883	9.3110		
State's taxable income (apportioned)		14,940	409,565	979,628		211,379	474,434		
Less specific credit			(500)						
FIT applicable—50% of State taxable income		(7,474)	(204,787)			(105,692)			
Limited to 10% of State taxable income				(97,963)					
Net taxable income		7,475	204,278	881,665		105,687	474,434		
Income tax allowance at following rates:									
3% of $3,000 plus 4% of next $5,000		269							
8.25% plus additional 1.98% privileges and income tax (Total 10.23%)			20,898						
$225 first $6,000 plus 7% of excess				61,521					
5% on first $25,000 plus 7% of excess						6,898			
2% of taxable income							9,489		
Total State income tax allowance		269	20,898	61,521	82,688	6,898	9,489	$16,387	$99,075

[1] Taxes other than Federal and State—per examiner	$1,313,393
Less highway use	510
Total franchise and ad valorem taxes	1,312,883
Income before Federal and State income taxes	3,782,536
	5,095,419

APPENDIX NO. 7

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. RP61–19

DETERMINATION OF GAS SERVICE REVENUES AT PRESENT RATES

Rate schedule	Demand	Commodity (cents)	Billing units		Revenue		Total revenue
			Demand	Commodity	Demand	Commodity	
Northern System:							
SR–2		62.81		247,767		$155,622	$155,622
CR–2	$4.55	25.01	51,058	750,470	$232,314	187,693	420,007
CD–2	4.55	25.01	1,890,000	53,443,500	8,626,800	13,366,219	21,993,019
I–2		25.01		290,856		72,743	72,743
CRL–2	4.80	25.01	372,360	5,795,248	1,787,328	1,449,392	3,236,720
Total Northern			2,319,418	60,527,841	10,646,442	15,231,669	25,878,111
Southern System:							
CDX–1	3.43	22.0	3,600,000	95,569,500	12,348,000	21,025,290	33,373,290
CD–1	3.43	22.0	1,200,000	31,983,000	4,116,000	7,036,260	11,152,260
SR–1		50.48					
SI–1		27.63					
Total Southern			4,800,000	127,552,500	16,464,000	28,061,550	44,525,550
Total company			7,119,418	188,080,341	27,110,442	43,293,219	70,403,661

APPENDIX NO. 8

MIDWESTERN GAS TRANSMISSION COMPANY

DOCKET NOS. RP61-19 AND RP62-7

Rates and revenues resulting therefrom

Rate schedules	Billing determinants		Rates		Revenues	Cost of service
	Demand	Commodity	Demand	Commodity (cents)		
Northern System:						
SR-2		247,767		[1] 56.01	$138,774	
CR-2	51,058	750,470	$3.77	25.01	380,181	
CD-2	1,896,000	53,443,500	3.77	25.01	20,514,139	
I-2		290,856		25.01	72,743	
CRL-2	372,360	5,795,248	4.02	25.01	2,946,279	
Total Northern System	2,319,418	60,527,841			24,052,116	$24,061,775
Southern System:						
CDX-1	3,600,000	95,569,500	3.03	22.0	31,933,290	
CD-1	1,200,000	31,983,000	3.03	22.0	10,672,260	
SR-1 [4]				[2] 46.92		
SI-1 [4]				[3] 26.98		
Total Southern System	4,800,000	127,552,500			42,605,550	42,611,273
Total					66,657,666	66,673,048

[1] Reflects CD-2 rate level at 40% load factor.
[2] Reflects CDX-1 and CD-1 rate level at 40% load factor.
[3] Reflects CDX-1 and CD-1 rate level at 200% load factor.
[4] No sales were made during the test year under these rate schedules. Rates are designed therefor, since sales are now being made. By letter dated 6/28/63, the Commission accepted SR-1 for filing as an initial rate schedule, but conditioned acceptance to require Midwestern to revise rate to level of CD-1 rate in these proceedings at 40% load factor.

O'CONNOR, *Commissioner, concurring:*

With one exception, I join in the decision reached herein. This exception, however, necessitates a brief statement of my position.

I am alarmed over the majority's elusive reference to the "double leverage" theory in their determination of Midwestern's rate of return. The theory, rejected by the examiner and unmentioned in the briefs on the exceptions, is ostensibly raised to be disavowed, but the disavowal lacks the finality deserved.

The theory's effect is to treat as equity only that portion which represents the parent's percentage of equity. Thus, only $4.7 million of Midwestern's $17.1 million equity would be treated as such and allowed a commensurate return. This treatment would be most unreasonable for subsidiaries, such as Midwestern, which have issued their debt and preferred capital independently, and not through their parents. In such cases, the normal equity risks fall on the full $17.1 million, and not on an imputed portion.

The theory is, as the Examiner found, neither meaningful nor reliable, and it cannot be passed off as a valid extension of the "capital attraction" theory. Its conceptual weakness lies in its preoccupation with the return the parent company shareholders receive on their investment in the subsidiary—the "levered" return—rather than with the weighted average return on the combined equity. This levered return is irrelevant. The attraction of equity capital to the subsidiary will depend upon the combined return on equity generated by an investment in the parent, and not upon the return yielded by a hypothetically separate investment in the subsidiary.

Even in the relatively simple context of the wholly-owned subsidiary relationship, the complexities of application, could be insurmountable. Suppose, for example, that the subsidiary's parent were in turn a subsidiary. Logical application of the concept would dictate imputing the primary parent's capital

structure to the secondary parent, and the resulting imputation to the subsidiary. Would this same treatment be accorded if the primary or secondary parent were non-jurisdictional? If, instead of being wholly owned, the subsidiary or its parent were owned by several non-affiliated companies, which capital structure would be imputed to the subsidiary? Intermixed in the infinite structural possibilities is Staff's proviso that the application of the leverage theory could be determined by the extent of the subsidiary's retained earnings. At what point would these earnings become determinative? Would there also be a point where, although not determinative of application, they would be determinative of weight? More importantly, even if these multiple imputations could be made, and the significance of the retained earnings assayed, how would they be meaningfully translated into rates?

Once one leaves the relatively simple context of the wholly-owned subsidiary and enters into the realm of the partially-owned, the leverage concept becomes truly absurd. Combined with the above technicalities, one now has the added problem of tracing the indirect and direct ownerships, and determining if, and how, a differing return is to be allowed to each. Not only is application reduced to a humorous futility, but, as Staff readily admits, one reaches a point on the direct-ownership spectrum—approximately where Midwestern now lies—where the concept would not even be applicable.[1]

When shorn of its technical trappings, the concept is but another specious rationale to be used in lowering rates of return to companies solely because of their affiliation. If this is the end sought, then the end is unjustified. If this is not the end sought, then the concept has no meaning. The Commission should either take this opportunity to explicitly so state, or else refrain from dignifying it with comment.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON A CONSOLIDATED PROCEEDING UNDER SECTION 5(a) OF THE NATURAL GAS ACT

(ISSUED APRIL 29, 1964)

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[1] In December of 1963, 11.6 percent of Midwestern's common equity was distributed to Tennessee's shareholders. The existence of common equity warrants increases the potential public ownership of Midwestern to slightly over 22 percent.

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ZWERDLING, *Presiding Examiner:* This is a consolidated Section 5(a) rate proceeding involving cost of service issues with respect to Midwestern Gas Transmission Co. (Midwestern), and rate design issues with respect to Midwestern and Natural Gas Pipeline Co. of America (Natural).

On February 13, 1961 the Commission instituted a proceeding in Docket No. RP61–19 to determine whether the rates, charges and classifications of Midwestern for sales from its Southern System are just and reasonable as required by Section 5(a) of the Natural Gas Act. This order was an outgrowth of the Commission's directive in Opinion No. 320 (21 FPC 653), certificating Midwestern's Southern System, that Midwestern should file a new rate schedule within 1 month after its first full year of operation, and that a Section 5(a) hearing would then be scheduled to permit prompt inquiry into the justness and reasonableness of the rate filed. On May 28, 1962, the Commission in Docket No. RP62–7 instituted a Section 5(a) investigation of the justness and reasonableness of Midwestern's rates, charges and classifications for sales and exchanges from its Northern System. This order was an outgrowth of the Commission's directive in Opinion No. 331 (22 FPC 775), certificating Midwestern's Northern System, that Midwestern at the end of 1 year's operating experience should file revised rate schedules, to be followed by Commission review of the Northern System rates. By order issued February 18, 1963, the Commission consolidated Docket Nos. RP61–19 and RP62–7 for purposes of hearing and decision, established procedures and fixed a date for prehearing conference. Subsequently, on February 25, 1963, the Commission instituted a Section 5(a) proceeding with respect to Natural in Docket No. RP63–6, limited to the question whether the design of Natural's two-part demand and commodity rate is just and reasonable and not unduly preferential or discriminatory. The order consolidated Docket No. RP63–6 for purposes of hearing and decision with Docket Nos. RP61–19 and RP62–7, *supra.*

Prehearing conferences were held on March 21 and 22, and May 20, 1963. The cross-examination hearing commenced on July 15, 1963, and was concluded on October 17, 1963. The case developed two phases—(1) a *cost of service* phase involving Midwestern alone, in which the Staff contends (according to its latest adjusted figures) that the company has earned excess revenues of approximately $8,000,000 in the normalized test year of July 1, 1961–June 30, 1962; and (2) a *rate design* phase involving both Midwestern and Natural. In the rate design phase the Coal Intervenors[1] propose that Midwestern's present two-part demand-commodity rates be converted to a flat one-part rate, with no minimum bill. The Coal Intervenors also attack the existing rate design of Natural, although they do not set forth in any clear way the precise type and level of rates which they recommend for Natural. None of the other parties, including Staff, support any change in the existing basic rate design of Midwestern or Natural. In addition to the basic rate design issue, Staff proposes

[1] Fuels Research Council, Inc., National Coal Association, United Mine Workers of America, and Mid-West Coal Producers Institute, Inc.

elimination of the existing 25-cents per Mcf lateral line charge embodied in the demand component of Midwestern's CRL–2 rate, applicable to certain of its Northern System customers. None of the customers subject to this charge have supported the Staff proposal.

Both the cost of service phase of the proceeding, affecting Midwestern alone, and the rate design phase affecting both Midwestern and Natural, developed substantial controversy which became the subject of extensive testimony during the hearing and extensive briefs. Final briefs on the cost of service issues were submitted on December 27, 1963, and final briefs on the rate design issues were submitted on March 14, 1964.

Although the Presiding Examiner's initial decision on the cost of service issues is now completed, it has not been possible due to the exigencies of the time schedule to deal with the rate design issues at this time. Furthermore, this Presiding Examiner is involved in the South Louisiana Area Rate proceeding (AR61–2), in which an extended cross-examination hearing commences on April 22, 1964, to continue without substantial interruption to its conclusion, under a directive from the Commission that hearing and decision in that case be expedited in every way possible. The instant Midwestern proceeding is a Section 5(a) proceeding, in which any reduction of exisiting rates which may ultimately be adopted by the Commission will become effective only from and after the date of the Commission's final decision. Under these circumstances, it is concluded that the public interest requires a prompt determination of the controverted cost of service issues, and that it would be contrary to the public interest to defer such a decision for the extended period which will be required before the Presiding Examiner will be in a position to issue an initial decision on the rate design issues. The Presiding Examiner has accordingly earlier made it clear to the parties that he proposed to issue a prompt initial decision with respect to the cost of service issues, fixing rates on the basis of Midwestern's *existing* rate design, and deferring consideration and resolution of the rate design issues to a later stage. The Coal Intervenors, who alone proposed a change in the existing rate design of Midwestern and Natural, have expressed no objection to this procedure.

Accordingly, the instant decision will be confined to the cost of service issues in this proceeding, relating in Midwestern alone.

Both the Staff and Midwestern submitted in evidence cost of service studies using the twelve months ended June 30, 1962 as the test period, with adjustments for known changes. The final cost of service now claimed by Midwestern is $67,995,430 (initial brief, Appendix A). Staff's final recommended cost of service amounts to $64,081,173.[2] Midwestern's final estimated revenue figure is $67,476,866, as compared with Staff's final figure of $69,536,669 (Exh. 55–A). In addition, both Midwestern and Staff reflect the net effect of increased sales to Northern Illinois Gas Co. pursuant to Docket No. CP63–149, as producing an upward adjustment to excess revenues in the amount of $617,000. (Staff initial brief, p. 71; Midwestern intial brief, Appendix A.) The Staff thus derives an excess revenue figure of $6,072,496, as compared with Midwestern's excess revenue figure of only $98,436. However, by motion submitted March 20, 1964, Staff contends that the Commission's recent *Alabama-Tennessee decision*, Op. No. 417, 31 FPC 208, requires the flowing through of tax benefits resulting from the use of liberalized depreciation; that this requires a recalculation of Midwestern's Federal income tax allowance in the instant cost of service, resulting in a *zero* tax allowance in place of the $1,892,483 Federal income tax allowance previously

[2] Staff initial brief, Appendix p. 1, after removing the CP63–149 cost adjustments.

included in the Staff cost of service. The adoption of this new cost of service adjustment would increase Staff's claimed excess revenue figure to $7,964,979.

At the outset of the proceeding, there existed a disagreement between Midwestern and the Staff regarding the *original cost* of a number of items of Midwestern's plant. However, these disagreements were resolved by a stipulation dated July 15, 1963, which the Commission approved by letter of July 24, 1963. On the basis of this stipulation, Midwestern's average gross plant in service for the test year, adjusted for specific plant additions, was $89,354,500. (Exh. 59–A, footnote 1)

I. Operating Expenses

A. *Affect of Canadian Exchange Rate on Computation of Midwestern's Purchased Gas Cost From Trans-Canada*

Midwestern purchases the gas required to serve customers on its Northern System from Trans-Canada Pipe Lines Limited (Trans-Canada) under a contract date May 14, 1960. (Exh. 30) Article IX of this contract provides:

> All payments under this contract shall be made to the First National City Bank of New York, New York, in United States dollars *in an amount being the then equivalent of the amount so billed in lawful money of Canada.* [Emphasis supplied.]

On May 2, 1962, shortly before the end of the test year used in this proceeding, the Canadian Government pegged the Canadian dollar at 92.5 U.S. cents. Accordingly, Staff contends that the cost of Trans-Canada gas to Midwestern should be here determined by applying a 92.5 percent conversion factor to the rate paid by Midwestern. Midwestern, on the other hand, contends that this cost determination should be made on the basis of parity. Based on Midwestern's Northern System sales as originally estimated in the Staff's direct case, the difference between Staff and Midwestern on this issue would be $1,280,707. (Exh. 25, Sch. 2, Col. 6)

In support of its position Midwestern relies upon testimony presented by its economic witness, Robert R. Nathan,[*] based upon a study of the history of the Canadian dollar and factors determining its value in the international monetary market. Nathan expressed the view in his direct testimony that:

> * * * based on a review of the history of the relationship of the Canadian-United States dollars and the economic factors which go to make up that history, that it is unlikely that the exchange rate for Canadian-United States dollars will remain fixed at or around 92.5%. (3: 462)
>
> * * * * * * *
>
> In my opinion it would not be realistic to assume that the current rate will continue for several years. (3: 482)
>
> * * * * * * *
>
> * * * it is my opinion that the most reasonable prospect for the rate of exchange of the Canadian dollar for the next several years is that it will become par with the U.S. dollar. (3: 486)

Nathan observed that in the 17 years since 1946, when the Canadian Government restored the historic parity of the Canadian-U.S. dollars, the official value of the Canadian dollar had been below parity with the U.S. dollar for only two brief periods (3: 468, 474); that the Canadian dollar rose to a premium in terms of U.S. dollars by February 1952, and thereafter, until June 1961, was almost always above par with the U.S. dollar. (3: 471; Exh. 27, Tables 1 and 2)

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[*] An outstanding economist and private consultant.

Nathan expressed the view that "It is not possible to predict future exchange rates, past experience in my opinion is the best guide." (3: 483) He then set forth his basic thesis as follows:

> As the employment situation improves, as the balance of payments becomes stronger, as the accumulation of monetary reserves increases the money supply, the policies of the Canadian government will, in my opinion, again place greater emphasis on price stability. These conditions are emerging at this time and will probably be more powerful in the future. The only way the Government can avoid inflation in these circumstances would be to appreciate the Canadian dollar. (3: 482)
>
> * * * * * * *
>
> During the past year the economic situation in Canada has improved considerably and the balance of payments position has shown signs of renewed strength. It appears to be only a matter of time until the Canadian dollar will again return to parity with the U.S. dollar.
>
> Present circumstances, as described previously, are analogous to those in earlier years when the Canadian Government either raised the official exchange value of the Canadian dollar or let the rate rise in a freely fluctuating market. It is reasonable to suppose that the Canadian dollar will again appreciate as long as the balance of payments' position remains strong, production continues increasing at a satisfactory rate, and rising prices continue to exert inflationary forces. (3: 485)

Midwestern concludes that this testimony "plainly demonstrates the overwhelming probability that the Canadian dollar will return once again to parity, or above, within the foreseeable future, rather than remain at its present depressed level." (Initial brief, p. 30) However, this categorical and sweeping assumption is placed in more realistic perspective if attention is directed to certain careful limitations expressed by witness Nathan during cross-examination, as follows:

1) Nathan would *not* predict that within the next two years the Canadian dollar would return *to par*, or that the *average* exchange rate for the next two years would be *at or near par*. He merely felt that "there would be a tendency to return toward par within that period." (9: 1340, line 16–1341, line 3)

2) He felt that

> * * * there are so many factors influencing the exchange determination that it is exceedingly difficult to project either *specific levels or precise times* at which changes in policy are likely to be made * * * (9: 1340)

Past experience did not tell him *when* the Canadian dollar would *tend* to return to par. (9: 1341, lines 11–14)

3) His estimate of the future was as follows:

> * * * *if* Canada finds that as a result of the devaluation her foreign exchange reserves have risen as they have, and they are satisfactory and her internal economic conditions are satisfactory in terms of unemployment and production and, therefore, it is time now to fight inflation because prices have risen there, then I think they *could* move in one of two ways * * *
>
> One is to go off of the official exchange rate again, and my guess is it would rise; the Canadian dollar would rise toward parity. Whether it would reach 100 cents on the American dollar, I honestly don't know. *I have some doubts.* It may come near it.
>
> * * * * * * *

Whether it would go to a hundred cents of American dollar or it would go to 95 or 97, it is hard to tell * * *

* * * * * * *

Or the other alternative, Mr. Examiner, would be to revalue its currency to $1 or 97.5 or whatever it would find as feasible for a period of time.

If I may just add one point, *governments as with anybody, find it awfully hard to set a rate of exchange which makes sense over a period of time because they have to judge a wide variety of factors.* They have to judge productivity; they have to judge competition in the international market; they have to judge what is in the minds of potential investors; they have to judge what is going to happen to imports as well as exports, so when one sits with government officials and tries to work out a rate of exchange decision, *it is torturous because there are so many factors that come into account, and it is awfully hard to value these.* (9: 1349–50)[4]

The situation may thus be summarized as follows:

1) The most Nathan would say is that in his judgment there would be a *tendency* for the Canadian dollar to return *toward par* within the next two years.

2) The fact is that as of the date of this decision (more than eight months after the above testimony) the Canadian dollar is *still* officially pegged at 92.5 cents.

3) If and when the Canadian government might elect to depart from its current official exchange rate of 92.5 cents, Nathan envisioned two possible alternatives: a) Canada might go off the official exchange rate, and in that case Nathan had "*some doubts*" whether the Canadian dollar would reach 100 cents on the dollar, although it would rise *toward* parity; or (b) the Canadian government might instead establish a new official exchange rate of $1 or 97.5 "or whatever it would find as feasible for a period of time."

4) Nathan's limited prediction that there would be a *tendency* for the Canadian dollar to return *toward par* within the next two years is based upon his analysis of the economic situation in Canada—upon his assumption that the Canadian employment situation will continue to improve at a satisfactory rate, that its balance of payments will continue to become stronger, that its accumulation of monetary reserves will continue to increase its money supply, that this will result in *continued* inflationary pressures, that the Canadian government under such circumstances will regard the avoidance of inflation as its *primary* objective, outweighing any other possible counterbalancing pressures.

5) If the Canadian government *were* to consider a possible change in its policy with respect to the exchange rate at some future time, this would be a difficult decision for that government to make because there are so many factors which must be considered "and it is awfully hard to value these."

6) Yet we are asked here to make *our own* evaluation of these factors, and to guess how *the Canadian government* would react to and evaluate them.

Under all the circumstances outlined above, it is concluded that a sound and fair regulatory policy here would be to compute Midwestern's purchased gas cost allowance in this proceeding on the basis of the continuing Canadian official exchange rate of 92.5 cents.

In the event that *a Canadian government policy change* with respect to the exchange rate *should* occur at some future date, with the result that there should be a significant and substantial rise of the exchange rate towards parity, under circumstances where it appeared that the determinative economic factors were such as to indicate a *continuing trend* in that direction, Midwestern *at*

[4] Emphasis in all above quotations supplied.

that time could consider whether, in the light of its entire prevailing cost and revenue picture, it would wish to file a rate increase application under Sec. 4. If it did, the purchased gas cost allowance would be reconsidered at that time in the light of the then prevailing situation with respect to the Canadian exchange rate.

At that time, and in such a proceeding, if the Canadian exchange rate had still not actually reached parity, but seemed to be headed in that direction, consideration might then be given to the technique here proposed by Midwestern in its intial brief (p. 31–32)—*i.e.*, that Midwestern's purchased gas cost from Trans-Canada would be computed on the basis of parity, subject to a condition (designed to avoid a possible windfall to the company) that Midwestern at the end of every six months period thereafter would refund to its customers their proportionate share of the amount, if any, by which the payments actually made to Trans-Canada during such period were less than those which would have been due had the exchange rate actually been at parity.

In view of the fact that as of this late date (more than eight months since the above testimony by witness Nathan) the Canadian dollar *still* remains pegged at the official exchange rate of 92.5 cents, it is concluded that the consideration at this time of any such device as that here proposed by Midwestern is premature and untimely. It is not irrelevant to note in this connection that since the Canadian government in May 1962 established its official exchange rate of 92.5 cents, there has been no downward revision of Midwestern's rates to reflect the resultant reduction in its purchased gas costs. The result is that the company has in fact been receiving a windfall running back to May 1962 (a period of almost two years up to the instant date)—and this is a windfall which the consumers cannot recoup, since in the instant Sec. 5(a) proceeding rates may only be fixed prospectively for the future. Under these circumstances, it seems not unreasonable to suggest that the possible risk and inconvenience envisioned by Midwestern as a result of the adoption of the instant position may in fairness be left with the company rather than the ratepayers.

B. *Amortization of Storage Development Project*

Midwestern proposes an upward adjustment in its test-year cost of service in the amount of $897,880, representing one-fifth of the maximum amount which it was authorized by the Commission to spend in the development of storage facilities in the Chicago area.[5] The company recognizes that if the project proves successful the total costs, estimated at $4,489,400, will be capitalized in its rate base. It alleges that return, taxes and depreciation on this amount would be approximately 20 percent per annum, which would produce roughly the same effect on cost of service as its instant proposed adjustment.

Under this adjustment Midwestern would commence the recovery of its estimated storage costs *now*, instead of following the usual practice of deferring such charges until the storage development operations were completed, either terminating in a successful project or in a determination of infeasibility.[6] Midwestern recognizes that the adoption of this adjustment would represent "special treatment" (initial brief, p. 33). The sole justification assigned for this proposed

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[5] The project involves the testing of three storage fields in Illinois and Indiana adjacent to the Southern System line.

[6] This is despite the fact that in the event the project should be terminated as infeasible, the total expenditures up to any such date might conceivably be substantially less than the $4.4 million maximum figure. For example, Midwestern witness McGee indicated that the company would spend about $1 million on the storage project in 1963 rather than the $2.2 million originally estimated, because a decision was made to test only one of the three fields at this time. (9 : 1371)

departure from normal practice is its fear that in the event the project should turn out to be infeasible, these expenditures might not be allowed by the Commission in a subsequent rate proceeding, on the ground that they constituted a nonrecurring item. Midwestern contends that, in contrast to other companies, it needs "special protection" against any such possibility because it is "relatively small" and the failure of its storage development project would result in a substantial loss if it subsequently should encounter such Commission treatment.

On the face of it, the Midwestern proposal raises certain obvious and troublesome problems:

1) It seeks before-the-fact recovery—before the success or failure of the storage activities or the amount of expenses can be determined, and before additional sales are realized.

2) If the total costs of the project were instead capitalized, a successful project would be accompanied and offset by additional units of sales from the successful facilities, thus following the traditional principle of a proper matching of costs and revenues. Allowance of the proposed $897,880 annual adjustment now, when there are no offsetting sales, would violate this principle.

3) In the event the project should be terminated as infeasible, it is entirely possible that Midwestern might not have expended the entire estimated maximum amount of $4,489,400 by that time. Allowance of the proposed adjustment, which is based upon the entire estimated maximum amount, might thus conceivably result in collection from the ratepayers of sums in excess of the amount actually expended.

4) If the project were not terminated as infeasible, allowance of the proposed $897,880 adjustment could mean that Midwestern might conceivably continue to collect such amounts annually from the ratepayers until its next rate case, long after the maximum amount of $4,489,000 had been fully recovered.

5) Under the proposed adjustment, Midwestern's present customers would be required to pay for the storage facilities, although it is by no means certain that all of these particular customers will eventually benefit from such facilities should they prove successful. If the storage project should prove feasible and be put into service, it would seem that the customers who are then in a position to benefit from storage ought to pay its costs, and not the consumers of an earlier period.

6) A related problem arises from the fact that the nature of the storage service which will be offered by Midwestern in the event the project should be successful is not determined at this time. The additional peak capacity made available by storage could be used to render additional firm contract-demand service, or it could be used to render a special storage or winter service. If the latter alternative were authorized, the Commission might conceivably determine that only the customers who availed themselves of such special storage service should pay for it. Yet allowance of Midwestern's proposed adjustment, with its before-the-fact recovery from *all* customers, would frustrate any such determination.

7) Finally, since Midwestern will include these expenditures in its rate base, the proposed adjustment raises the possibility of a double recoupment unless some specific procedure were worked out to avoid any such result.

Midwestern recognizes that problems of this nature are inherent in its proposal. It emphasizes, however, that it does not seek a windfall but seeks only to protect itself against a possible loss in the event the project should prove infeasible; that accordingly it would be satisfied with any practical procedure providing the requisite protection both to itself and to its customers. In order to avoid some of the problems raised above, such as the possibility of double

recoupment, the failure to reflect offsetting sales, and the charging of present customers who may ultimately not benefit from the storage service, Midwestern suggests the adoption of a condition which would require it, in the event of a successful project, to do one of the following: (a) refund any amounts previously collected under the proposed adjustment, *or* (b) reduce its rate base by crediting to the depreciation reserve the amounts already recouped. With respect to the other problems outlined above, it suggests that any such possibilities could similarly be forestalled by adding some appropriate additional condition to the Commission's order.

The Staff correctly characterizes these recommended solutions as "awkward." It is true that some of these difficulties might be reduced under a condition requiring that in the event of a successful project the company would refund any amounts previously collected under the proposed adjustment—thus purportedly putting the parties back where they started.[7] However, this proposal in effect would require the company's present customers to play the role of lending agencies advancing the funds, interest free, for the storage project—despite the fact that they might conceivably wish to make some other use of their funds, and despite the further fact that they might not desire, be able or be allowed to use the storage facilities when they are finally developed.

In addition, it is to be borne in mind that the refund route is not necessarily an iron-clad protection to all customers, at all times, as emphasized by the U.S. Supreme Court in *F.P.C.* v. *Tennessee Gas Transmission Co.*, 371 U.S. 145 (1962). The Court there characterized the protection afforded consumers by the refund procedure as

> * * * somewhat illusory in view of the trickling down process necessary to be followed, the incidental cost of which is often borne by the consumer, and in view of the transient nature of our society which often prevents refunds from reaching those to whom they are due. (371 U.S. at 154–5)

Thus the effect of granting to Midwestern the "special treatment" and the "special protection" which it seeks here against any possibility of loss to itself, no matter how remote, would be simply to shift all risks to the consumers. In the face of these considerations, it is reasonable to ask what are the circumstances in this case which justify or require so substantial a departure from standard, normal regulatory and accounting practice. Does Midwestern in fact risk an unrecoverable loss by waiting to see what actually happens in the testing of its storage fields?

Midwestern describes its alleged problem as follows:

> Failure to permit Midwestern to recover its costs here may have the practical effect of precluding Midwestern from ever recovering these costs should the project prove to be infeasible. For, should the project turn out to be infeasible, there is a serious question whether the monies expended on the project would be allowed in a subsequent rate proceeding.
>
> Any attempt by Midwestern to recover these costs in such a proceeding might very well be met, as was Southern Natural Gas Company in its rate proceeding at Docket G–20509, by the claims of the Staff that these expenses constituted a non-recurring item and hence should not be allowed. (Initial brief, p. 33)

The salient fact about the *Southern Natural Gas Co.* case, however, is that the Commission in Op. No. 379, 29 FPC, *did* allow the storage development ex-

[7] The second device suggested would be even less satisfactory, in that it deals only with the problem of double recoupment.

pense item, on the ground that "the search for storage is an activity properly related to Southern's pipeline operations". In arriving at this position the Commission rejected a Staff contention that the item was non-recurring merely because Southern had transferred its storage development activities to a subsidiary. However, the language there used by the Commission in meeting an *ad hoc* argument by the Staff based upon the peculiar circumstances of that case, cannot be regarded as a policy determination that costs incurred in an unsuccessful search for storage, which the Commission characterized as "an activity properly related to * * * pipeline operations", may not subsequently be allowed as part of the company's jurisdictional cost-of-service in a later rate proceeding.

Midwestern's fear that in the event its instant storage project should prove infeasible it might later be confronted in a subsequent rate proceeding with a Staff contention that these expenses constituted a non-recurring item and hence should not be allowed, appears groundless in view of Staff's categorical assertions to the contrary in its instant initial brief, as follows:

> * * * Midwestern does *not* risk an unrecoverable loss by waiting to see what actually happens in the testing of the storage fields." (p. 9)
>
> * * * * * * *
>
> Mr. Walser's suggestion that the amortization expense might at that point be regarded as non-recurring * * * *is baseless.* (p. 13) [emphasis supplied.]

The Staff correctly points out, in this connection, that if Midwestern's own proposed adjustment is to be regarded as acceptable, even though it represents an allowance (on an amortized basis) for an expense which will not recur in the same form once this storage project is terminated, then there is no logical basis for suggesting that the same expenditure becomes non-recoverable merely because it is not charged until the total development operation is completed.

The doubt expressed by Midwestern would appear to be particularly groundless in view of the position taken by the Commission on a similar item in Op. No. 326, El Paso Natural Gas Co., 22 FPC 260, 264 (1959), as follows:

> With respect to the item "Other Gas Supply Expense" the presiding examiner accepted El Paso's figure which included the amount of $47,919, representing *an investment for gas supply made* with the Gresham-Hunter Corporation *in 1952, now determined unrecoverable. While this particular item is non-recurring, it represents the kind of expenditure which should be recognized in cost of service,* so that we shall accept El Paso's and the presiding examiner's total amount of $103,950, for Other Gas Supply Expenses. [Emphasis supplied.]

Any other position would appear to be inconsistent with the accounting treatment prescribed for such expenditures in Account No. 822 of the Commission's Uniform System of Accounts, which provides:

> This account shall include expenses of investigation, exploration, and development of underground storage projects under consideration *which prove not feasible.* [Emphasis supplied.]

Under these circumstances it is concluded that the risk to Midwestern is not such as to justify an adjustment representing so substantial a departure from standard, normal regulatory and accounting practice, where the interests of the ratepayers might conceivably be seriously prejudiced.

C. *Allocation of Indirect Administrative and General Expense*

Midwestern's parent, Tennessee, incurs certain indirect administrative and general (A&G) expenses which allegedly do not lend themselves to breakdown or direct charge to any particular division or subsidiary company. Such indirect expenses include the expenses of the Administrative, Corporate, Accounting-Corporate, Internal Audit, Industrial Relations, Legal, Office Service, Treasury, Public Relations and Advertising, Purchasing and Transportation, and Tax Departments of Tennessee. In determining what portion of such total indirect A&G expense should be assigned to Midwestern, the latter employs the so-called Massachusetts formula under which equal weight is given to each of three factors—labor, revenue and property. The Staff, however, contends that the allocation in this proceeding should be made on the basis of the single factor of labor alone. The dollar difference between these two approaches amounts to $191,810. (Exh. No. 25, Sch. 2, Col. 8)

In Tennessee's most recent rate proceeding at Docket G–19983, the Company similarly employed the Massachusetts formula for this allocation, and the Staff witness there concluded, subject to some modification of the mechanics of application, that the three-factor Massachusetts formula did produce a reasonable result in that case. However, Staff vigorously attacks the use of this approach in the instant proceeding.

In recommending continued adherence to the Massachusetts formula in the instant proceeding, Midwestern recognizes that this method does not achieve a perfect allocation of indirect A&G among the several divisions and subsidiaries of Tennessee, and that "probably no formula can be devised which can achieve such a result." However, it contends that the three-factor Massachusetts formula results in a more equitable and reasonable allocation than other possible methods, especially the single factor labor formula here espoused by Staff. In support of this position, Midwestern alleges that the use of the Massachusetts formula is particularly appropriate for an operation which is as complex and diverse as that of Tennessee; that when the companies among which the indirect A&G is to be allocated are dissimilar (as in the case of the Tennessee subsidiaries), the several factors have an impact which varies widely from company to company so that reliance upon only one factor results in a sharp tendency to produce distorted results; whereas the use of multiple factors serves to minimize such distortions.

The Staff, however, argues that there is no virtue in diversity of factors in and of itself; that each factor included in the average must have its own individual claim to validity as an index of the manner in which the joint A&G expenses are incurred; that a factor which is totally invalid as an index does not acquire some validity merely because it is averaged in with other factors. The Staff then attempts to demonstrate that the *revenue factor* is totally invalid as an index; that this is fatal to the usefulness of the Massachusetts formula in the instant case, because the dollar difference between Midwestern and Staff on this issue is almost entirely due to the alleged distortions which the *revenue factor* produces in the allocation of indirect A&G expenses among the three utility entities—Tennessee Pipeline, East Tennessee and Midwestern.

Staff's attack upon the validity of the revenue factor as an index centers upon the fact that the amount of gross revenues which a pipeline collects is dependent upon two factors which allegedly have nothing whatever to do with the incurrence of A&G expenses—*i.e.*, (1) the level of purchased-gas costs paid by the company (which constitutes a major portion of the pipeline company's total cost of service, and accordingly has a major impact upon the level of its rates), and (2) the capacity factor at which the company operates.

This Staff analysis, however, overlooks the critical distinction between the *nature of the expenses* which go to make up indirect A&G, and the *services performed in the incurrence of these expenses*. It is the *latter* which should be determinative in the allocation of indirect A&G, *not the former*. Although it is the salaries paid to officers and employees which in large measure give rise to the indirect A&G, these officers and employees typically devote their time and effort to matters relating to *revenue* and *property*, as well as to labor. The fallacy in the Staff analysis is that the relative level of gross revenues, *regardless of how it came about, does* have a bearing upon the extent of the services performed for a given company in the Tennessee system by personnel in such departments as the Treasury, Accounting and Tax Departments. For example, revenue clearly is of concern to the Treasury Department which must collect, manage and invest the gross revenues; to the Accounting Department which must account for it; and to the Tax Department which must prepare and file tax returns based on revenue. There can be no question but that the departments of Tennessee which are included in indirect A&G devote a substantial proportion of their time to the various aspects of the *revenue* problems of the Tennessee divisions and companies.

Thus, although it seems clear that the revenue factor, if applied alone, is subject to various defects and inadequacies, it does have validity in several pertinent respects. Accordingly, we cannot agree with the Staff conclusion that the revenue factor *per se* is so totally invalid as to fatally contaminate any method of allocation which in any way reflects that factor.

In arriving at its conclusion that it is the *labor* factor alone which successfully withstands critical examination, Staff relies upon the following purported rationale:

> When each entity uses its own separate staff for certain functions and uses the central organization for more specialized services, the relative amounts expended by the entities on their separate staffs are indicative of the portion of the costs of the central organization which is attributable to each particular entity. (Initial brief, p. 21–22)

Although this statement has an impressive sound upon a superficial reading, it actually goes no farther than to state a *conclusion*—to which the natural reaction would seem to be, "*Why?*" It completely overlooks the critical distinction, referred to above, that it is the nature of the services performed in the incurrence of particular A&G expenses which should be determinative in the allocation of such expenses. It seems obvious that certain types of services performed in the incurrence of particular A&G expenses would have no relationship whatsoever to, and would be totally unaffected by, the relative size of the payrolls of different entities for their own separate labor force.

Accordingly, just as it is possible to point to various defects and inadequacies applicable to the revenue factor if applied alone, cross-examination of Staff witness Blake made it clear that the labor factor, when used alone, also carries its share of blemishes, flaws and defects. Staff's confident conclusion that the labor factor "successfully withstands critical examination" is somewhat deflated by the concessions extracted from its own witness Blake during cross-examination as follows:

(1) When asked why the salary and other expenses of Tennessee's Legal Department are more closely related to direct labor of Midwestern than to such factors as revenue and property, Blake replied:

> * * * when you take such items as the legal department expense, it would require a very close analysis to determine whether the plant, the

revenue or the labor was the controlling factor. Now, certainly all three would contribute. As to which one on this particular department would govern, I do not know, and I could not tell without a thorough analysis of it. (5: 905)

(2) In response to a similar question with respect to the salaries and other expenses of Tennessee's Treasury Department, Blake replied:

Certainly on the treasury department it would be a very, very difficult thing to say. (5: 907)

(3) With respect to the Administrative Department, although he adhered to the view that this department was more concerned with labor than with property or revenue matters, he would not go so far as to say that the expenses of the Administrative Department had no relation to the revenue at all. Going even further, he agreed that in determining the allocation of A&G expense relating to an officer in that department whose functions were related largely to sales, "revenue would be a very strong factor." (5: 910)

In dealing with this issue, the most impressive and inescapable fact which emerges is that when an attempt is made to look separately at the different and varying types of A&G expense which must be allocated, a myriad of situations are encountered where no one can say with confidence that the services performed in the incurrence of such expenses are all related to one factor, or to another factor, or are more related to one factor than to another. Under these circumstances, it is difficult to see how the use of a single factor formula can be regarded as practicable or satisfactory.

The next effect of all the zealously controverted testimony and the heated and extended discussion of this issue in the briefs of both Staff and Midwestern appears to be that *none* of the methods considered is entirely satisfactory; that use of the revenue factor alone involves numerous flaws and defects, but use of the labor factor alone is subject to the same difficulty; and that those defects indentifiable in the use of any one factor alone are of course reflected in a method using all three factors (although to some extent the three-factor method does serve to minimize the distortions inherent in the use of a single factor).

Staff's initial brief accordingly concludes by asserting that no single indirect allocation factor or combination of such factors is capable of yielding entire satistion here; that Staff's long-range hope for a solution lies in the undertaking of more detailed studies which will indicate rational bases for the *direct* assignment of the great bulk of A&G costs; that because of this conclusion the Commission's Chief Accountant had invited officials of Midwestern to participate in a conference, scheduled for November 19, 1963, to discuss the entire problem, in an effort to see if it would be possible to develop sufficiently detailed information as to the manner in which A&G costs are actually incurred in the Tennessee system "to obviate the need for reliance upon arbitrary factors of any sort in future rate proceedings." (Initial brief, p. 29–30) Curiously, however, Staff's reply brief, filed December 27, 1963, makes no reference whatsoever to any such conference.

The total dollar amount ($191,810) represented by this particular issue in the instant proceeding actually is relatively minor as major rate cases go. The circumstances presented here do not justify a labored attempt to determine which one of the two admittedly "not entirely satisfactory" approaches should be given a "comparatively less *un*satisfactory" rating for the limited purposes of this case—while the search for a really useful and acceptable alternative goes on. Confronted with this type of situation, it is concluded that the commonsense and fair approach for the time being would be to continue to adhere to the

three-factor method (the Massachusetts formula) which the Staff itself was satisfied to use in the last Tennessee rate proceeding (G–19983)—until such time as the Staff's projected "more detailed studies" on this subject may produce a more useful solution. This would particularly appear to be acceptable as an interim solution in view of the fact, demonstrated by Midwestern's Exh. No. 26, that for the five years 1957 through 1961 Midwestern, using the Massachusetts formula, shows a *lower* relative A&G expense, under seven significant and basic tests, than the average for all other natural gas pipeline companies.

D. *Normalization of Labor Costs Charged to Operations and Maintenance*

During the test year Midwestern charged $1,066,336 to operations and maintenance as a current expense, and $157,042 was capitalized in the Construction Work in Progress Account. (4:685) Midwestern contends that with the construction of its pipeline system virtually completed, the $1,066,336 figure for labor charged to operations and maintenance is not representative of what may be expected in the future, and requires an upward adjustment. Although there is no disagreement between Midwestern and the staff that some adjustment is required, the amount of the adjustment is in dispute. Midwestern recommends an adjustment of $82,484, while Staff proposes $42,083—a difference of $40,401.

Staff's $42,083 adjustment is designed to reflect the *average increase* in expensed labor in a representative recent period following the close of the test year. Staff witness Parks, in rebuttal testimony distributed in June 1963, calculated the adjustment on the basis of the most recent data available at that time, covering the 10-month period following the test period—*i.e.*, July 1962 through April 1963. (4:685) The total dollar amounts for labor charged to operations for this period produced a monthly average of $91,600. Parks subtracted from this figure the comparable average monthly amount for the test year ending June 30, 1962, amounting to $88,861. The resulting difference of $2,739 represented the average increase in expensed labor during the 10-month period following the end of the test year. He multiplied this figure by 12 to obtain an annualized projection in the amount of $32,868. He finally added $10,000 to this figure "for good measure" (Staff initial brief, p. 15), to obtain his recommended adjustment in the amount of $42,083.

During Parks' cross-examination, Midwestern counsel supplied for the record the May 1963 figure for labor charged to operations, amounting to $94,309. (4:729) It is safe to assume that if the June 1963 figure were also available, and if the adjustment were therefore recalculated on the basis of the full 12 months following the test period, the result would still fall far short of the $42,083 adjustment here recommended by Staff.

By contrast, Midwestern witness Walser obtained his recommended adjustment of $82,484 by using only the first 5 months of 1963 (January through May). He annualized the 5 months' figures for labor charged to operations for that period, obtaining a total labor cost of $1,148,820. The difference between that figure and the $1,066,336 charged during the test period amounted to $82,484, which represents the adjustment here proposed by Midwestern. (7:1165)

The simple issue presented here is whether the instant adjustment should be derived on the basis of Midwestern's actual experience for the 10- or 12-month period immediately following the end of the test year, or whether it should instead be computed on the basis of the company's experience for the 5-month period of January through May 1963. The answer to this question hinges upon which of the two periods may be regarded as more reasonably representative of what Midwestern may be expected to experience in the future.

Midwestern contends that the 5-month period of January through May 1963 is more representative, because there has been since the beginning of 1963 a stabilization in the number of its employees, both generally and those engaged in operations; that, however, during the first part of the post-test-year period used by Staff, there were still significant variations in the number of employees, which one would expect in the shakedown of a new company. Staff, however, points out that a similar kind of stabilization has also occurred in past periods—*i.e.*, the corresponding 5 months of 1962.

Midwestern also calls attention (rebuttal brief, p. 44) to the fact that the Parks table shows that both in the test year and the 10-month period following, the average labor operation expenses for the months of November and December were well below the *monthly average* for those periods. The suggested implication seems to be that the November and December experience was abnormal and not representative, and that accordingly it is more appropriate to use the 5-month period of January through May, 1963. This Midwestern argument overlooks the inevitable and basic characteristics inherent in any calculation of averages, where it is to be expected that some of the constituent figures will be above the average level and some below. The fact that figures for other months of the year may fall below the average monthly figure of $96,000 derived for Midwestern's selected period of January through May 1963 does not establish that the experience for such other months is unrepresentative of what may be expected in future years *during the same seasons.* Rather, it suggests merely that Midwestern's selected 5-month period of January through May is not calculated to produce averages which are representative of what may be expected throughout an entire calendar year in the future.

This seems obvious upon an examination of the Parks table. (4:685) In both the test year and the 11-month period following the test year, the figures for the months of January, February and March were substantially higher than the figures for the remaining months in each of those periods.[8] The other months used by Midwestern, of April and May, similarly showed higher figures than the remaining months in both the test year and in the 11-month period following the test year, with the exception of the month of June in the test year and the month of October in the period following thereafter.

In view of the above, and under standard and accepted principles of ratemaking, it is concluded that our objective of obtaining a figure representative of what Midwestern may be expected to experience in the future will be served more effectively if our calculation is based upon the company's actual experience during the 10- or 12-month period following the end of the test year, than by reflecting only the figures for the selected 5-month period of January through May 1963. Accordingly, the Staff's proposed adjustment in the amount of $42,083 will be adopted here.

E. *Legal Fees and Salaries for Legal Services*

1. *Salary—T. G. Corcoran*

Staff proposes elimination from operating expenses of an item of $29,906, representing salary paid to Thomas Corcoran who is employed as Midwestern's General Attorney. The total information provided by Midwestern with respect to Mr. Corcoran's services during the test year consisted of the following:

1) In advance of the instant hearing Midwestern indicated, in response to a Staff request, that

> Mr. Corcoran was on the payroll of Midwestern as General Attorney during the year July 1, 1961, to June 30, 1962 (test period), and has been

[8] With the exception that the month of June was also a high month in the test year.

so employed through the year 1962 to date (September 20th). The legal matters which he handled were general in nature. He does not maintain an office in Chicago, Illinois (General Office of MGT). The time spent on MGT matters was eight hours daily, also he was serving other clients during the period July 1, 1961, to June 30, 1962. (1: 43–44)

2) The sole justification provided in the direct testimony of Midwestern witness Walser consisted of the following:

The salary payments to Mr. Corcoran, who is the General Attorney of Midwestern, are, like those to all other Midwestern employees, supported by Mr. Corcoran's signed time reports. (3: 438)

3) Efforts by Staff counsel, during cross-examination of witness Walser, to obtain some more useful information than the vague and general statements quoted above, produced the following:

Q. * * * Mr. Walser, does Midwestern maintain any records which reveal in detail the nature of the work performed by Mr. Corcoran?

A. Only what would be reflected on his time sheets as an employee of Midwestern which he submits in a similar manner to other employees of Midwestern.

Q. What do the time sheets reveal, Mr. Walser?

A. They reveal the hours he has spent from day to day through each time period, payroll time period devoted to general legal matters of Midwestern.

* * * * * * *

PRESIDING EXAMINER: Mr. Walser, when you stated a moment ago * * * that you have submitted to the staff Mr. Corcoran's signed time reports and that these time reports showed the hours of work devoted by Mr. Corcoran to legal matters for Midwestern, do those reports show in any way the nature of the legal matters on which Mr. Corcoran devoted his efforts for Midwestern?

The WITNESS: No. They show general attorney, his title, and the hours, which is similar to the same information furnished by all administrative employees of Midwestern. (7: 1121–2)

* * * * * * *

Q. Mr. Walser, what services in fact did Mr. Corcoran render to Midwestern during the test year that were useful to the utility business?

A. As I understand from discussing it with the President of the company * * * Mr. Corcoran has exercised general overall supervision of the company's attorneys, supervision of general legal matters involving Washington activities; he keeps Midwestern's officers and any other legal counterparts advised of regulatory developments in Washington that may be of concern to Midwestern or of possible concern to Midwestern, he has conferred regularly with the president of the company again on general legal matters as they may relate to Midwestern's operation.

Q. With whom did he confer during the test year in connection with your last statement?

A. I can't give you specifics as to whom or when. He has conferred, I know, from time to time with Mr. George Perrine, who is *now* president of the company, during the test period was attorney and consultant. (7: 1123–24) [Emphasis supplied.]

An identical issue with respect to legal fees paid to Mr. Corcoran arose in an earlier rate proceeding involving Midwestern's parent, Tennessee Gas Transmis-

sion Co., Docket No. G–5259. This Presiding Examiner there adopted the Staff's position that the company had failed adequately to meet the burden of explaining and supporting the nature and character of the services performed, and that the information provided was of such vague and general character that it was not possible to determine whether the charges were of the type which may properly be passed on to the ratepayers. (18 FPC 497–9) The discussion of this matter in the *Tennessee* decision, *supra*, is equally applicable here, and it is adopted for the purpose of the instant decision. The Examiner's conclusions on this issue in the *Tennessee* case were affirmed and adopted by the Commission on appeal. (18 FPC 435)

The information provided by Midwestern in the instant case with respect to the Corcoran fees, and the nature of the services to which they relate, plainly does not rise to the dignity of

> such detailed information as will permit ready identification, analysis, and verification of all facts relevant thereto. (Uniform System of Accounts, General Instructions, par. 2A, p. 3)

The mere fact that Mr. Corcoran is now listed as an "employee" of Midwestern on its Form 2 statement filed with the Commission (7: 1125)—as distinguished from the *Tennessee* case, *supra*, when he was listed as outside counsel—does not in any way change or diminish the responsibility of the company to provide such detailed information.

Here, as in the *Tennessee* case, Midwestern elected to confine its description of the services rendered to the vague and general explanation here provided. In choosing that course the company necessarily falls short of sustaining the burden of proof imposed on it under the Natural Gas Act. This can come as no surprise to the company, since in adhering to that course in the instant case Midwestern was fully aware that the identical course had resulted in a disallowance of similar charges in the earlier rate proceeding of its parent, Tennessee, involving the services of the same counsel.

2. *Retainer—Little, Presbrey and Ohse*

Staff also proposes to eliminate from operating expenses an item of $14,300, representing a legal retainer paid to the Illinois law firm of Little, Presbrey and Ohse, which is Midwestern's State Counsel for Illinois. Staff contends that the company's purported justification for this item reveals similar inadequacies to those dealt with above, and falls far short of satisfying the reasonable standard of "full information" established by the Uniform System of Accounts.

Midwestern contends that it has a very large investment in plant in Illinois, and that it is necessary that it retain competent counsel familiar with local law for advice and representation on legal problems which may arise in that State, and to keep it abreast of local matters which may affect its interests. The record shows that in addition to providing general legal advice to problems arising in Illinois, the firm of Little, Presbrey and Ohse provides advice as to the hiring of local counsel in the counties of Illinois where the company operates, and acts as the coordinator of legal work performed in various parts of the State on behalf of the company in connection with rights of way problems, damage claims, and opinions needed for local counsel in connection with financing. The firm is responsible for keeping Midwestern abreast of legislative and regulatory matters which may affect its interests, including matters before the Illinois Commerce Commission. Certain of these services were performed during the test period, and the record shows that Midwestern expects to continue to rely on this firm for such services. (1: 41–2; 3: 438–9; 7: 1133–5) Among other

things, Staff (initial brief, p. 7) questions the need for such a retainer on the ground that Midwestern does not pay similar retainers in other states, and on the further ground that the company employs other counsel than Little, Presbrey and Ohse in Illinois. However, Midwestern correctly notes that since it has a large investment in plant in Illinois, and is searching for underground storage in that state, it is not unreasonable for the company to expect continuing legal problems to arise in that state.

It is concluded that the information provided with respect to this modest charge is reasonably sufficient to satisfy Midwestern's burden of proof here; that the situation does not warrant further soul-searching or further questioning of the company's managerial discretion as to where counsel will be needed and what legal service will be required. Accordingly, the $14,300 legal retainer paid to the firm of Little, Presbrey and Ohse will be allowed as a proper operating expense.

There remains to be considered the question whether in computing Midwestern's Federal income tax allowance a deduction should be made for the $29,906 Corcoran legal salary item which is here disallowed as an operating expense. Staff contends that disallowed legal fees and salaries *should* nevertheless be reflected as income tax deductions, under the basic principle that the income tax allowance may not exceed actual tax liability.

The effect of disallowing the Corcoran legal salary item as an operating expense is that the stockholders of Midwestern, rather than the ratepayers, will be required to bear the entire burden of this particular expenditure. Under the circumstances, it is concluded that equity requires that the tax saving inuring to the company by use of this deduction on its tax return should be retained for the benefit of the investors.

As pointed out in Midwestern's reply brief (p. 48–49), a number of State regulatory commissions have adopted this principle in cases where charitable contributions were excluded from the cost of service, holding that under such circumstances equity required crediting the tax deductions for such charitable contributions to the investors. *Manufacturers Light & Heat Co.*, 34 PUR 3d 132, 142 (W. Va. PSC 1960); *Hope Natural Gas Co.*, 33 PUR 3d 335, 340 (W. Va. PSC 1960); *Pub. Util. Com'n.* v. *Bell Telephone Co.*, 16 PUR 3d 207, 256–7 (Pa. PUC 1957); *Mich. Consol. Gas Co.*, 5 PUR 3d 449, 462, 463–4 (Mich. PSC 1954). The same principle is applicable here. Accordingly, the disallowed Corcoran legal salary item will not be reflected as a tax deduction in computing Midwestern's income tax allowance.

II. Depreciation Rate

In Midwestern's original certificate proceedings (Docket No. G–16841, *et al.*, Op. No. 320, and Docket No. G–18313, *et al.*, Op. No. 331) the company proposed initial rates reflecting a 3.5% depreciation rate for both its Southern and Northern System transmission properties, and it has booked depreciation at that rate since the inception of service on both systems. In the instant proceeding, however, Midwestern contends that a proper and reasonable depreciation rate for its Southern System would be 3.6 percent, and for its Northern System would be 4 percent. Staff, on the other hand, recommends the adoption of a 3.125 percent depreciation rate on Midwestern's transmission properties, for both systems. The difference between these conflicting approaches amounts to $594,460, on an annual basis.

A. *Midwestern's Southern System*

In the last rate proceeding involving Midwestern's parent, Tennessee Gas Transmission Company, Docket No. G–19983, it was agreed and concluded that in a depreciation rate determination the controlling factor affecting the service life of the company's transmission properties was the exhaustion of gas reserves, that this would occur prior to the end of the physical life of the properties, and

that accordingly the remaining economic life of the system should be used as the basis for determining the depreciation rate. The same principles are controlling here.

Midwestern contends that the remaining life of its Southern System is dependent upon Tennessee's remaining life, since Tennessee is Midwestern's sole supplier on the Southern System. Both Midwestern and the Staff are in agreement that in one way or another the facts with respect to Tennessee are of crucial importance in determining the depreciation rate for Midwestern's Southern System. However, they are in sharp disagreement as to how and to what extent the Tennessee experience is to be used here.

In the last Tennessee rate proceeding (G–19983) an initial decision issued by this Presiding Examiner (May 28, 1962) approved a depreciation rate of 3.12 percent for Tennessee's transmission plant, based upon an assumed 30-year remaining life from December 31, 1956. In a subsequent general rate settlement, approved by Commission order of December 21, 1962, Tennessee accepted this 3.12 percent depreciation rate and has booked depreciation on all its transmission properties at that rate since that time.

In the instant case Midwestern witness Davis, using as his point of departure the same 30-year remaining life from December 1956 which was the basis for the 3.12 percent depreciation rate determination in Tennessee's Docket No. G–19983, derived a 26-year remaining life for Tennessee from December 31, 1962, by virtue of reflecting all recent plant additions in the total Tennessee depreciable plant to be recovered. He calculated that if the same remaining life of 26 years as of December 31, 1962, were to be used for the Midwestern Southern System transmission properties, a depreciation rate of approximately 3.6 percent per annum would be necessary to recover the undepreciated depreciable plant on that System (3:500; Exh. 28, Sch. 8). Davis accordingly concluded that a 3.6 percent depreciation rate is justified for Midwestern's Southern System transmission properties.

The Staff, however, approaches the problem in an entirely different manner. The heart of the Staff position is that Midwestern should be required to depreciate its Southern System transmission property at the same 3.12 percent rate fixed for Tennessee, as if Midwestern were operated as a part of the Tennessee system rather than through a separate corporation—on the theory that

> Unless compelling reasons can be shown, we oppose any rate advantage to Midwestern which arises from the fact that its service is being rendered by a separate corporation rather than by Tennessee Gas Transmission Company itself.

The Staff notes that Tennessee has made vast amounts of *new plant additions* since 1957; that in 1959 alone, the year in which Midwestern's Southern System was constructed, Tennessee made transmission plant additions which far exceeded in cost the entire transmission plant which Midwestern eventually constructed; that the agreed depreciation rate of 3.12 percent which was adopted for Tennessee in its December 1962 rate settlement is applicable to and has been used by Tennessee for all its transmission properties, including such new plant additions; that accordingly if the present Midwestern transmission facilities had been operated as part of the Tennessee system in 1962, rather than through a separate corporation, they would have been included within the mass of Tennessee property to be depreciated at the 3.12 percent rate and would still be subject to that rate today. In this connection, Staff notes that by definition the "remaining life" of each Tennessee unit of plant addition at the moment of introduction into the plant accounts is about 30 years (*i.e.*, 100 percent of the cost, divided by the 3.12 percent depreciation rate);[9] that accordingly it would take until the year 1992 to recover the full cost of a 1962 plant addition at the same 3.12 percent depreciation rate. The inference left is that under these circumstances Tennessee's willingness to "go along" with the same 3.12

[9] The figure of 30 years, rather than 32 years, results from the reflection of 0.2 percent for interim retirements.

percent depreciation rate for its new plant additions renders obsolete and meaningless the original assumption of a 30-year remaining life *from 1956*, running to the end of 1986, upon which the established 3.12 percent depreciation rate was founded. In this same connection, Staff notes that neither Tennessee nor Midwestern have claimed any changed circumstances rendering the 3.12 percent depreciation rate inappropriate for Tennessee, nor have they urged a reevaluation of the 3.12 percent rate.

It is concluded, however, that the Staff argument assumes too much. Midwestern's Southern System actually did not commence operation until the latter part of 1959, subsequent to the end of the test year used in Tennessee's G–19983 rate proceeding. If it had in fact been in operation during that test year, and if a proposal had been made in the Tennessee G–19983 proceeding to include and reflect the Midwestern system in that depreciation rate determination, serious objections would have been raised on the ground that Midwestern was a separate system serving a separate market area, that if Midwestern's newer plant were rolled-in with the Tennessee plant in determining the depreciation rate the result would inevitably have been a still higher depreciation rate, and that it would have been unfair to impose this upon Tennessee's customers who were in no way served by the Midwestern plant. If under such hypothetical circumstances the Midwestern facilities had nevertheless been treated as if they were a part of the Tennessee system, being rolled-in with the Tennessee plant in determining the depreciation rate, it seems axiomatic that a higher depreciation rate than 3.12 percent would have been derived for the combined Tennessee and Midwestern plants, by virtue of the addition of Midwestern's new and undepreciated plant to the total plant to be depreciated over the assumed 30-year remaining life period.

Similarly, Staff's argument based upon Tennessee's willingness to "go along" with the same 3.12 percent depreciation rate for its new plant additions assumes too much. Under the terms of Tennessee's G–19983 rate settlement the company agreed to make no rate increase filings prior to January 1, 1964. Subsequent to the expiration of this moratorium, there are many possible considerations which might impel the company not to seek a reopening of the depreciation rate question, despite substantial new plant additions since the last determination. As the Commission has said on numerous occasions, there is a value in rate stability—and the public interest would not be served by the reopening and relitigating of the company's depreciation rate level upon every occasion when there was a change in the factors or conditions underlying the original determination. Yet if the Staff's rationale were adopted here, Tennessee's failure to seek an adjustment of its previously determined 3.12 percent depreciation rate upon the acquisition of substantial new plant would be converted into a confession of weakness, militating against Midwestern's right to have its own depreciation rate considered upon the merits. Such an approach would not appear to be conducive to rate stability.

In considering the appropriate depreciation rate for Midwestern's Southern System transmission properties upon its own merits, we agree with Midwestern witness Davis' starting assumption that the remaining life of Midwestern's Southern System is dependent upon Tennessee's remaining life, since Tennessee is Midwestern's sole supplier on the Southern System "and presumably will be the sole supplier for many years down the road." (9: 1356–8) In Tennessee's G–19983 rate proceeding the company contended that its remaining life should be determined rigidly on the basis of the then existing reserve-life index of the acreage under contract to it, amounting to 24 years from December 1956, and this was the basis for its claimed 3.5 percent depreciation rate in that proceeding.

However, in the initial decision rendered in that case (May 28, 1962) this Presiding Examiner rejected the use of the strict reserve life index for that purpose, and instead rested his determination of Tennessee's remaining life upon the best available estimate of the probable duration of gas supply, including projected future discoveries, in the general producing areas to which the Tennessee pipeline would have access—as urged by the Staff. Despite testimony by a Staff witness in that proceeding estimating that the volumes of gas to be discovered would be sufficient to keep Tennessee's existing transmission system in operation to the year 2010, and that the company in any event had a remaining economic life in excess of 50 years, the Staff there concluded that any such prediction as to the company's future gas acquisitions must of necessity be speculative. The Staff accordingly recommended, as a matter of "judgment," that a "quite conservative period of 30 years" should be used to depreciate Tennessee's transmission properties, and proposed adoption of a 3.12 percent depreciation rate on that basis.[10] The Presiding Examiner's initial decision adopted this Staff position in approving the 3.12 percent depreciation rate, which later was incorporated in the Tennessee settlement.

It is important to note here that Staff does not contend in the instant Midwestern case that the 30-year remaining life estimate for the Tennessee system (from and after December 1956), which it regarded as appropriate for the purpose of the 3.12 percent depreciation rate determination in Tennessee's G-19983 proceeding, requires revision or adjustment at this time, or that it should be reopened and reexamined in this case. Accordingly, no evidence whatsoever was presented by any of the parties on this question in the instant hearing. Under these circumstances it is concluded that it would be inappropriate, on the record made in this case to treat the 30-year remaining life determination which was adopted in Tennessee's G-19983 proceeding as a matter lightly to be ignored, to be replaced by an assumption (totally without record support) that if Tennessee's depreciation rate were to be redetermined today it would be held that Tennessee's remaining life was still 30 years or longer, running from the instant date.

It is accordingly concluded that Midwestern witness Davis correctly computed the depreciation rate for its Southern System on the basis of a 26-year remaining life for Tennessee's transmission properties as of December 31, 1962. On this basis, and by strict mathematical computation, Davis found that a depreciation rate of approximately 3.63 percent was required, and he accordingly concluded that a 3.6 percent depreciation rate was justified for Midwestern's Southern System. This rigid mathematical calculation, however, overlooks certain equally relevant factors—*i.e.*, the fact that the 30-year remaining life estimate employed for Tennessee in Docket No. G–19983 was recognized as a "very conservative" estimate, the fact that Midwestern witness Davis in deriving his 3.6 percent figure reflected no salvage value at all for the Midwestern plant, and the fact that Midwestern itself has booked depreciation for its Southern System at a 3.5 percent rate since its inception. Giving weight to these considerations, it is here concluded that the depreciation allowance for Midwestern's Southern System in the instant cost of service should be computed on the basis of a 3.5 percent depreciation rate.

The use of a 3.5 percent depreciation rate for Midwestern, as compared with Tennessee's 3.12 percent rate, is not surprising in view of the fact that the average age of the Tennessee plant is 8.65 years, as compared to 3.14 years for Midwestern. It is understandable that where the average age is substantially different as be-

[10] See initial decision in *Tennessee Gas Transmission Company*, Docket No. G–19983, May 28, 1962, at mimeo. pages 86–87. [Unreported]

tween two companies, the depreciation rates will be different in order to depreciate the properties over the same remaining life (all other factors remaining equal).

B. *Midwestern's Northern System*

The Staff recognizes that the determination of a depreciation rate for Midwestern's Northern System requires a consideration of different factors, since "the utility of Midwestern's Northern System is dependent upon the continued flow of gas from Canada." (Initial brief, p. 43) Under these circumstances any estimate as to the remaining life of Midwestern's Northern System must depend upon the assumptions which are to be made concerning the duration of Canadian natural gas supplies.

Midwestern purchases gas for its Northern System from Trans-Canada Pipe Lines, Ltd., under a contract which expires December 15, 1985. Trans-Canada, in turn, holds an export license from the National Energy Board of Canada which expires May 14, 1981. Since Trans-Canada is not subject to the Commission's jurisdiction, it is agreed that Trans-Canada would not require any Sec. 7(b) authorization from this Commission in order to discontinue deliveries to Midwestern at the end of the contract term. It is further agreed that continuation of deliveries by Trans-Canada after May 1981 would be dependent upon an extension of the export license granted by the Canadian National Energy Board; and that such an extension cannot be granted under the Canadian law unless the gas to be exported is shown to be surplus above reasonable foreseeable Canadian needs, taking account of the trend of Canadian discoveries.[11]

Midwestern witness Davis concluded that it was reasonable to assume that Trans-Canada's export license will be extended 4 years to 1985 in order to permit that company to live up to its contractual obligations to Midwestern. Beyond that, however, he emphasized that no one can know what the Canadian gas supply picture will be in 1985; that presumably, if there should be more than enough Canadian gas to meet Canadian requirements at that time, gas would continue to be exported; that on the other hand, if there were not a sufficient surplus above Canadian requirements in 1985, it is reasonable to expect that the export of gas to the United States might not continue to be authorized beyond that date. Under these circumstances, Midwestern contends that the depreciation rate for its Northern System should not be based upon a speculative assumption that deliveries will continue to be made to it by Trans-Canada for a number of years beyond the contract term, but rather that the determination should be made on the basis of the more conservative assumption that deliveries by Trans-Canada will not be continued beyond the present contract term of 25 years, subject to later adjustment if, at some future date, more firm assurance is provided of continued deliveries. On this basis, Midwestern concludes that the appropriate depreciation rate to be fixed for its Northern System at this time, based on the 25-year contract term, is 4 percent.

Staff, however, contends that circumstances at the present time do not warrant determination of Midwestern's Northern System depreciation rate on the basis of so pessimistic an assumption as to the duration of the Canadian supply. In the Staff's view the only real question to be resolved here is whether it is reasonably to be expected that at the time when an extension of the Canadian export license may be sought there will be available sufficient "surplus" gas—*i.e.*, gas not needed for reasonably foreseeable Canadian uses after taking account of the trend in Canadian discoveries. Staff argues that in considering this

[11] National Energy Board Act, 1959, Sec. 83; Staff initial brief, p. 43–44.

question it would be a mistake for the Commission to close its eyes to the information which is now available and which strongly indicates where the probabilities lie.

In this connection, Staff calls attention to certain findings with respect to Canadian gas supply and requirements as set forth in the Canadian National Energy Board Report to the Governor in Council, filed March 1960, on applications by Trans-Canada and other Canadian companies for licenses to export natural gas to various areas of the United States. The National Energy Board Report concluded that there was a surplus of 9.3 trillion cubic feet of established reserves above the *then* Canadian requirements (Sec. 12, pp. 3 and 7), and that there was "a surplus of some 46 trillion cubic feet estimated *for 1989* having regard to the trends in discovery of gas in Canada." (Sec. 4, p. 12–13; Sec. 12, p. 7) [Emphasis supplied.]

While taking cognizance of these findings by the Canadian National Energy Board, Midwestern in its initial brief contends that the Board estimate of a surplus of 46 trillion cubic feet in 1989 related merely to "the Canadian requirements at the time the application was being considered" and that the Board did not consider whether there would be a sufficient surplus of gas above *future* Canadian requirements as of 1989. (Initial brief, p. 21–22) Midwestern is clearly in error here. The Board's estimate of a surplus of 46 trillion cubic feet in 1989 was characterized as "in excess of *future* Canadian requirements." (Sec. 4, p. 13) It was based upon an estimate of Canadian demand for gas over the 30-year period 1960 to 1989, amounting to some 30.3 trillion cubic feet, which in turn was calculated on the basis of an annual demand expected to rise from approximately 365 billion cubic feet in 1960 to approximately 1.6 trillion cubic feet in 1989. (Sec. 2, p. 4; Sec. 12, p. 1; Table 1)

Midwestern further contends that the Board found:

> that Trans-Canada's estimated deliverable reserves were less than needed to meet its full estimated requirements and indicated that there would be significant shortages beginning with 1976. (Initial brief, p. 22)

These alleged shortages are characterized as "significant shortages in deliverability both on a peak and annual basis beginning in 1976." (Reply brief, p. 21)

The language found in the Board's report, however, has a somewhat different flavor. In referring to Trans-Canada's own estimate of deliverable gas from its established reserves the Board stated:

> This would provide for contracted and non-contracted but anticipated sales of some 6,769 billion cubic feet with no significant shortages in either peak day or annual volumes until 1976. The total estimated shortage is 255 billion cubic feet or 3.8 per cent. (Sec. 5, p. 6)

On the next page of the report, however, the Board expressed the following conclusion:

> The Board believes that Canadian requirements are fully protected and that Trans-Canada will be able to purchase additional gas from the presently non-contracted reserves referred to and from new discoveries which should cover amply the estimated shortage of 255 billion cubic feet and the increments in demand after 1962–63. (Sec. 5, p. 7)

As noted at the beginning of this discussion, Trans-Canada's export license from the National Energy Board of Canada runs only to May 14, 1981. As pointed out in the Board's report (Sec. 5, p. 18), Trans-Canada's application was limited to this period since May 14, 1981 was the terminal date set forth in the permits previously issued to Trans-Canada by the Oil and Gas Conser-

vation Board of the Province of Alberta. However, Staff calls attention to the fact that in August, 1963 (subsequent to completion of the instant hearing on the cost-of-service issues) Trans-Canada filed with the Alberta Oil and Gas Conservation Board an application to extend all of its existing export permits from the present termination dates to 1989. (Initial brief, p. 46) Administrative notice may properly be taken of this development. We agree with the Staff's suggestion that there could be no serious question as to Trans-Canada's motivation to extend the sale to Midwestern upon the termination of their present contract. Thus it appears likely that in the event Trans-Canada's current application to the Alberta Board should be granted, Trans-Canada would be in a position to apply for an extension of its National Energy Board export license to 1989. We agree with the Staff's suggestion that under such circumstances there is little reason to doubt that such an extension would be granted, in the absence of an extraordinarily drastic change in the trends of either Canadian consumption or Canadian discoveries since 1960.

In view of all the circumstances set forth above, it is concluded that the depreciation rate for Midwestern's Northern System should be determined on the basis of a remaining life running to 1989, or 27 years from December 31, 1962. On the basis of such an assumption, the Staff recommends adoption of a 3.125 percent depreciation rate, but without any indication as to how such a figure is derived from a 27-year remaining life. A calculation based upon data set forth in Midwestern's Exh. 28 indicates that on the basis of a strict mathematical computation a depreciation rate of approximately 3.6 percent would be required to recover the undepreciated depreciable plant on Midwestern's Northern System on the basis of an assumed 27-year remaining life. However, certain other relevant factors should be considered here—*i.e.*, the fact that such a 3.6 percent calculation reflects no salvage value at all for the Midwestern plant, the fact that Midwestern itself has booked depreciation for its Northern System at a 3.5 percent rate since its inception, and the further fact that Midwestern itself has booked depreciation *at the same rate* of 3.5 percent for *both* its Northern and Southern Systems from the commencement of operations. Giving weight to these considerations, it is here concluded that the depreciation allowance for Midwestern's Northern System in the instant cost of service should be computed on the basis of the same 3.5 percent depreciation rate already approved herein for its Southern System.

The net result of here adopting a 3.5 percent depreciation rate for Midwestern's Northern and Southern System transmission properties is to produce a total depreciation expense allowance (including amortization) of $3,086,053—$264,733 less than Midwestern's proposed allowance, but $329,727 more than the Staff's proposal.

III. Working Capital

Staff has calculated a total gross working capital allowance of $452,604 (Exh. 55, Sch. 4), including allowances for working capital required for 45-days operating expenses, materials and supplies, and prepayments. Staff, however, does not include any allowance for gas purchase lag or minimum bank balances.

Midwestern originally claimed a total gross working capital allowance of $2,311,535. (Exh. 25, Sch. 7.2) This included $1,000,000 for average minimum bank balances. However, Midwestern now withdraws its request for a separate allowance for minimum bank balances, in view of its recognition (as pointed out by Staff) that the need for any such separate allowance is offset by *ad*

valorem tax accruals which are available in the average amount of $845,965. (Midwestern initial brief, pp. 4–5) [12]

Accordingly, Midwestern presently claims a total gross working capital allowance of $1,311,535. This includes $689,976 for a claimed lag associated with purchased gas costs, disputed by Staff. The remaining $621,559 of Midwestern's presently claimed gross working capital allowance exceeds the Staff's figure by $168,955. This $168,955 difference results not from any disagreement in principle between Midwestern and Staff on the theory of computing the working capital allowance, but from the fact that Staff has disallowed certain operating expenses claimed by Midwestern, thus producing a different computation of working capital required for 45-days operating expenses.

It thus appears that the only controverted issue of principle now presented with respect to the working capital allowance lies in Midwestern's claimed allowance of $689,976 for the lag associated with purchased gas costs.

As noted above, Midwestern claims a $689,976 gas purchase lag allowance, covering an alleged 5-day lag between its payments to its suppliers (Trans-Canada on the Northern System, and Tennessee on the Southern System) for purchased gas and its collections from its customers for the gas sold to them. Midwestern contends that it is required to pay its gas suppliers on or before the 25th of each month, under its contracts with them; that its contracts with its own customers also provide for payment by them to Midwestern by the 25th of each month, but that the Midwestern tariff provides that monthly payments "shall be considered as duly delivered when mailed by either registered or ordinary mail"; that since the customers' obligation is thus satisfied by depositing the check in the mail by the 25th, there is bound to be a lag until the check is actually received by Midwestern; that there is actually a lag of about 5 days between Midwestern's receipt of payment from its customers and its payment to its suppliers; that to make up for this lag, Midwestern needs the claimed allowance of $689,976, representing 5/365 of its total annual gas purchase expense, in order to avoid being placed in a position where it would have to write checks without yet having the covering funds on deposit in the bank.

Midwestern's allegation with respect to the existence of a 5-day gas purchase lag, as outlined above, presents a disputed question of fact which must be resolved here by an examination of the evidence. The evidence contained in the instant record with respect to the alleged lag relating to Midwestern's Southern System, accounting for $456,083 out of the total claimed allowance of $689,976, is quite different from that presented with respect to the Northern System, and the two must be considered separately.

1. *The Southern System*

Midwestern purchases gas for its Southern System from its parent, Tennessee, under Tennessee's FPC Gas Tariff, Eighth Revised Vol. No. 1. Although under Art. VI of the Tennessee Tariff payments for purchased gas are required to be made on or before the 25th of the month, Art. XI provides that payments shall be considered as duly delivered *when mailed* by either registered or ordinary mail.

However, as a matter of actual practice, Exh. 56 [13] shows that during the 17-month period from May 1961 to September 1962, Midwestern made no monthly payments to Tennessee for purchased gas on the 25th of the month or earlier;

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[12] Under the circumstances, there is no need to consider here the merits of Midwestern's original claim for a separate minimum bank balance allowance.

[13] A work paper of Staff's working capital allowance witness Parks, representing data taken from the books and records of Midwestern. (4 : 749)

that instead Midwestern wrote its checks to Tennessee as follows: 3 months on the 26th, 7 months on the 27th, 3 months on the 28th, 3 months on the 29th, and 1 month on the 30th.[14] With respect to payments *to Midwestern* from its three customer companies, Exh. 56 shows that out of a combined total of 48 monthly payments during the 16-month period from June 1961 to September 1962, only 3 payments were actually received by Midwestern later than the 27th of the month. Payments from Northern Illinois Gas Company were received as follows: 1 on the 24th of the month, 4 on the 25th, 10 on the 26th, and 1 on the 27th. Payments from Northern Indiana Public Service Co. were received—1 on the 23d, 1 on the 24th, 3 on the 25th, 6 on the 26th, 4 on the 27th, and 1 on the 28th. Payments from Peoples Gas Light and Coke Co. were received—12 on the 26th, 2 on the 27th, 1 on the 28th, and 1 on the 30th.

It thus appears that Midwestern's common, standard practice has been to writes its checks to Tennessee in payment for purchased gas *on the 27th of the month, or later.* By contrast, as a matter of common practice Midwestern *receives payment* from its customers *on the 26th of the month or earlier.*[15] Under these circumstances, it seems clear that if Midwestern merely continues its previous common practice in making its purchased gas payments to Tennessee, it would have no gas purchase lag on its Southern System, since Midwestern actually receives its payments from the three customer companies in plenty of time to write its check to Tennessee by the 27th of each month. It is relevant to note, in this connection, that Midwestern makes no contention here that its previous common, standard practice in making payment for gas purchases to its parent company, Tennessee, needs to be changed.

Under the circumstances set forth above, it is concluded that the evidence here presented does not establish the existence of an actual gas purchase lag problem on Midwestern's Southern System. Accordingly, Midwestern's claimed allowance of $456,083 for an alleged lag associated with purchased gas costs on its Southern System is denied.

2. *The Northern System*

Midwestern purchases gas for its Northern System from Trans-Canada under a contract which provides that payments are to be made on or before the 25th of each month, and that:

> All payments under this contract shall be made to the First National City Bank of New York, New York, in United States dollars in an amount being the then equivalent of the amount so billed in lawful money of Canada. (Art. IX of Exh. 30, p. 7)

Payments to Midwestern by its Northern System customers are made at the Northwestern National Bank in Minneapolis. (9: 1380) Midwestern contends that even if the Minneapolis Bank *received* the checks from Midwestern's customers by the 25th of the month, considerable time is necessarily consumed in the normal processes of converting these funds into payments to Trans-Canada, in such a way as to meet the above requirement of the Trans-Canada contract. Midwestern's working capital allowance witness McGee, the company's chief financial officer, testified that if Midwestern had no working capital associated with purchased gas costs, the company in order to make the Trans-Canada pay-

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[14] Midwestern witness McGee explained that on the last two sheets of Exh. 56, relating to the Southern System, in the 5th column the second date in each entry represented "the date that Midwestern wrote the check to Tennessee." (9: 1396)

[15] The only exception being that out of a total of 48 monthly payments during the period covered by Exh. 56, 7 payments were received on the 27th of the month, and 3 on the 28th or 30th.

ments on time would have to receive the payments from its customers at least 5 days prior to the 25th of the month. In reaching this conclusion, he testified that two days are required to transfer such customer payments from the collection point to the First National City Bank in New York. He assumed that, as a matter of good business practice, Midwestern would not mail its own check to the New York bank until the necessary funds, obtained from customer collections, had been deposited there, and that thereafter 3 days would have to be allowed for this last step. (3:553)

It is concluded that there is substantial merit in Midwestern's contention that it would not be in a position to satisfy the above quoted requirement of the Trans-Canada contract at any time before the customer collections were actually received and deposited in the First National City Bank of New York. Staff, however, suggests that this contractual provision would be satisfied if Midwestern on the 25th of the month delivered to the First National Bank of New York its check *on any other bank* where Midwestern had sufficient funds on deposit, including a Houston, Chicago or Minneapolis bank. In response to this suggestion, advanced during cross-examination, Midwestern witness McGee testified that the company normally pays Trans-Canada by checks drawn on the First National City Bank of New York; that the Midwestern check, delivered on or before the 25th of the month, must be made payable to that bank "and the funds have to be good in New York that day if the check is to be good"; that if the check were drawn on any bank other than the First National City Bank of New York, a still further lag would have to be provided to permit such a check to clear so that the New York bank would have "good funds" in New York on the 25th. He further testified that:

> * * * they must be funds that they can put their hands on right that minute. They don't have to wait two or three days to see whether the check is good enough.
>
> In other words, they might want to use that money that day themselves. * * *
>
> * * * * * * *
>
> A. * * * No sir, I would not say that. If you give a check to the First National City Bank in New York drawn on a Chicago bank the day on which the check is to be paid in New York, you have not paid your bill. (9:1374–8)

Actually, the evidence here establishes that as a matter of common practice the bulk of the customer payments to Midwestern on the Northern System *are not received at the collection point by the 25th of the month.* Exhibit 56 shows that payments to Midwestern from Michigan Wisconsin, which is by far the largest purchaser of gas from Midwestern on the Northern System, are commonly received on the 26th and 27th of the month, and in some cases even later. During the 23-month period from November 1960 to September 1962, payments from Michigan Wisconsin were received by Midwestern as follows—5 on the 25th of the month, 8 on the 26th, 8 on the 27th, 1 on the 28th, and 1 on the 29th. Since approximately two-thirds of the customer payments from Michigan Wisconsin are thus received by Midwestern on the 26th and 27th of the month, and assuming (as seems reasonable) that 2 days are required after collection to transfer such funds to the First National City Bank of New York, it follows that a substantial part of the customer payments would not be deposited in the New York bank until the 28th or the 29th of the month.

As a suggestion to reduce the lag involved here, Staff contends that there is no reason why Midwestern could not mail its check in payment for the Trans-Canada gas to a New York agent in advance of the date when the customer

funds were to arrive at the First National City Bank of New York, with instructions to present the check at the New York bank after the customer payments had been deposited there. However, even if some such procedure were adopted, customer payments received by Midwestern in Minneapolis on the 26th and 27th of the month could not be deposited in Midwestern's account in the First National City Bank of New York earlier than the 28th and 29th of the month, unless Midwestern were to adopt still another Staff suggestion—*i.e.*, that payment should be accomplished by the *telegraphic transfer* of funds from one bank to another, rather than by the more conventional practice of mailing checks.

It should first be noted that even if Midwestern were to adopt this Staff suggestion, the necessary funds still would not arrive on deposit in the New York bank prior to the 26th and the 27th of the month. There would thus be a 1- or 2-day lag in any event, even under the most optimistic assumptions based upon the Staff proposal. However, in addition, Midwestern contends that the adoption, as a matter of routine practice, of a procedure under which a pipeline company's payments for gas purchases would be made *by telegraphic transfer* of funds from one bank to another is virtually unheard of in the natural gas industry; that for purposes of control, to provide permanent records of payment, and to minimize the possibilities of error, it is better business practice for a pipeline company to make payments of such magnitude by check rather than by wire as a routine regular matter. Staff witness Parks, when asked whether he knew of any practice in the natural gas industry whereby payments for gas purchases by a pipeline company to its supplier are made routinely by the telegraphic transfer of funds, replied:

> I do not know of any specific instances. However, that would not *preclude* any company from doing that sort of thing any and every day. (4:704). [Emphasis supplied.]

Midwestern witness McGee, when asked whether it was *possible* to transfer funds from a bank in one city to another bank in another city by wire, stated:

> Yes, they could do that, *but it would be an inconvenience.* In fact, you *could* pay all your bills by wire, I suppose. (9:1399) [emphasis supplied].

Midwestern's total purchased gas cost bill for its Northern System averages $1.3 million per month. (Exh. 25, Sch. 1) It seems not unreasonable to suggest that where financial obligations of this magnitude are involved, substantial weight should be given to the company's own management decision as to what constitutes a reasonably prudent and safe practice in meeting the payments due under its gas purchase contract. In the absence of a showing that the practice followed by the company for this purpose is clearly unnecessary, wasteful and unreasonable, it hardly seems appropriate to impose upon the company the Staff's idea as to how it might do business, leaving the company without reasonably adequate breathing space—particularly when the total return dollars which would be saved for the ratepayers even if we were to adopt the Staff's instant position would amount to approximately $15,200 on an annual basis.[36]

For the reasons set forth above, Midwestern's claimed allowance of $233,893 for the lag associated with purchased gas costs on its Northern System is approved.

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[36] The total claimed gas purchase lag for the Northern System amounts to $233,893. On the basis of the 6.5 percent rate of return here adopted, the elimination of this particular working capital allowance would save the ratepayers a total of $15,203 in return dollars.

In view of the approval of this particular allowance for gas purchase lag, it becomes necessary to deal with a Staff contention (made in its initial brief, p. 77–78, for the very first time in this proceeding) that any such allowance should be offset by 21/45 of the 45-day operating expense allowance. Staff bases this contention upon the fact that in the last *Tennessee* rate proceeding Docket No. G–19983, on the basis of a detailed and careful Staff study indicating that Tennessee's actual experienced lag between operating disbursements in general and collections was in fact only 23.95 days, the Presiding Examiner's initial decision in that case concluded that 21/45 of the conventional 45-day operating expense allowance was not needed for that purpose and could accordingly be used as an offset to other gross working capital requirements. Staff concludes that there is no reason to suppose that Midwestern's actual experienced lag between payments and collections is any different from Tennessee's experience; that accordingly a similar offset is available here.[37]

In the absence of any showing to the contrary, the Commission has conventionally and normally included in working capital an allowance for 45 days' operating expenses as cash working capital, based upon the assumption of an average period of 45 days' lag between actual receipt of revenues and the payment of related expenses. *El Paso Natural Gas Co.*, 22 FPC 260, 270; *Union Producing Co.*, Op. No. 414, 31 FPC 41 at 49. It is accordingly concluded that if Staff desired in the instant case to take the position that the actual lag experienced by Midwestern is significantly shorter than the conventionally-allowed 45-day lag, the burden was on Staff to establish by competent and persuasive evidence the correct facts with respect to Midwestern's actual lag experience. However, Staff has not undertaken to make or present any study of Midwestern's actual lag experience in this case. Instead, its effort to satisfy this burden was confined to two questions presented to Midwestern witness McGee during cross-examination, in a manner which did not identify the precise issue involved or the purpose of the Staff inquiry. McGee was asked by Staff counsel to state whether he had any reason to suppose that the actual lag between expenditures and receipts by Midwestern was any longer than that experienced by Tennessee, and whether he knew of any reason to think that the actual lag now being experienced by Tennessee is any longer than that for the year ending July 31, 1959. (9:1402) McGee replied that he had made no studies to determine either matter; that he did not know of any particular reason *offhand* to think that the lag in the case of Midwestern would be longer than that for Tennessee; that with respect to Tennessee's current actual lag as compared with that experienced for the year ending July 31, 1959, he "wouldn't assume that it has changed in particular" and had "no indication either way that has been called to my attention," but

> I would be surprised if there were any serious changes in it either way. I think we have been operating rather normally. (9: 1402–3)

As noted above, this particular Staff offset theory was not advanced at any stage of this proceeding prior to its instant initial brief. It was not included in the working capital allowance presentation of Staff witness Parks, either on direct or rebuttal. Furthermore, it was not raised by Staff counsel during the course of a lengthy prehearing conference at the outset of this proceeding, during which the Presiding Examiner devoted considerable time to a discussion

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[37] Staff's computation of such a proposed offset as amounting to $213,437, being 21/45 of a gross 45-day allowance of $452,804, is an error. Staff's proposed 45-day allowance here is only $277,698 (Exh. 55, Sch. 4, line 17), and 21/45 of this amount would be only $129,407.

seriatim of each of the controverted issues in this proceeding, including issues raised with respect to the working capital allowance.

The Staff, as well as all other parties, understood that all of the procedures adopted in the instant proceeding were designed to eliminate the element of surprise, and to make possible an orderly and useful development on the record of the material and relevant facts. It seems clear that if Staff had raised this particular issue at the prehearing conference, or during the hearing itself, the actual facts on this question would have been developed on the record in an orderly and reliable manner. Instead, we have a situation in which Staff's instant contention rests entirely upon the brief colloquy with Midwestern witness McGee, referred to above, which plainly does not rise to the dignity of an evidentiary study establishing the facts with respect to Midwestern's actual lag experience.

Under these circumstances, it is concluded that Staff's handling of this particular matter has not provided a satisfactory or adequate basis for setting aside the Commission's normal and conventional assumption of an average 45-day lag. Accordingly, this particular Staff offset theory is rejected.

Pursuant to the above, a total gross working capital allowance of $712,262 is approved here, consisting of the following:

Cash working capital (⅛ of net operating expenses)	$303,463
Allowance for Northern System gas purchase lag	233,893
Materials and supplies	117,635
Prepayments	57,271
Gross Working Capital	$712,262

As will be developed at a later point, a zero Federal income tax allowance is derived for the purpose of this decision. Accordingly, there will be no Federal income tax offset to gross working capital.

IV. Rate of Return

The Staff here recommends an overall rate of return of not more than 6.5 percent for Midwestern. The company, however, insists that a rate of return of 7.3 percent is required. A rate of return of 7.3 percent would be far in excess of the highest overall rate of return which the Commission has ever allowed a major pipeline company. (1:110) [18]

The rate of return problem with respect to Midwestern has had a long and controversial history, which includes the following historical background of interest.

1) In the original certificate proceeding with respect to Midwestern's Southern System, *Midwestern Gas Transmission Company, et al.*, Op. No. 320, 21 FPC 653 (May 12, 1959), the Commission noted that one of the greatest difficulties in connection with the Midwestern application arose from its proposed rate of return of 7 percent. The Commission then stated:

> With a 6¼ percent rate of return the return on the common stock becomes 9.3 percent, and it will range up to 13.4 percent for a 7 percent rate

[18] The Commission has never previously approved an overall rate of return higher than 6½ percent for any company, with the exception of a single case involving Cimmaron Transmission Company, a small, newly organized gathering and pipeline system whose total facilities involved an estimated cost of $447,264—a company not in any way comparable to Midwestern. (*Texas Pacific Coal and Oil Company, et al.*, 22 FPC 1059, December 1959.)

of return. In view of the high cost of the bond money it is our judgment that 6 percent would be too low, but 6¼ percent would be reasonable and adequate particularly in view of the fact that Midwestern will have no trouble marketing its gas. Seven percent is obviously too high. (21 FPC 658–9)

2) The rate of return question was again the subject of serious controversy in the subsequent certificate proceeding relating to Midwestern's Northern System, *Midwestern Gas Transmission Company, et al.*, Op. No. 331, 22 FPC 775 (Oct. 31, 1959). The Commission noted that:

> Midwestern's plans for the proposed financing of its northern system, as well as its proposed rates for sales therefrom, are based on a 7 percent rate of return to be achieved in 1963, the third full year of operation. Midwestern undertook to show through testimony of the Chairman of its Board that in view of the high cost of debt money in today's money market, this rate of return is necessary to finance the project.
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> * * * * * * *
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> In Opinion No. 320 we permitted a rate of return of 6¼ percent for the southern system and we do not contemplate a lower rate of return for the northern system.
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> * * * * * * *
>
> We do not think it wise to attempt to look six months or a year into the future and undertake to fix a rate of return now based upon future conditions that cannot be known with reasonable certainty. We shall, therefore, require Midwestern to file with the Commission, prior to commencing construction, the firm proposals for financing as finally consummated and we shall at that time fix a rate of return. Thereafter, and no later than 60 days prior to the commencement of service, Midwestern shall file rate schedules satisfactory to the Commission covering the sales authorized herein, which rate schedules shall be accompanied by cost of service data showing the derivation of the specific rates, and which take into consideration, among other things, the resultant cost of financing to Midwestern. (22 FPC 784–5)

The Commission then stated:

3) Pursuant to the above order, Midwestern subsequently filed rate schedules for its Northern System sales reflecting a rate of return of 7 percent per year. However, by letter order dated August 19, 1960, the Commission rejected such rate schedules on the ground that:

> The proposed rates for the Northern System reflect a rate of return of 7% per year. It is the Commission's opinion that the proper rate of return for the Northern System is 6½% per year. This rate and the 6¼% rate heretofore allowed on the Southern System will permit an average rate of return of about 6.38% on the undepreciated cost of plant for both systems as estimated in the certificate proceedings in Docket Nos. G–16841 and G–18313, *et al.*

4) On September 1, 1960, Midwestern filed an application for rehearing of the August 19, 1960 letter order, and on October 10, 1960, the Commission issued an Order Denying Application for Rehearing. In this order the Commission stated:

> We have not to date allowed any comparable pipeline system to earn a rate of return in excess of 6½ percent and it would seem certainly obvious to Midwestern that there was a strong possibility of our not permitting it to begin its service with rates which would earn in excess of a 6½% rate of

return in the third year which is the crucial year for judging the economic feasibility of a new project. (24 FPC 845)

5) The Fifth Circuit affirmed this Commission order in *Midwestern Gas Transmission Co.* v. *F.P.C.*, 292 F. 2d 119, 122 (June 30, 1961), stating:

> The third year of operation was a proper year upon which to base a rate of return for rate-fixing purposes. It would be the first full year of normal operations.
>
> * * * * * * *
>
> It is our conclusion that the Commission order is supported by the evidence before it, and that its requiring rates based upon a 6½% rate of return for the third year of operation is reasonable and proper and is not arbitrary, capricious, confiscatory or violative of Midwestern's rights to due process.

For the purpose of our instant rate of return determination, it is noted that as of December 31, 1962 Midwestern's capitalization included $59,979,000 in long-term debt,[19] $10,000,000 in preferred stock, and $17,125,973 in common equity. (Exh. 5–B.)

The Staff's proposed capitalization in Exh. 5–B includes Deferred Federal Income Tax in the amount of $3,182,200, at a 1.5 percent cost, pursuant to the Commission policy previously established in the *Northern Natural Gas Company* case, Op. No. 342, 25 FPC 431, and the *El Paso Natural Gas Company case*, Op. No. 366, 28 FPC 688, in connection with the treatment of liberalized depreciation in the allowance for Federal income taxes. However, a totally different treatment of this matter is now required as a result of the Commission's recent *Opinion and Order on Proper Rate Treatment of Liberalized Depreciation Tax Deductions* in *Alabama-Tennessee Natural Gas Company*, Op. No. 417 (February 3, 1964).[20] The Commission there held:

> (6) Upon reexamination of the present policy of basing income tax allowances for a company which pays taxes calculated under liberalized depreciation on the deductions available under straight-line depreciation, we find that there is no present factual justification for thus normalizing the prospective rates of Alabama-Tennessee and other natural gas companies similarly situated so that such rates should reflect only the actual taxes currently payable during the applicable test year in Docket No. G–19984 herein.
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> (7) Upon reexamination of the present policy of permitting a specific return of 1.5 percent to be earned upon the portion of the rate base equiv-

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[19] Midwestern adjusts the actual long-term debt of $59,979,000 downward to exclude $2,379,000 in long-term debt which was due to be retired in 1963, in accord with a practice previously followed by the Staff of excluding debt due within one year. Midwestern contends that the Commission in the past has consistently excluded such debt, just as new debt about to be issued is included in the capitalization in order to arrive at a capital structure which is representative of the future; and that such a practice is particularly appropriate in the instant Sec. 5(a) proceeding, where rates are to be fixed for the future. Staff witness McGrath, however, testified that Staff more recently has departed from this practice on the ground that: (1) There is continual construction and accordingly a continual replacement of debt; (2) accordingly, if long-term debt due within one year were excluded, only one side of the picture would be reflected because Staff was not in a position to determine or reflect the new debt which might be issued during the year or in the near future. (6: 1026–8) On the record made in the instant case, it is concluded that Staff's position is persuasive and that long-term debt due to be retired in 1963 should not be excluded.

[20] Rehearing and Stay denied under Op. No. 417–A, issued April 15, 1964 31 FPC 928. This will be discussed in further detail in connection with our consideration of the required allowance for Federal income taxes, *infra*.

alent in amount to accumulated "deferred tax" funds in Account 282, we find that Alabama-Tennessee and other natural gas companies similarly situated are not entitled to any return upon such customer-contributed capital so that the amount of such funds in Account 282 during the applicable test year in Docket No. G–19984 will be excluded from the recognized rate base herein. (31 FPC 208 at 221)

Op. No. 417 requires a zero return on the accumulated deferred balances.[20a] Accordingly, in constructing the Midwestern capitalization as of December 31, 1962, for the purpose of our instant rate of return determination, Deferred Federal Income Tax in the amount of $3,182,200 will be included at a zero return, in place of the 1.5 percent cost reflected by Staff on Exh. 5–B. As a result of this adjustment, the return allowance on Midwestern's common equity under the Staff's recommended overall rate of return of 6.5 percent would be 10.46 percent, as shown by the following table:

	Amount	Percent	Cost	Rate of return (percent)
Long-term debt	$59,979,000	66.43	$5.88	3.906
Preferred stock	10,000,000	11.08	5.50	.6094
Deferred Federal income tax	3,182,200	3.52	0	
Common equity	17,125,973	18.97	10.46	1.985
	90,287,173	100.00		6.5

The Staff correctly observes that the conflicting rate of return recommendations here presented by Midwestern and Staff result from two basically differing approaches—(1) the Midwestern approach, insisting that it be treated as if it were an entirely separate and independent enterprise, and (2) the Staff approach, in which emphasis is placed upon the reality of Tennessee's parentage and control and the important consequences which flow from those facts.

Midwestern commences its discussion of the rate of return issue with the assertion that

> the principal controversy concerns the fair return allowance on Midwestern's common equity and the factors to be considered in arriving at that allowance. (Initial brief, p. 63)

It then summarizes its position as follows:

> The evidence conclusively shows that a 6½ percent over-all return allowance is grossly inadequate, not only because it would result in a return on common equity for a relatively new company [Midwestern] which is far below that being earned by seasoned pipeline companies and electric utilities which have a thicker equity and far better financial standing, but also because the low coverage of interest charges resulting from a 6½ percent over-all return would jeopardize the credit of Midwestern and seriously impair its ability to obtain new debt capital (Tr. 559–64, 582–90).
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> * * * * * * *
>
> Considering, *inter alia*, the *thinness of Midwestern's equity*, the returns on common equity being allowed by the Commission *to thin equity pipelines* and the earnings of well-established and successful pipeline companies, Mr. Clarke concluded that *13 percent is the minimum fair return on Midwestern's common equity* (Tr. 590). Allowing for the imbedded cost of debt

[20a] Op. No. 417, p. 220, and Op. No. 417–A, pp. 931, 932.

and preferred stock and a 13 percent return on equity, the over-all return for Midwestern would be approximately 7.3 percent, based on its capitalization as of December 31, 1962, adjusted to exclude debt due within one year. * * * (Initial brief, p. 64) [Emphasis supplied.]

In support of its position that the fair return on its common equity is at least 13 percent, Midwestern relies upon evidence relating to (1) returns earned on book value by 10 major pipelines, (2) earnings of electric utilities, and (3) the Commission's past return allowances to thin equity companies.

With respect to returns earned on book value, Midwestern points out that the Staff's study of 10 major pipelines (Exh. 5, p. 3) shows a median average return on common book equity of 13.2 percent for the 10-year period 1952–61, and an average return earned on equity of 13.1 percent for the 5-year period 1957–61. During the latter period the pipeline industry in general earned between an 11 percent and 13 percent return on book equity, on an average equity of 30 percent as compared with Midwestern's approximately 20 percent equity.

Midwestern further contends that, under an application of the comparative earnings test, the Commission is obliged to allow pipelines (and Midwestern in particular) a return on equity higher than the average return on book equity of 11 percent earned by the electric utilities over the years. This is not a new contention, and the Commission has not heretofore found it to be persuasive. *Tennessee Gas Transmission Corp.*, 24 FPC 204, 207–9, affirmed, 293 F. 2d 761 (CA5); *El Paso Natural Gas Co.*, 28 FPC 688, 694–5, 699. As the Commission found in *El Paso*, the natural gas industry is "stable and prosperous"; and it has convincingly demonstrated its ability to attract the needed amounts of capital. In the Tennessee interim order rate of return case, *supra*, the Commission granted Tennessee an overall rate of return of 6⅛ percent, providing an allowance of 10.12 percent on the Tennessee common equity, despite the company's identical contention in that case that Tennessee and other natural gas pipeline companies were entitled to a higher return on equity than electric companies "which have historically received a return of close to 11 percent on a larger common equity base."

The Staff alleges that almost all of the Commission's recent decisions in pipeline cases have yielded returns on equity in the 10–10.5 percent range (citing cases decided in 1960 or later). However, Midwestern contends that these particular decisions are not applicable here because they dealt with well-established pipelines, with a much lower cost of debt and a thicker equity than Midwestern; that

> * * * where, as here, companies have had an exceptionally thin equity, the Commission has consistently recognized that, because of the greater risks involved, a higher allowance on equity is required. * * * (Initial brief, p. 68)

Actually, the only truly recent case cited by Midwestern in support of this latter conclusion is the *El Paso Natural Gas Company* case, Op. No. 366, 28 FPC 688 (1962); and it is clear that the Midwestern position that it is entitled, as a thin equity company, to a 13 percent return on equity on the basis of Commission practice in recent years, rests largely upon that decision. In the *El Paso* case, involving four different dockets reflecting equity ratios ranging from 18.205 percent to 21.091 percent, the Commission agreed with the company that its thin equity should receive "a somewhat greater percentage allowance than if it were thicker"; that "the proper return on common equity should fall between the earnings-price ratios and the earnings on book value, but would naturally lie much closer to the upper level of this range because

its common equity is thin." The Commission there approved overall rates of return of 6 percent and 6⅛ percent in the four dockets, reflecting returns on equity ranging from 11.99 percent to 12.96 percent. (28 FPC 701–702) Midwestern contends that, on the basis of the same rationale, a 13 percent return on equity for Midwestern is justified, when considering that it not only has a more risky capital structure than El Paso, but is a relatively new venture which cannot reasonably be expected to be able to attract capital on the same return basis as established pipelines. (Initial brief, p. 70)

The basic and fatal flaw in this entire Midwestern position is that it completely ignores the overriding and determinative factor that Midwestern is a creature of Tennessee, owned and controlled by Tennessee. This is not merely a matter of theoretical, abstract analysis, but a factor of overwhelming significance which makes it wholly unrealistic and sterile to attempt to analyse the instant rate of return issue in the terms employed here by Midwestern. The suggestion that Midwestern is a small and relatively new company, alone and adrift in a lone and friendless sea, is not persuasive in view of its close affiliation with Tennessee, which has been characterized as

> * * * not an "average" pipeline company but rather * * * one of the largest and soundest (*Tennessee Gas Transmission Co.* v. *F.P.C.*, 293 F. 2d 765)
>
> * * * * * * *
>
> * * * Tennessee enjoys a favorable and improving position in the money market in relation to the rest of the industry.
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> * * * * * * *
>
> * * * there has been a substantial increase in the market price of its stock since 1946, reflecting the favorable position which its common stock enjoys in the market place. (Tennessee Gas Transmission Co., 24 FPC 207–8)

In the original certificate proceeding with respect to Midwestern's Southern System, Gardiner Symonds, Chairman of the Board of Midwestern and Tennessee, testified as follows with respect to the benefits of Midwestern's affiliation with Tennessee:

> Q. Then when Midwestern is going into the money market, does it receive any benefits of its being a subsidiary of Tennessee?
>
> A. In my opinion, it receives great benefits from being a subsidiary of Tennessee as to the stability and association with a company with 15 years of history in the money markets and 15 years of history in operation. (6: 968)

Midwestern witness Hunsaker, Vice President and Director of Colonial Management Associates, Inc., which purchased $2 million face value of Midwestern mortgage bonds in June 1960, testified as follows in the instant proceeding:

> We were also impressed in 1960 by the sponsorship of the company by the Tennessee Gas Company, a remarkably successful enterprise in the post-war years. We did not have the worry and problem as to management in all the many complex departments of a brand new gas company. * * * (10: 1471)

In the *El Paso* case, *supra*, involving a company whose common stock is traded on the market and publicly held, the Commission concluded that

> In the present proceeding the most significant fact with respect to the common equity is that it is so "thin." (28 FPC 700)

In the instant proceeding the most significant fact with respect to Midwestern's common equity is not that it is so "thin," but that it is owned and controlled by Tennessee.[21]

It is of interest to note, in this connection, certain historical facts with reference to the manner in which Midwestern has been operated, making it clear that Midwestern management has not been guided by the single objective of promoting the distinct and separate interests of Midwestern, as opposed to the interests of the Tennessee system as a whole. Thus, although Midwestern witness Hunsaker here testified to the importance of a gradual improvement in the credit standing of Midwestern and indicated that a retention of earnings by Midwestern would definitely contribute toward this end (3:563–4), the Midwestern directors in late 1962 voted to pay a $4.8 million dividend to its common stockholder, Tennessee (10:1492–3). This represented substantially all of the refund received by Midwestern from Tennessee as a result of the Commission order of December 21, 1962 approving the settlement of the Tennessee rate cases (Docket No. G–19983, *et al.*)—except for $923,440 which Midwestern in turn passed on to its own customers.[22] It also represented about 90 percent of Midwestern's earned surplus at the end of 1962. Thus, instead of treating the $4.8 million as retained earnings, Midwestern simply transferred it back to Tennessee in the form of a dividend. This would appear to underscore the irrelevance of any inquiry in this proceeding into the level of equity return which would be needed by Midwestern *as a separate entity.*

The basic flaw in Midwestern's approach here becomes clear in the light of certain general principles laid down by the Commission in recent rate of return decisions. In its Order Denying Applications For Rehearing in the *Tennessee* interim order rate of return case, *supra*, 24 FPC 525 (September 1960), the Commission stated:

> A lower equity ratio does not necessarily demand a higher rate of return as Tennessee contends. It may well be true that a high leverage condition with a thin equity is indicative of a greater risk than a low leverage, thick equity situation. *But the equity ration is only one element or factor to be considered in appraising the risks associated with the common equity of any given company, and certainly no mathematical measure of differences in risk can be derived from comparing the equity ratios of different pipeline companies.*
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> * * * * * * *
>
> The determination of a proper allowance for common equity is peculiarly *a matter of judgment* for the Commission. A rate of return cannot be a matter of slide rule computation. Consideration must be given to a multiplicity of factors, some of which cannot be isolated and objectively measured

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[21] Midwestern's initial brief characterizes it as a "wholly owned subsidiary of Tennessee." (p. 63) Subsequently, in connection with its discussion of Staff's "double leverage" theory, the Midwestern brief makes a passing reference to the fact that on October 9, 1963, Tennessee advised its stockholders that on December 10, 1963, it would distribute one share of Midwestern common stock to Tennessee stockholders for each 200 shares of Tennessee common shares held as of November 15, 1963. (p. 73) However, Midwestern makes no further reference to this situation, in spite of the fact that its instant reply brief was filed subsequent to the December 10th deadline, and the Midwestern reply brief does not modify or qualify its original characterization of the company as a "wholly owned subsidiary of Tennessee."

[22] Moody's Public Utility Manual, 1963, at p. 1320.

and weighed, yet which, in the circumstances of any given case, may tip the balance one way or the other. (24 FPC 562–7) [Emphasis supplied.]

Similarly, in the *El Paso* case, *supra*, the Commission stated:

> Our determination must be founded upon our judgment applied to a number of factors. No mechanical rule is possible although certain elements will have more force than others in guiding us to a conclusion.
>
> In former proceedings we have ordinarily proceeded by determining the cost of the company's debt and of its preferred stock, by making an allowance for its common equity based upon earnings-price ratios and other factors, and by applying these amounts to the company's capitalization so as to arrive at a rate of return. To use this approach alone, in our opinion, places too great an emphasis on the exact percentage of the equity ratio in the capital structure and provides no incentive for reducing the cost of debt and preferred stock. Therefore, we think it important and realistic also to consider the end result, for it is the overall return which measures the total costs to consumers, and the total return to all investors. We shall therefore base our decision on consideration both of a proper return on equity in accordance with our previous practice and of a proper overall return under all the applicable circumstances. (28 FPC 691–2)

Midwestern's instant approach falls into the very vice which the Commission criticized in the above statement, in that it reduces the rate of return determination to a narrow and formalistic slide rule computation, places undue emphasis upon the exact percentage of the equity ratio in the Midwestern capital structure, ignores the one overwhelming and determinative factor that Midwestern is a creature of Tennessee, owned and controlled by Tennessee, and ignores the end result. In view of this overriding factor, it is particularly true here that no mathematical measure of differences in risk can properly or meaningfully be derived by attempting to compare the Midwestern equity ratio with the equity ratios of other pipeline companies whose common stock is publicly held and whose financing programs include the sale of further common stock to future equity investors.

Midwestern, however, contends that an equity investment in Midwestern is entitled to a higher rate of return than an equity investment in Tennessee "because of the greater risks involved"; that the higher contemporaneous cost of debt to Midwestern is clear evidence that the debt investor regards Midwestern as a greater investment risk than Tennessee. Midwestern then concludes:

> No one would expect or even suggest that the debt investor should put his money in Midwestern for the same return which he could get from Tennessee. Why should the equity investment be treated any differently? (Reply brief, p. 63–4)

The answer is that the relationship between Midwestern and Tennessee makes it quite irrelevant to consider what return on equity would be necessary to attract sufficient amounts of *equity capital* to Midwestern *from outside investors*. So far as our instant record reveals, there has never been the slightest intention to place Midwestern in a position in which it would attract the necessary amounts of equity capital *on its own*. It is clear that from the beginning Midwestern has been a project of the parent Tennessee, and there has been no intimation that Tennessee currently entertains any thought of setting it adrift as an independent enterprise. If Midwestern is to remain under the control of

the Tennessee system, then there can be no question that Tennessee will continue to be the predominant source of equity capital for Midwestern."[23]

The Midwestern reply brief attempts to raise doubts as to the reliability of any such assumption, arguing that:

> * * * even if * * * assumptions as to Tennessee's desire to retain the controlling interest in Midwestern are sound, this does not mean that the only future substantial source of equity capital for Midwestern would be from Tennessee. Voting control is often maintained in corporations with even less than 51 percent ownership. Moreover, why does the Staff assume that Tennessee is bound to supply equity funds to Midwestern in the future at less than a fair return? Clearly, Tennessee is obligated to its stockholders to invest in securities only where it is reasonable to believe that a fair return commensurate with the risks involved can be obtained. (p. 69–70)

Although the above statement, for the purpose of argument, poses *possibilities* which are within Tennessee's power, there is in fact no suggestion that Tennessee does not desire to retain its controlling interest in Midwestern; nor is there any suggestion that it is seriously expected or intended to accomplish future equity financing for Midwestern by the sale of its common stock to the general public; neither is it suggested that Tennessee has any actual intention to dilute its control over Midwestern to less than 51 percent ownership, or to any level in that neighborhood. We find equally academic and unrealistic the suggestion that unless an overall rate of return of 7.3 percent is approved in this proceeding, providing a 13 percent return on Midwestern's equity, Tennessee might "refuse" to supply equity funds to Midwestern in the future, because of its obligation to its own stockholders "to invest in securities only where it is reasonable to believe that a fair return commensurate with the risks involved can be obtained."

It is difficult to view such a suggestion seriously, unless we are to totally ignore the nature of the relationship between Tennessee and Midwestern, and Tennessee's purpose in originally setting up the Midwestern system. It was Tennessee itself which made the management decision at that time to set up the Midwestern pipeline system as a separate company, with a relatively thin equity, rather than as a part of its own operation. Under these circumstances it does not seem realistic to suggest that Midwestern's thin equity ratio means a higher risk to *Tennessee* and that it is accordingly necessary to provide a higher return on the Midwestern equity in order to *compensate Tennessee* for such higher risk. In the *Tennessee* interim order rate of return case (24 FPC 204, 209, *supra*), the Commission approved an overall rate of return of 6⅛ percent for Tennessee, concluding that the resultant equity return of 10.12 percent was "fully adequate for Tennessee, and * * * sufficient to enable Tennessee to attract new equity capital and preserve its financial integrity." Although Tennessee disagreed with and attempted (unsuccessfully) to overturn that decision, it is not suggested that Tennessee has any desire or intent to seek authority to abandon any portion of its own pipeline operations under these conditions. If Midwestern is here allowed an overall rate of return which will reflect a similar allowance on the Midwestern equity, there is no more reason to suppose that

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[23] Even the small minority interest in Midwestern equity which exists today as a result of Tennessee's December 10, 1953, distribution of one share of Midwestern common stock to Tennessee stockholders for each 200 shares of Tennessee common stock, has arisen not from a Midwestern management decision to seek out additional equity financing, but rather from the decision of *Tennessee management* to pay its own shareholders a dividend in the stock of Midwestern.

Tennessee would desire to cut adrift and relinquish its control over the Midwestern pipeline system, than if the Midwestern system had originally been constructed merely as an addition to Tennessee's own pipeline system.

For the reasons indicated above, it is concluded that Tennessee's *needs* are the only relevant subject of inquiry here under the capital-attraction test, and that this calls for an assessment of Tennessee's *overall* capacity for capital attraction. Just as purchasers of Tennessee common stock do not elect to invest in Tennessee's gas producing activities alone as a separate enterprise (and we therefore look at earnings-price ratios reflecting the market's appraisal of the risks of the *entire* Tennessee enterprise), so it is that investors furnishing Tennessee's equity capital do not confine their attention to Tennessee's financing of its subsidiary, Midwestern. The question of Tennessee's overall needs was fully considered and resolved by the Commission in the *Tennessee* interim order rate of return case, *supra*, when it concluded that a 10.12 percent equity allowance was sufficient for that company.

If Tennessee had set up the Midwestern pipeline as an expansion of its own utility plant, rather than as a separate company, using for this purpose the same amounts of debt, preferred stock and equity financing which actually were employed by Midwestern, at Midwestern's actually experienced debt and preferred stock costs, it is reasonable to assume that an equity return in the area of 10.12 percent would still have been regarded as fully adequate for Tennessee. Under the circumstances, it is difficult to see why a higher allowance is required or justified for the Midwestern common equity, owned by Tennessee, merely because Tennessee management elected to create Midwestern as a separate company. The investors furnishing Tennessee's equity capital do not require any greater allowance in connection with the Midwestern operation than they would require in connection with any other additions which Tennessee might elect to make to its own pipeline system.

Under all the circumstances set forth above, it is concluded that a reasonable and proper return allowance on Midwestern's common equity would be the level of return which has been allowed on Tennessee's equity, and which is in the range of equity returns allowed by this Commission in recent years to other pipeline companies with equity ratios similar to that of Tennessee. As indicated at an earlier point, as a result of the Commission's recent decision on the proper rate treatment of liberalized depreciation tax deductions in *Alabama-Tennessee Natural Gas Company*, Op. No. 417, it has become necessary to revise Staff's Exh. 5–B rate of return computation to reflect Deferred Federal Income Tax in the Midwestern capitalization at a zero return, in place of the 1.5 percent cost shown by Staff, with the result that Staff's recommended overall rate of return of 6.5 percent will now produce a return allowance of 10.46 percent on Midwestern's common equity. This more than meets the test set forth above, and it is accordingly concluded that an overall rate of return of 6.5 percent is reasonable and proper for Midwestern in the instant proceeding.

Before concluding this discussion with respect to the return allowance required on Midwestern's common equity, it is of interest to note that a great deal of attention was devoted during the instant hearing and in the briefs of the parties to a "double leverage" approach presented by Staff witness McGrath, which the Staff initial brief characterizes as "one useful method of analyzing the unique problems created by the parent-subsidiary relationship." (p. 87) Under this theory Staff contends that its recommended 6.5 percent overall rate of return would actually provide an equity allowance of 25.102 percent for that portion of Tennessee's investment in Midwestern common stock which allegedly came from Tennessee *equity capital*; that this is a more significant fact to be con-

sidered here than the resultant equity allowance of 10.185 percent which a 6.5 percent overall rate of return would provide[24] for Midwestern's *total equity* capitalization. Staff's "double leverage" theory may be summarized as follows: (1) There is no way to determine the actual source of the dollars used by Tennessee for its $17.1 million investment in the Midwestern common stock. Therefore, Staff commences with the basic assumption that these dollars were divided up into (a) *debt* dollars, obtained from Tennessee debt financing, and (b) *equity* dollars, obtained from Tennessee equity financing, in the same proportions as Tennessee's total capital structure. (2) On the basis of this assumption, Staff concludes that $4.7 million of the Tennessee investment in Midwestern's common equity, or 5.27 percent of the total Midwestern capitalization, came from Tennessee *equity* money: and that the balance of the total Midwestern equity of $17.1 million came from Tennessee debt and preferred stock money, with $9.8 million, or 56.71 percent of the $17.1 million coming from Tennessee *debt* capital. (3) Staff concludes that on that portion of Midwestern's $17.1 million common equity which is presumed to have come from Tennessee debt money, Tennessee need only earn enough to cover the imbedded 4.54 percent cost of its own debt financing; and that Tennessee needs a higher equity-type return only on that part of the Midwestern $17.1 million common equity which is presumed to have come from Tennessee equity money—*i.e.*, $4.7 million. (4) Staff calculates that on the basis of a 6.5 percent overall rate of return for Midwestern, the equity return on this $4.7 million, representing 5.27 percent of the total Midwestern capitalization, would amount to 25.102 percent; and Staff concludes that this demonstrates that on the basis of an overall 6.5 percent rate of return for Midwestern the Tennessee equity would do very well indeed. Midwestern attacks Staff's "double leverage" theory as

> * * * a device for making low returns on equity appear generous. This is done by drawing attention away from the average return proposed on the over-all equity, and focusing attention on what would be the rate of return on a small portion of the equity if substantially less than the average return is attributed to the major portion of the equity. (Reply brief, p. 71)

The Midwestern briefs raise many substantial questions as to the logic and reliability of Staff's "double leverage" analysis, and the Staff briefs provide earnest responses to these criticisms. The net effect of the entire argument is that although the "double leverage" approach holds out an alluringly pat formula for dealing with the equity allowance problem, we are not persuaded that it constitutes a truly reliable and meaningful technique. Staff witness McGrath himself testified that in his view the "double leverage" treatment should not be used at all times in the future, but that if Midwestern came before the Commission subsequently in another rate case the situation at that later date would have to be re-examined (6: 965); that if the retained earnings of Midwestern built up to a high enough level, he might not come up with the same approach (6: 1009–11); that if more than 10 or 11 percent of Midwestern's common stock were publicly owned, he might wish to reconsider his approach. (6: 1011–12)

It is conceded that Staff's instant "double leverage" approach has never previously been adopted or relied on by the Commission. The "double leverage" technique has not been used or relied on in any way in this decision as a basis or support for the determination here made that a 6.5 percent overall rate of return is reasonable and proper for Midwestern. Accordingly, no purpose would be served here by discussing in any further detail the arguments and counter-

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[24] As per Staff's Exh. 5–B computation.

arguments directed toward the "double leverage" method in the Midwestern and Staff briefs.

In addition to its basic argument with respect to the return allowance required on Midwestern's common equity, Midwestern makes the further contention that Staff's recommended 6.5 percent overall rate of return would have an adverse effect on its financial integrity and ability to attract capital, relying upon evidence presented by its witness Hunsaker with respect to coverage of interest by earnings, and the claimed impact of such a rate of return upon the value of the warrants which were used as an inducement to sell Midwestern's bonds.

Midwestern contends that in order to raise debt capital and preferred stock capital, a company must be able to demonstrate an earnings capacity which provides a satisfactory coverage of interest charges and preferred stock dividend requirements. It relies upon testimony by witness Hunsaker to show that the coverage of interest by earnings after taxes for Midwestern would be 1.6 times on the basis of Staff's recommended 6.5 percent overall return and 1.8 times on the basis of the company's own recommended 7.3 percent return; that both of these coverages are low when compared to the 2.8 times coverage for natural gas companies generally.[35] On the basis of these figures it appears that even the company's recommended return of 7.3 percent, which is vastly higher than any heretofore allowed by the Commission, would still leave Midwestern far short of achieving the average interest coverage.

Similarly, Midwestern witness Hunsaker cited, as another test of credit used by bond buyers, the coverage of interest plus sinking fund requirements (debt service charges) by cash flow—or, interest plus sinking fund requirements divided into the sum of net income, income taxes, interest and depreciation. He calculated that Midwestern's 1963 level of interest, plus sinking fund requirements would be covered only 1.7 times, on the basis of Staff's recommended 6.5 percent return, plus Staff's proposed depreciation allowance of 3.125 percent, as compared with 2.2 times on the basis of Midwestern's proposed 7.3 percent return and Midwestern's proposed depreciation allowances of 3.6 percent for the Southern System and 4 percent for the Northern System. Hunsaker concluded that the 1.7 times coverage was completely inadequate, and that even the 2.2 times coverage resulting from the Midwestern recommendation was on the low side. These comparisons have been rendered partially moot in the light of the fact that the instant decision adopts a depreciation rate of 3.5 percent for both the Northern and Southern Systems, which would produce over $300,000 more in annual depreciation allowances than the Staff proposal. As a result the coverage of interest plus sinking fund requirements by cash flow will actually be more favorable to Midwestern than that assumed in witness Hunsaker's testimony.

In connection with Hunsaker's testimony that the 1.7 times coverage was completely inadequate, he alleged that Midwestern's bond indentures forbid the sale of additional bonds unless the annual debt service requirement (interest and sinking fund payments) were covered at least 1.75 times. Staff, however, points out that there is still another provision of the trust indenture which forbids issuance of additional bonds unless the *interest alone* on all bonds, old and new, is covered 4½ times by the cash flow;[36] that even at the 7.3 percent return here proposed by Midwestern, the interest on all existing bonds would actually be covered only 3.8 times, and that in order to meet this particular

[35] 1961 FPC Statistics for Natural Gas Companies.
[36] Midwestern Gas Transmission Co. Prospectus, dated June 1, 1960, p. 19.

coverage test Midwestern would have to have an overall rate of return of 8.7 percent. (Reply brief, p. 14–15) Certainly no one would seriously contend here that Midwestern's financial integrity and ability to attract capital would be seriously impaired unless it were allowed a rate of return of 8.7 percent.

The mere statement of the matters set forth above would appear to be sufficient to raise doubt as to the meaningfulness of relying on a rigid mathematical comparison of fixed interest coverages as a controlling factor in determining the proper rate of return for Midwestern in this proceeding.

It is concluded that the 6.5% overall rate of return here adopted for Midwestern adequately safeguards the legitimate interests of its existing bondholders. As pointed out by the Staff, when the Midwestern mortgage bonds were issued in June, 1960 it was evident to investors that the company was to have a high percentage of long-term debt and relatively low coverages at any projected rate of return which the Commission could reasonably have been expected to authorize for the company's initial rates. By that time the Commission had already in Op. No. 320 (May 1959) rejected Midwestern's proposed 7 percent rate of return for the Southern System, directing that initial rates for the Southern System to be predicated upon a 6¼ percent rate of return; and in Op. No. 331 (October 1959), where Midwestern again proposed a 7 percent rate of return for its Northern System, the Commission had made it clear that this question was the subject of serious controversy, and that the matter would be looked into very carefully upon filing of Midwestern's firm financing proposals. The unusually high coupon of 5¾ percent on Midwestern's mortgage bonds was doubtless the result of two factors: (1) timing (June, 1960 was a time when debt money generally was very expensive—Exh. 4, p. 5); and (2) the potential investor's evaluation of the risks of this particular bond issue. The bonds were issued with warrents, which authorized the holder to purchase 4 shares of Midwestern common stock for each $1,000 bond, at $15 per share, between 1964 and 1973—and these warrants were characterized by witness Hunsaker as a "sweetener." (10: 1473) The high interest rate, plus the "sweetener" of the warrants, thus represented what was necessary to compensate prospective bondholders for the risks of lending money to Midwestern. Having already received this compensatory inducement for the purchase of the Midwestern mortgage bonds, it could not seriously be suggested that the bondholders are now entitled to have their investment converted into a bond with the type of interest coverage which is characteristic of an AAA-rated bond.

Midwestern further complains that Staff's proposed 6.5 percent rate of return would adversely affect its financial integrity because it would, for all practical purposes, destroy the value of the warrants, referred to above, which were used as an inducement to sell the mortgage bonds. However, Staff points out that although the warrant "sweetener" may have been necessary to induce investors to purchase the bonds in the first instance, the Midwestern bonds have now achieved independence as an investment, so that they can be and are evaluated entirely on their own—as evidenced by the fact that in July, 1963 the bonds were quoted on the market at 104 bid, *without warrants*, with none offered. (10: 1502) Furthermore, Midwestern witness Hunsaker emphasized that the overriding concern of the investors in these bonds was that Midwestern meet its contract obligations of interest payment and sinking fund retirement, and that the warrants were "by definition, merely a sweetener". (10: 1473) Staff correctly observes, in this connection, that if there had been no warrants, some of the persons who purchased Midwestern bonds might have chosen instead to invest in more secure bonds; that having chosen to forego greater security and to take instead the speculative fling on the warrants, these investors must be regarded

as fully compensated so long as Midwestern continues to meet its interest obligations and the obligations of the bond indenture are fulfilled regularly.

Staff further contends, however, that there is no adequate basis for the flat prediction that the warrants would be worthless if a 6.5 percent overall rate of return were here adopted for Midwestern. It is pointed out that the warrants are actually exercisable not just in a brief period in the immediate future, but over a full 10-year period from January 1, 1964, through December 31, 1973; that the potential value of the warrants accordingly cannot be measured merely by looking at the calculation of net earnings per share in the immediate future. It is suggested that one obvious and important factor which is bound to have a bearing on the value of the warrants is Midwestern's own dividend policy—*i.e.*, whether it will permit an appropriate portion of the earnings to be retained in the business, or whether there will instead be a repetition of the 1962 experience when substantially all of the refund received by Midwestern from Tennessee was transferred back to its parent in the form of a $4.8 million dividend.

Finally, Staff contends that the market place has just recently provided evidence that the warrants exercisable at $15 stand an excellent chance of having value, regardless of the outcome of the instant proceeding. As noted at an earlier point, the Tennessee directors voted to distribute as a dividend to its shareholders on December 10, 1963 one share of Midwestern common for each 200 shares of Tennessee common held as of November 15, 1963. The Staff now alleges, on the basis of information obtained from the Registration Statement and amendments filed by Midwestern with the Securities and Exchange Commission, that the Tennessee directors also decided to make a cash payment to holders of less than 200 shares of Tennessee common, in lieu of the issuance of fractional shares of Midwestern common; that pursuant to this undertaking, 63,043 of the Midwestern shares (being the "fractional shares") were on December 17, 1963, sold to an underwriter for $19 per share, less the underwriting expenses of $1.15 per share, and that this $19 per share valuation is treated as the basis for the cash payment to holders of less than 200 shares of Tennessee common; that in addition, prior to December 17, 1963, Tennessee also made an offer to those of its shareholders who would be entitled to receive from 1 to 10 full shares of Midwestern common, to have those shares also included in the sale to the underwriter; that this invitation was subsequently accepted by the holders of 41,516 out of the total of 64,520 of such shares, and those shares were then also sold to the underwriter at $19 per share less expenses. Staff observes that the underwriter must, of course, be assumed to have been aware of the instant pending Sec. 5(a) rate proceeding against Midwestern, which was fully disclosed in the prospectus. Under these circumstances the Staff concludes that the $19 may reasonably be regarded as the approximate valuation of Midwestern common shares in the market place, already discounted to some extent by the possibility of future rate reductions, and Staff accordingly contends that a warrant to purchase a Midwestern common share at $15 must be regarded as having a considerable *immediate* value.

Finally, Midwestern's recent actual experience provides the best and most realistic answer to the pessimistic predictions that anything short of the 7.3 percent rate of return proposed by the company itself will impair its ability to attract additional debt financing. In late 1962 (subsequent to the Commission's 1960 action rejecting Midwestern's efforts to base its initial rates upon a 7 percent rate of return, *supra*) the company was able to retire its 6 percent debentures and substitute in their place 5½ percent cumulative preferred stock, issued at par to a number of insurance companies. It is recognized that this, to some extent, reflects some relaxation in the general debt-money market after

the days of very tight money in 1960. However, it seems obvious that no company in really poor financial condition and repute would have been able to issue preferred stock to a class of institutional investors which Midwestern witness Clarke recognized as among the most astute in the business. (10:1517)

Still further evidence of Midwestern's financial status is afforded by recent market quotations of its first mortage bonds. According to Midwestern witness Hunsaker the bonds in July 1963 were bid at 105, with warrants attached, but none were offered—and at 104, exclusive of warrants, with none offered. (10:1502) In addition, Standard & Poor's Bond Guide for December 1963 shows a more recent quotation of 106 bid, with warrants attached. Under the circumstances, it does appear that existing bond holders are notably concerned about Midwestern's continuing ability to meet the 5¾ percent interest payment on these mortgage bonds, and it is apparent that there are other investors willing to take their place.

It is accordingly concluded, for all the reasons set forth above, that the 6.5 percent overall rate of return here adopted for Midwestern will not have an adverse effect upon its financial integrity and ability to attract capital.

V. Federal Income Taxes

A. *Guideline Depreciation Rates*

The issue presented here is the proper depreciation rate to be used for tax purposes in computing Midwestern's Federal income tax allowance. The problem arises under Revenue Procedure 62-21, established by the Internal Revenue Service in July, 1962, to supersede its Bulletin F. Bulletin F. set up hundreds of lives as a guide to taxpayers in determining depreciation expenses for tax purposes. Revenue Procedure 62-21 sets forth greatly shortened service-lives (Guideline lives) for numerous classes of depreciable plant compared with the service-lives previously suggested in Bulletin F. The Guideline life for pipeline is 22 years (10:1419), resulting in a depreciation rate of 4.54 percent. (11:1667)

Midwestern admittedly has not claimed Guideline lives on its previous income tax returns, and states that it does not intend to do so in the future, for the reason that there were

> * * * serious doubts in our minds that we could qualify for the use of Guideline depreciation, and there was real concern as to the consequences which would result if we adopted Guideline depreciation. (11: 1661-2)

Accordingly, Midwestern in the instant proceeding uses a 3.5 percent depreciation rate for tax purposes, this being the same rate now booked by the company and claimed on its tax returns.

Midwestern witness Cresap, a partner in the firm of Arthur Andersen & Co., testified that in his judgment the reserve ratio test[27] was probably "the essential part" of the Guideline depreciation rate procedure; that he did not believe Midwestern's depreciation reserve could ever be adequately tested under the reserve ratio provisions, because Midwestern did not have the type of assets which the reserve ratio was designed to test for depreciation. (11: 1590) He reached this conclusion not merely because Midwestern was a new company, but

> * * * also because the reserve ratio test is not reliable when applied to companies with only a few units of physical property, nor is it reliable when

[27] The reserve ratio is the percentage between the reserve for depreciation and the total basis (cost) of an asset group. (13: 523)

applied to companies which acquire assets at very irregular intervals. (11: 1577)

He also noted the "increasing emphasis" which the Internal Revenue Service places on the use of *good faith* in the application of the Guideline depreciation rate procedure. He concluded that there could be no "good faith" justification for a 22-year life for tax depreciation purposes when it is clear that such a 22-year life would not be sustained by the company's retirement and replacement practices (11: 1577); that there was serious doubt whether the Internal Revenue Service would permit Midwestern to use the 4.54 percent Guideline depreciation rate, reflecting a Guideline life of 22 years, if this Commission in connection with its determination of Midwestern's transmission depreciation expense concluded that the company has a service life substantially in excess of 22 years. (11: 1591)[*] In this connection, Cresap testified that it was not the general practice for pipeline companies to use tax depreciation lives which are substantially different from book depreciation lives. (11: 1577-9) It is suggested that although a slight difference of possibly 12 percent might not be considered significant by the Internal Revenue Service, a substantial difference such as 32 percent (between the Guideline rate of 4.54 percent and the 3.5 percent rate now being booked by Midwestern) might well result in a refusal by IRS to permit the company to use Guideline lives. (11: 1667)

Under all these circumstances, Midwestern concludes that it is highly doubtful that it could qualify for the use of Guideline depreciation; that in the judgment of its management the company could not *in good faith* claim Guideline depreciation, and that in law and good conscience it should not, in effect, be forced to claim it. Midwestern further concludes that if it were nevertheless to use Guideline depreciation, the consequences thereof could be financially detrimental and adverse. Witness Cresap, for example, pointed out that there could easily be a period of 3 or 4 years for which tax deficiencies would have to be paid with no recovery possible from customers, if rates were here fixed on the basis of Guidelines lives and the Internal Revenue Service should subsequently disallow Guideline lives. (11:1574-5)

In the prepared testimony originally distributed in this proceeding by its witness Blake, the Staff at first proposed to take the position that Guideline rates *should* be used in computing Midwestern's Federal income tax allowance. In Blake's proposed testimony he premised this position, in part, on the assumption that under the reserve ratio test set forth in U.S. Treasury Department Publication No. 456, Depreciation Guidelines and Rules, Midwestern would be entitled to use the Guideline rate as a matter of right for an absolute minimum of 9 years. He testified that this assumption was predicated on advice he had obtained from Houston, Texas, Internal Revenue Service personnel to the effect that the combined construction cost of both Midwestern's Northern and Southern Systems would be considered by IRS as base year cost. However, Blake subsequently abandoned this position completely, on the ground that on July 10, 1963, the same IRS personnel had advised him that the original information was in error, and that the construction of the Northern System would be considered by IRS to be *additions* to Midwestern's property, rather than part of the base year plant original cost. Blake concluded that on this basis Midwestern would exceed the reserve ratio range in the year 1967, so that in his view the company would be eligible to employ Guideline rates only through the calendar year 1966. (5: 843, 853-5)

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[*] The instant decision, as noted at an earlier point, adopts a 3.5 percent depreciation rate for computation of Midwestern's depreciation expense allowance, based upon an assumed remaining life of 27 years from December 31, 1962.

Staff's final position on the Guideline rate issue in this proceeding is stated in its initial brief as follows:

> The Company has persistently stated in this proceeding that it does not in good faith, believe that it is eligible to use the guideline rate, that it does not wish to use it, and that it does not intend to use it. We recognize that if the Commission were to compute Midwestern's tax depreciation on the basis of the guideline rates, it might have to claim this rate on its income tax returns in order fully to recover the allowed rate of return. In view of the relatively short period for which the consumers would be assured the benefits of the higher tax depreciation rate, the staff no longer feels justified in putting the Company in a position where it would have to act contrary to its best judgment. In addition while we believe that Mr. Blake's understanding of the nature and operation of the guideline procedure is sound in the light of currently available information, there are no doubt certain areas of uncertainty—such as the question of whether a good-faith belief in the reasonableness of a 22-year life would be necessary—regarding which a prudent person might wish to await further clarification. We emphasize that the position the staff currently takes is based upon the present state of knowledge about the guideline procedure and the publicly announced intention of this particular company not to use the guideline rate. (pp. 54–55)

Under the circumstances, the only party now pressing the position that Guideline rates should be used in computing Midwestern's Federal income tax allowance in the instant proceeding is the City of Chicago, intervenor, whose position was supported by testimony of witness Van Scoyoc, a utility consultant. Adoption of this position would reduce Midwestern's income tax allowance by approximately $1,000,000. (Exh. 55–A)

The City of Chicago contends that as a new company, Midwestern is entitled to use the Guideline life of 22 years throughout the first life cycle of its property, citing the following statement on page 3 of Treasury Publication No. 456.

> New businesses will initially have no reserves against their assets, and it is therefore unlikely that they will have high reserve ratios during the first replacement cycle. As a consequence, new businesses will generally be permitted to use the guideline lives throughout the first replacement cycle. Thereafter, like any other business, they will be permitted to continue use of the guidelines, so long as replacement practice is consistent with the lives used.

Chicago further contends that in any event Midwestern, as a matter of right, would be entitled to use Guideline lives for a period of 3 years without any question whatsoever by the Internal Revenue Service, citing the following statements in Treasury Publication No. 456:

> Any taxpayer who wishes to use the new guideline lives or a life longer than the guidelines, may do so initially as a matter of right and without question by the Internal Revenue Service for a period of 3 years. Use of guidelines will continue to be accepted thereafter unless there are clear indications that the taxpayer's replacement practices do not conform with the depreciation claimed and are not even showing a trend in that direction.
>
> * * * * * * *
>
> Taxpayers who wish to use the new guideline lives or any life longer than the guidelines may do so without challenge for the first 3 years under this Procedure.

It is Chicago's position that Midwestern thus has available an opportunity to reduce its income tax costs by taking advantage of Guideline rates, that it is the obligation of the company to take advantage of such opportunities, and that accordingly its income tax allowance in this proceeding should be computed as if the company had in fact utilized that opportunity. Reliance is here placed upon the principle enunciated in *El Paso Natural Gas Company* v. *F.P.C.*, 281 F. 2d 567 (CA 5), that

> It is the obligation of all regulated public utilities to operate with all reasonable economies. This applies to tax savings as well as economies of management.

Chicago rejects the suggestion that the attempted use of Guideline lives by Midwestern would impose on it the risk of financial detriment. Witness Van Scoyoc testified that even if the Internal Revenue Service should later, upon audit, require that Midwestern's Guideline lives be adjusted upward, the resulting increased tax cost would be offset by a reduction in return and associated income taxes due to the reduction in rate base resulting from book depreciation accruals. Finally, Chicago contends that even if such a claimed risk were realistic, any such risk should be borne by Midwestern since it is afforded an opportunity to earn a reasonable rate of return.

It is of particular interest, in connection with this question, to note that of the 36 natural gas pipeline companies referred to in the FPC Statistics of Natural Gas Companies, only three companies have claimed Guideline lives, and two of those companies have followed deferred tax accounting for the difference in taxes. (11:1579)

In evaluating Chicago's position, it should be noted at the outset that even the 3-year grace period is of doubtful comfort to Midwestern here, since it clearly would appear to commence for all taxpayers with the taxable year 1962, rather than variously with the first year in which any individual taxpayer might see fit to claim Guideline lives. Thus, throughout Treasury Publication No. 456 the 3-year grace period is referred to as "the first three taxable years to which this Revenue Procedure applies." (pp. 23, 25, 27, 28, and 49) There is no statement that a taxpayer may use Guideline lives without challenge "for the first 3 taxable years in which he elects to claim Guideline lives on his tax return." It therefore seems clear that the 3-year "honeymoon" period in any event does not extend beyond the tax year 1964. Once that period expires, there is serious doubt whether Midwestern, under *any* interpretation of the Guideline rules, would be permitted thereafter to use Guideline lives. As noted above, the statement in Treasury Publication No. 456 with respect to the 3-year grace period concludes as follows:

> Use of guidelines will continue to be accepted thereafter *unless there are clear indications that the taxpayer's replacement practices do not conform with the depreciation claimed and are not even showing a trend in that direction.* [Emphasis supplied.]

Furthermore, there is a substantial question whether Midwestern's tax returns would be free from challenge upon audit by the Internal Revenue Service if the company used Guideline lives, *even for the 3-year grace period.* The theme running throughout Treasury Publication No. 456 is that Guideline lives may be utilized only to the extent justified by the taxpayer's actual retirement practices. The opening paragraph (page 1) of Publication No. 456 sets forth the underlying purpose and objective of Revenue Procedure 62–21 as follows:

> * * * It sets forth simpler standards and more objective rules *which will facilitate adoption of rapid equipment replacement practices* in keeping with current and prospective economic conditions. [Emphasis supplied.]

The basic concept of Guideline lives is stated as follows:

> The fundamental concept underlying the new Procedure is that the depreciation claimed will not be disturbed *if the taxpayer's retirement and replacement practices are consistent with the life used.* (p. 4) [Emphasis supplied.]

The same or similar language is repeated some 35 times in Publication No. 456.

The following question and answer on p. 45–46 of Publication No. 456 makes it clear that Guideline lives do not affect the basic approach of the Tax Code, that tax depreciation is based on the *useful life* of property in the taxpayer's own trade or business:

> 3. Question: At present, depreciation is based on the useful life of property in the taxpayer's own trade or business. How does this depreciation reform affect this approach?
>
> Answer: The depreciation reform retains this approach. *Every taxpayer should continue to base his depreciable lives on his own best estimate of the period of their use in his trade or business.* The new reform provides guideline lives, based on analyses of statistical data and engineering studies and assessments of current and prospective technological advances, for each industry in the United States. The guidelines which have been developed are felt to provide reasonable standards for taxpayers in the various industries and if used will be presumed to be acceptable unless subsequent events show that they are not appropriate for a particular taxpayer's circumstances. * * * Thus, under the depreciation reform, depreciation continues to be based on the concept of useful life of property to the taxpayer. However, wider latitude is provided for the taxpayer in making his own best estimate of useful life, and objective standards are provided wherever possible for determining when the taxpayer's estimate should not be disturbed. [Emphasis supplied.]

Of particular interest is the Internal Revenue Service announcement in Technical Information Release TIR–503, issued August 21, 1963, which stated:

> When determining the useful life of his guideline class of assets, the taxpayer should *in good faith* determine his forthcoming practice with respect to retirement and replacement of his assets in the class and *adopt a useful life for the class consistent with his intended retirement and replacement practice*, and then adhere to that practice. (11: 1663) [Emphasis supplied.]

In the face of the above statements in Treasury Publication No. 456, it is difficult to see how it can be asserted with any confidence that Midwestern could in good faith, consistent with the intent and spirit of Revenue Procedure 62–21, use Guideline lives for tax purposes. Midwestern, the Staff, and the City of Chicago all recognize here that a 22-year life is *not* the best estimate of the service life of Midwestern's pipeline. Furthermore, no party contends here that the use of Guideline lives by Midwestern would facilitate adoption by it of "rapid equipment replacement practices."

The final matter to be disposed of in connection with this problem is the view expressed by Chicago witness Van Scoyoc that if Midwestern did claim Guideline lives and the Internal Revenue Service should later disallow this upon audit,

there would be no risk of loss to the company because the resulting liability for back taxes and the sharp increases in taxes which would follow would be more than offset by the reduction in return and related taxes caused by the decline in rate base during such period. A basic flaw in the Van Scoyoc calculations arises from the fact that he assumed *no growth in plant* during the interim. He agreed that if there *were* growth, his assumed offset

> may be more than counterbalanced by additional return and income tax and, of course, that would have to be taken into account. (11: 1552)

The Commission's recent liberalized depreciation decision in *Alabama-Tennessee Natural Gas Co.*, Op. No. 417, *supra*, in adopting a flow-through approach, noted that from 1954 to 1960 natural gas pipelines had increased their gross plant by an average of 11.07 percent each year, and the Commission there concluded that it was reasonable to expect that

> the pattern of growth in demand and plant capacity with respect to Alabama-Tennessee and in the gas pipeline industry generally will continue for the reasonably foreseeable future. (pp. 216–218)

In arriving at this conclusion the Commission noted that witness Van Scoyoc, who testified in the *Alabama-Tennessee* case in support of the flow-through approach, had there testified that "natural gas pipelines were expected to continue their growth indefinitely (Tr. 1192)." (Op. No. 417, p. 217) Under the circumstances, no further comment would seem to be required on this point.

Under the circumstances presented here, where Midwestern actually has *not* used Guideline rates on its income tax returns and states that it does not intend to do so in the future because of its own serious doubts that it could qualify, and where at the very least it must be said that the company's right to use Guideline lives is the subject of serious uncertainty, it is concluded that it would be highly improper for this Commission to evaluate Midwestern's income tax allowance as if it had in fact claimed guideline rates. Accordingly, Midwestern's income tax allowance will here be computed on the basis of a 3.5 percent depreciation rate for tax purposes.

B. *Tax Depreciation for Pipeline Rights-of-Way*

The question presented here is whether Midwestern's Federal income tax allowance should reflect a deduction of $38,353 for depreciation of rights-of-way, as contended by Staff (Exh. 59–A), even though the Internal Revenue Service has rejected this as a proper deduction. The record shows that Midwestern has claimed such a deduction on its tax returns for the calendar year 1962 and for each prior year of its existence. However, in its audit of the 1959, 1960 and 1961 returns the Internal Revenue Service has consistently disallowed the deduction, and as of the date of the instant hearing Midwestern had already paid tax deficiencies for the years 1959 and 1960 as a result of such disallowance.

It is clear that, despite an adverse holding by the Eighth Circuit in *Northern Natural Gas Co.* v. *O'Malley*, 277 F. 2d 128, the Internal Revenue Service still adheres firmly to the position that depreciation on rights-of-way is not a proper deduction for income tax purposes. As already noted, Midwestern has undertaken to preserve its position by claiming the deduction on its returns and paying the deficiencies upon disallowance, but has not challenged the Internal Revenue Service's ruling in the courts.

Staff alleges (initial brief, p. 48) that the Interal Revenue Service position "has been rejected by every court that has passed upon it", citing *Portland General Electric Co.* v. *United States*, 189 F. Supp. 290 (*D. Ore.*) *aff'd*, 310 F. 2d 877

(C.A. 9; *Northern Natural Gas Co.* v. *O'Malley, supra*; and *cf. Union Electric Co.* v. *Commission*, 177 F. 2d 269 (C.A. 8). This staff comment is actually somewhat over-inflated, in view of the fact that two of the cases cited involve *electrical* utilities, where the problem takes on a somewhat different aspect. Actually, the only court decision to date involving a natural gas pipeline company is the *Northern Natural Gas Co.* case, *supra*.

The net effect of the Midwestern experience with the Internal Revenue Service is that Midwestern does not now, and did not in the test year or in prior years have available an *effective* income tax deduction for depreciation of rights-of-way—because although the company has gone through the motions of including the claimed deduction on its tax returns, the Internal Revenue Service has consistently disallowed the deduction and Midwestern has paid tax deficiencies as a result thereof.

Staff, however, contends that this position in which Midwestern finds itself involves a tax expense which Midwestern cannot be said to have "necessarily" incurred, since it had the power "to take some action to resolve the uncertainty," but failed to do so for reasons of its own; that accordingly, if there is any risk of ultimate loss here, Midwestern itself should be the one to bear it. (Initial brief, p. 50) Although the Staff brief does not elaborate its position any further than this, it can be assumed that Staff is here suggesting that if Midwestern had in fact challenged the IRS ruling in its own circuit, the chances are that it would have prevailed; that if this in fact had occurred, there would then have been no basis for failing to reflect the deduction in computing the company's income tax allowance, merely because of the *possibility* that the Supreme Court might conceivably some day uphold the IRS position; that accordingly Midwestern should not be left in a more favorable position here, simply because the company for reasons of its own has elected not to take any court action itself to resolve the uncertainty.

In view of the fact that to this date there has been only one court decision, in another circuit, dealing with this precise question in connection with a natural gas pipeline company, the Staff assumption that Midwestern would necessarily prevail if it were to challenge the IRS ruling in its own circuit is mere speculation. Under all the circumstances, there is some merit in the Midwestern observation that

> * * * it is rather strange for the Staff of one agency of the Government (FPC) to recommend action which, if adopted by the Commission, would force Midwestern to contest the action of another branch of the Government (IRS), particularly since the latter agency (IRS) has primary administrative jurisdiction of the matter (taxes) involved. (Initial brief, p. 60)

It may be true, as suggested by Staff, that if the Internal Revenue Service should ultimately abandon its position, as the result of a Supreme Court decision or otherwise, Midwestern would be in a position to receive refunds for the deficiencies paid in previous years. However, there is no case presently before the Supreme Court involving this question, and it is not suggested that any such case is even presently headed in that direction. Furthermore, no situation has yet arisen establishing a conflict among circuits, which would provide a basis for the Supreme Court to accept jurisdiction.

In view of the above, the only question really presented here is whether the circumstances are such as to warrant including in the instant order a contingent refund condition, providing for a future rate adjustment in the event the Internal Revenue Service should ultimately abandon its position as

the result of a Supreme Court decision or otherwise. It is concluded that the amount of $38,353 (Exh. 59–A) involved under this issue in this proceeding is too small to warrant such treatment, particularly when it is borne in mind that the cost of service adopted herein cannot be regarded as a scientifically precise prediction of future conditions in regard to cost of service and revenues in general. In *Alabama-Tennessee Natural Gas Co.*, 27 FPC 1180, 1193 (1962), where the alleged available deduction for depreciation on rights of way amounted to $14,016, the Commission affirmed the examiner's ruling that no such deduction should be considered in determining the income tax allowance, on the ground that

> * * * we believe the company was justified in refusing to litigate the relatively small amount involved * * *

Midwestern notes that on a per Mcf basis the amount of the deduction here involved, computed at 0.025 cent per Mcf, is far less than it was in *Alabama-Tennessee*, where the per Mcf deduction amounted to 0.125 cent. (Reply brief, p. 57, footnote 16)

Accordingly, the deduction for depreciation of rights-of-way will not be reflected here in computing Midwestern's Federal income tax allowance.

C. *Tax Treatment for Liberalized Depreciation, and Reduction of Tax Rate Under Revenue Act of 1964*

Pending Commission resolution in the *Alabama-Tennessee Natural Gas Co.* case (Docket No. G–5471, *et al.*) of the controverted question of proper treatment of liberalized depreciation in computing the Federal income tax allowance, Staff in the instant proceeding followed the Commission's then current practice of computing the income tax allowance on a normalization basis, including the reserve for deferred taxes in the rate base at a 1.5 percent return. (Exh. 5–B) The Presiding Examiner made it clear during the prehearing conference that the position ultimately adopted by the Commission on this issue in the *Alabama-Tennessee* case would be regarded as controlling for Midwestern in the instant proceeding. It was also made clear, however, that evidence purporting to show that there was something particular about the operations of Midwestern differentiating it from Alabama-Tennessee, or from other pipeline companies in general, would be regarded as relevant. (7: 1092) Despite this, Midwestern made no contention during the instant hearing or in its briefs that any such relevant distinction exists. Instead, Midwestern confined its position on this issue to the comment (reply brief, p. 55) that:

> * * * Midwestern maintains that any treatment of deferred taxes which directly or indirectly denies Midwestern the full benefits of utilizing Section 167 of the Code is unlawful and contrary to Congressional intent.

The liberalized depreciation issue has since been resolved by the Commission in its Op. No. 417 decision in the *Alabama-Tennessee* case, issued February 3, 1964. The Commission there re-examined its previous policy of basing income tax allowances for a company paying taxes calculated under liberalized depreciation on the deductions available under straight-line depreciation, and concluded that

> * * * there is no present factual justification for thus normalizing the prospective rates of Alabama-Tennessee and other natural gas companies similarly situated *so that such rates should reflect only the actual taxes currently payable during the applicable test year.* * * * (p. 221) [Emphasis supplied.]

In reaching this conclusion the Commission held that:

> * * * normalization is premature and unnecessary as long as there is growth in the size of the dollar investment in gross plant (caused by either increasing demand or higher construction costs). (p. 216)
>
> * * * * * * * *
>
> * * * we believe that it is reasonable to conclude that the pattern of growth in demand and plant capacity with respect to Alabama-Tennessee *and in the gas pipeline industry generally* will continue for the reasonably foreseeable future. (*Supra*, p. 218) [Emphasis supplied.]

In a motion filed March 30, 1964, Staff proposes that pursuant to Op. No. 417, *supra*, Midwestern's Federal income tax allowance should be recalculated here to reflect the flowing through of the tax benefits resulting from the use of liberalized depreciation, and to further reflect reduction of the Federal income tax rate from 52 percent to 50 percent under the Revenue Act of 1964. The motion also proposes a further adjustment in the future to reflect the further reduction of the tax rate from 50 percent to 48 percent for the year 1965 and thereafter, under the terms of the Revenue Act of 1964.

For reasons which will be set forth in detail below, it is concluded that Midwestern's Federal income tax allowance should be calculated on the basis of actual tax liability, reflecting the liberalized depreciation deduction which the company uses on its tax returns. In addition, since the rates fixed in this decision are to be effective only for the future, it is concluded that the income tax allowance should be computed on the basis of the new 50 percent tax rate. The Midwestern answer, filed April 6, 1964, states that the company has no objection to reflecting the reduction in the corporate income tax rate from 52 percent to 50 percent in the instant cost of service. The net result of these adjustments is to reduce the Federal income tax allowance to zero. Under the circumstances, the further reduction of the tax rate to 48 percent commencing with the 1965 tax year becomes academic for the purpose of this decision.

The Midwestern answer on a number of different grounds, strongly opposes the Staff proposal that the cost of service and rates to be determined herein should be adjusted to give immediate effect to the Commission's holding in Op. No. 417, with respect to flowing through of the tax benefits resulting from the use of liberalized depreciation. Midwestern requests that the Staff motion be denied; that a decision on the liberalized depreciation issue herein be held in abeyance pending completion of rehearing and review of Op. No. 417; that, in the event Op. No. 417 is ultimately affirmed, Midwestern be given a reasonable opportunity thereafter to advise the Commission as to whether it will continue to utilize liberalized depreciation; and that if the Staff's motion to "reopen the record" is granted, the company should be given a reasonable opportunity to present evidence with respect to this matter.

Clearly, the question as to the proper treatment of the liberalized depreciation deduction in computing Midwestern's Federal income tax allowance constitutes one of the most important and substantial issues in this case, making a difference of close to $2 million in the total cost of service, and that issue requires responsible treatment in the instant initial decision.

At the outset of this discussion it will be useful to eliminate a "straw man" by noting that although the Staff motion is couched in terms of a request to "reopen the record" in order to receive Exhibit A attached thereto, showing the required recalculation, the Staff motion actually does *not* involve or require the presentation of any additional evidence at all. As shown by Exh. A, Sheet 1, of the Staff motion, in order to reflect the flowing through of the tax benefits

resulting from the use of liberalized depreciation, Staff has merely computed the excess of liberalized depreciation over straight-line depreciation by substituting in its Exh. 3, Sch. 4A, calculations the 3.5 percent and 7.0 percent depreciation rates actually used by Midwestern on its tax returns for the test year. It is thus clear that there is required here only a simple mathematical calculation, and not any "reopening of the record" for the introduction of new evidence.

The Midwestern answer of April 6 contends that the Staff motion fails to take into account the fact that the Commission's *Alabama-Tennessee* decision, Op. No. 417, was not yet final, noting that the Commission on April 3, 1964, 31 FPC 768, had issued an "Order Granting Rehearing For Further Consideration." However, since the filing of the Midwestern answer, the Commission on April 15, 1964 has issued Op. No. 417–A, Opinion and Order Denying Rehearing and Stay, 31 FPC 928. Under the circumstances, Op. No. 417 has now become the final, controlling decision of the Commission, and it is determinative of the liberalized depreciation issue in the instant proceeding.

Midwestern further argues that the Staff motion fails to take into account the question of whether it will *continue* to elect to utilize liberalized depreciation in the future, and that the outcome of Op. No. 417 will have an important bearing on this matter. Midwestern accordingly requests that a decision with respect to the liberalized depreciation issue herein be held in abeyance pending completion of rehearing and judicial review of Op. No. 417, and that in the event of affirmance Midwestern be given a reasonable period thereafter to advise the Commission whether it will continue to elect to utilize liberalized depreciation.

This Midwestern position assumes that if the company for reasons of its own were to elect to discontinue claiming a tax deduction which the Internal Revenue Code admittedly authorizes, it would be improper for the Commission to thereafter compute the company's income tax allowance as if it were in fact continuing to take the deduction. This assumption ignores the basic regulatory principle that a regulated public utility is required to utilize available cost-savings opportunities. *El Paso Natural Gas Co.* v. *F.P.C.*, 281 F. 2d 567, 573 (CA5, 1960).

However, it is unnecessary to decide that particular question here, since it is concluded that the controlling fact for the purpose of the instant decision is that Midwestern *did* utilize liberalized depreciation on its tax returns during the test period. It would be pure speculation to attempt to guess what course Midwestern might take with respect to this matter at some future date, when judicial review of Op. No. 417 is completed. It is interesting to note that Midwestern itself, while making the above argument, carefully avoids any prediction that it would necessarily discontinue using the liberalized depreciation deduction on its tax returns in the event of affirmance.

Midwestern finally contends that it has not had adequate opportunity to make a record on the liberalized depreciation issue in this case because

> * * * the Examiner deemed it infeasible to have a full scale hearing on the liberalized depreciation issue in this proceeding.

Midwestern accordingly urges that if the instant record is to be "reopened" pursuant to the Staff motion, it should be given a reasonable opportunity to present evidence with respect to this issue and to show why the principles enunciated in Op. No. 417 should not be deemed applicable to Midwestern.

In order to keep this argument in perspective, it is important first to note, as explained at the outset of this discussion, that the record is *not* here being

"reopened" for the introduction of new evidence at all. It is concluded that the instant Midwestern request for an "adequate opportunity" to make a record on the liberalized depreciation issue in this case comes far too late, in view of the manner in which Midwestern counsel treated this matter throughout the hearing, and is not entitled to serious consideration at this stage. The relevant procedural history is summarized below:

1) In the course of a discussion of all the controverted issues in this case, during a prehearing conference held in the opening stage, the Presiding Examiner requested Midwestern counsel to state how the company intended to treat the liberalized depreciation deduction in computing its proposed Federal income tax allowance. The following colloquy then ensued:

> Mr. WERNER: I don't know. All I can say, Mr. Examiner, whichever way the Commission is going to go for everybody else, I assume it would go for us. * * *
>
> PRESIDING EXAMINER: In what case is it now pending before the Commission?
>
> Mr. WERNER. The Alabama-Tennessee case involved the whole liberalized issue.
>
> PRESIDING EXAMINER: * * * Are you suggesting that as far as Midwestern is concerned, you do not intend to make a full scale presentation on that issue, but will take the position that whatever should be the ultimate holding of the Commission on that issue for pipelines subsequently you would expect to apply to Midwestern?
>
> Mr. WERNER: I didn't mean to say, really, that. I merely indicated that whatever we do, we will have to be bound by what the Commission eventually does. (2:251-2)

2) During the hearing, City of Chicago witness Van Scoyoc made the same major evidentiary presentation with respect to the liberalized depreciation issue (Exh. 22-24; 3:394-428) which he had previously presented in the *Alabama-Tennessee* case, *supra*, as a witness for the Tennessee Valley Municipal Gas Association. (Op. No. 417, pp. 214-217) When the Van Scoyoc prepared testimony was copied into the transcript, the Presiding Examiner stated:

> * * * I would not expect that there would be any cross-examination of the witness Van Scoyoc designed toward testing the general philosophy of his presentation because * * * that issue has been orally argued before the Commission in the Alabama-Tennessee case, and it will be decided by them in this case.
>
> I am aware of the fact that Midwestern counsel indicated this morning that *he may wish to interrogate witness Van Scoyoc on questions relating to any alleged differences between the operating factors of Midwestern as distinguished from other pipeline companies. I would regard that as being of a different category.* (3:663) [Emphasis supplied.]

At a later session, during cross-examination of Van Scoyoc by Midwestern counsel, the Presiding Examiner again stated that he did not desire

> any interrogation of Mr. Van Scoyoc in this hearing *on any questions of that general nature going to the validity of the general position.*

in view of the fact that the *basic general question* was pending before the Commission in the *Alabama-Tennessee* case. (7:1090-91) However, the Presiding Examiner at the same time made it clear that he *would* permit interrogation relating to *distinguishing characteristics*, if any, between the Midwestern operations and those of Alabama-Tennessee, stating:

Now, I think I made it clear at an earlier session that the only type of interrogation of Mr. Van Scoyoc which I would regard as useful in this proceeding would be if any questions were raised as to whether there was something particular about the operations of Midwestern that differentiates it in connection with problems involved in this issue from other pipeline companies in general.

So you might want to make a record conceivably as a basis for argument that even though the Commission should, for the purpose of this discussion, ultimately hold that in the Alabama-Tennessee Case, that the liberalized depreciation deduction should be reflected in computing the income tax component, you might want on the basis of this record about Midwestern's operations, that this case is distinguishable. That is the only type of interrogation I would permit. (7:1092)

It is important to note that at no time during the prehearing conferences or the hearing itself did Midwestern counsel express any objection to the Presiding Examiner's ruling that he would not permit interrogation of witness Van Scoyoc on questions of a *general nature* going to the validity of his general position on the liberalized depreciation issue. It is of equal importance to note that although the Presiding Examiner made it clear that Midwestern *would* be provided with a full opportunity to establish that there was in fact a relevant and material distinction between the operations of Midwestern on the one hand, and those of Alabama-Tennessee and other pipeline companies in general, requiring or justifying a different treatment for Midwestern, Midwestern counsel elected not to pursue this matter in the hearing.

In view of this history the suggestion by Midwestern, in its instant answer to the Staff motion, that it has not had an adequate opportunity to make a record on the liberalized depreciation issue in this case comes too late. Furthermore, in view of the above history it is particularly surprising to now find Midwestern, for the very first time in the instant proceeding, making contentions in its answer to the Staff motion that there are distinguishing characteristics between its operations and those of Alabama-Tennessee and most other pipelines—*i.e.*, that Midwestern is unique in that virtually its entire plant has already been subject to liberalized tax depreciation, and that accordingly the risks related to utilizing liberalized depreciation under the flow through theory are relatively much greater for Midwestern than for other pipelines; that due to this fact and the alleged relative lack of plant growth since initial construction, there has been a rapid decline in the deduction available to Midwestern for liberalized depreciation; that accordingly, even assuming that the flow through theory is ultimately held valid, it would be erroneous to use Midwestern's test year deduction for liberalized depreciation, since it is allegedly not representative of the future. (Midwestern answer, p. 7–8)

Midwestern had every opportunity to make such contentions with respect to its alleged distinguishing characteristics and to present supporting evidence thereon during the instant hearing. Having failed to avail itself of this opportunity during the hearing, its instant request comes too late and must be denied.

In addition to its proposal that Midwestern's Federal income tax allowance should be recalculated to reflect the flowing through of the tax benefits resulting from the use of liberalized depreciation, the Staff motion further contends that Op. No. 417 requires a reduction of the Midwestern *rate base* by an amount equal to the accumulated deferred taxes set out in Account No. 282. However, because the instant record does not show deferred taxes accrued subsequent to December 31, 1962, Staff has merely set forth (Exh. A, Sch. 4 of Motion) certain

computations offered "only as an example of the calculations required to reduce Midwestern's rate base and the return component of the cost of service consistent with Opinion No. 417." (p. 2) While offering these calculations for informational purposes, the motion states that Staff nevertheless

> does not propose to change any other component in the cost-of-service as set out in Exhibit 55–A. In fact, to alleviate any controversy, Staff reaffirms its position with respect to such components and the testimony relating thereto. (p. 2)

The Midwestern answer argues, on various grounds, that it would clearly be erroneous to deduct the accumulated deferred tax reserve from its rate base. (p. 6–10) It is here concluded, as Staff seems to agree, that no useful public interest purpose would be served by injecting this particular controversy into the instant case at this late stage of the proceeding.[29]

VI. State Ad Valorem Taxes

Staff witness Parks orginally proposed an allowance of $1,205,046 for state ad valorem taxes, which Midwestern witness Massey adjusted upward by $102,510. (Exh. 25, Sch. 6.2) Subsequently, on rebuttal Parks increased Staff's proposed allowance by a net amount of $26,727 (Exh. 55, Sch. 1; Exh. 55-A), and Staff's initial brief thereafter made another upward adjustment of $9,899 (p. 57, footnote 17), so that the amount now in dispute is $65,884. Midwestern's initial brief (p. 61) by a table in footnote 38, shows how the original aggregate difference between the Staff and the company is broken down by states, and it is clear that the major part of the dollar difference lies in the figures used for the Minnesota and Wisconsin ad valorem taxes. The basic difference between the two approaches is that Staff witness Parks used the latest available actual assessments and rates as of the time of his presentation, whereas Midwestern witness Massey reflected anticipated increases in assessments or rates for the calendar year 1963.

With respect to Minnesota, Massey proposed an ad valorem tax allowance of $678,996, as compared with the actual 1962 tax bill of $638,082. He based this on an agreement reached with the Minnesota Department of Taxation during negotiation of the 1962 assessment that a further 2½ percent increase in assessed value would be applied in 1963 on Midwestern's pipeline property, plus an estimated 5 percent increase in *tax rates* based on the historical pattern of average annual increases since 1957. (3: 548–9) Staff witness Parks' final proposed allowance for Minnesota ad valorem tax was $646,859. (Midwestern initial brief, p. 61. footnote 38; p. 62, footnote 39)

With respect to Wisconsin Massey proposed an ad valorem tax allowance of $251,750, based upon an estimated 5 cent per hundred increase in the tax rate for 1963, as compared with 1962, and an estimated $800,000 increase in the 1963 assessment. (Exh. 25, Sch. 6.2; 3: 549) Midwestern proposed no upward adjustment in this recommended allowance, in spite of the fact that the record showed that the Wisconsin Department of Taxation had advised by letter of June 28, 1963, that the 1963 tax rate applicable to Midwestern would actually be approximately 6 cents more per hundred dollars of assessed value than the tax rate assumed in Massey's recommendation; and in spite of evidence that

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[29] As earlier noted in the discussion of the *rate of return* issue, however, Op. No. 417 does require that Deferred Federal Income Tax be included in Midwestern's capitalization, for the purpose of the rate of return computation, at a zero cost in place of the 1.5 percent cost reflected in Staff's Exh. 5–B.

the Wisconsin taxing authorities had recently determined the 1963 assessed value of Midwestern's property at a level $111,350 higher than the assessed value assumed in the Massey recommendation. (11: 1679–80) Staff's final recommended allowance for Wisconsin ad valorem tax was $236,118. (Midwestern initial brief, p 61, footnote 38; Staff initial brief, p. 57, footnote 17)

Staff's initial brief sensibly suggests that there is no purpose in speculating about the level of Midwestern's 1963 ad valorem taxes for Minnesota and Wisconsin in the event that information as to the *actual* 1963 ad valorem taxes should become available prior to the decision in this case; and that

> The staff would have no objection to a procedure whereby the record could automatically be reopened so that the Examiner or the Commission could take official notice of any increases in state tax rates which constitute material changes from the rates used in staff cost of service. (p. 58)

The information with respect to Minnesota and Wisconsin ad valorem taxes actually paid by Midwestern for 1963 has in fact now become available—amounting to $666,154 for Minnesota, and $261,098 for Wisconsin. The Presiding Examiner takes administrative notice of these facts, and on this basis it is concluded that an allowance of $666,154 should here be adopted for Midwestern's Minnesota ad valorem tax.

The Wisconsin ad valorem tax presents a somewhat different problem. Staff agrees that the 1963 increase in the Wisconsin ad valorem *tax rate* should be reflected here. However, Staff contends that the *assessed value* actually adopted for Midwestern's property by Wisconsin taxing authorities for 1963 should *not* be used here. The rationale advanced in support of this position is that assessed value in Wisconsin is arrived at by an averaging of undepreciated cost of plant, plus capitalization of net operating income at 7 percent; that in Midwestern witness Massey's original testimony his estimate of an anticipated increase in the 1963 Wisconsin assessment was based upon the fact that the company's test-year revenues were over $1,000,000 higher than those upon which prior assessed values had been based; that if Staff's position should be sustained on any substantial part of the issues in this proceeding, such "excess revenues" would be greatly reduced, and it would therefore follow that the Wisconsin assessment would subsequently be reduced accordingly. Staff concludes that it would not be appropriate here to normalize Midwestern's test-year ad valorem tax liability to reflect increased 1963 expenses "which arise solely from the fact that the company earned more money than it should have"; that

> Therefore, unless Midwestern can demonstrate that the increase in Wisconsin assessed value was not due to the capitalization of net income formula, no normalization should be made. (Initial brief, p. 58–59)

Although there is some merit in this Staff contention, there is no precise way to measure at this time the impact which the rates fixed for Midwestern in this case will have upon the Wisconsin assessment in the future. As already noted above, Midwestern throughout the hearing and in its instant briefs has adhered to a recommended allowance for Wisconsin taxes of $251,750 despite its information, placed in the record by its witness Massey, that the actual 1963 ad valorem tax would be in the area of $261,000, approximately $9,350 higher than its recommended figure. Under all the circumstances, this $9,350 difference may fairly be regarded as a cushion providing some margin for the possibility that the Wisconsin assessment may subsequently be reduced as a result of the impact of the instant decision. Accordingly, the $251,750 Wisconsin ad valorem tax allowance previously recommended by Midwestern is adopted for the purpose of this decision.

The ad valorem tax allowances recommended by Midwestern for the other states involved are regarded as adequately supported by the record, and are hereby adopted as follows: (1) Illinois—$114,000; (2) Indiana—$148,001; (3) Kentucky—$78,750; (4) North Dakota—$59; (5) Tennessee—$36,000.

As a result of the above, the total allowance approved for state ad valorem taxes in the Midwestern cost of service is $1,294,714.

VII. Revenues

A. *Volume of Sales to Michigan Wisconsin*

On the matter of determining appropriate sales volumes to use in the normalized test year, for the purpose of testing the reasonableness of Midwestern's existing rates, Staff here takes the position that test year sales volumes should be normalized to take account of the most recent customer estimates of their purchases during calendar year 1963. Staff notes that a substantial portion of the service on Midwestern's Northern System is rendered, either directly or indirectly through Michigan Wisconsin Pipe Line Co. (Michigan Wisconsin), in areas which were not previously supplied with natural gas; that Northern System service began in the fall of 1960, and that the test year ending June 30, 1962 accordingly plainly falls within the developmental period which pipelines almost invariably experience when natural gas is first introduced into an area;[30] that since the rates to be fixed in the instant proceeding are for the future, the sales volumes employed should be representative of what may be expected as the company leaves the developmental stage and advances toward maturity.

The major subject of controversy with regard to estimated revenues concerns the volume of gas attributable to Michigan Wisconsin's purchases from Midwestern on its Northern System, under Midwestern's CD–2 rate schedule. The revenues related to the volumes in dispute amount to $2,073,141. (Exh. 57, sch. 2–A)

At the outset it should be noted that the function of the instant Sec. 5(a) decision is to fix Midwestern's rates for the future, prospectively from the instant date. A reasonable and meaningful estimate of representative volumes which Michigan Wisconsin may be expected to take from Midwestern in 1964 and succeeding years involves two calculations: (1) the volumes to be purchased during the five winter peak months of November through March, and (2) the volumes to be purchased during the seven off-peak months of April through October.

Michigan Wisconsin witness Browning, Manager of its Marketing and Forecasting Department, concluded that on a year-in-year-out basis the normalized purchases of that company from Midwestern during the five winter peak months would be the average daily contract demand of 158,000 Mcf per day (at 100 percent load factor). His use of 100 percent of contract demand for the winter peak period was based upon his analysis of the historical pattern of Michigan Wisconsin's purchases since the commencement of service on the Midwestern system and his judgment with respect to Michigan Wisconsin's requirements for the future, Browning's Exh. 58 shows that except for two months, November and December, 1961, Michigan Wisconsin's average purchases from Midwestern

[30] Midwestern's prospectus of June 6, 1960, filed in connection with the sale of its first mortgage bonds, stated: "The area to be served by the Company's Northern System is largely without natural gas service, and the development of a demand for natural gas may take some time." (p. 3)

during each of the months November through March have at the minimum closely approached the contract demand of 158,000 Mcf per day. Moreover, in more than half of the months the average purchases have substantially exceeded the contract demand. On the overall, Michigan Wisconsin's purchases have averaged 162,300 Mcf daily during the winter period. (7:1103)

Browning further concluded that the normalized purchases of Michigan Wisconsin from Midwestern during the seven off-peak months of April through October would be the minimum contract volumes, it being reasonably assumed that Michigan Wisconsin would never place itself in a position where it would be paying for gas not taken. On the basis of the minimum contract quantity of 75 percent, which was in effect at the time of Browning's testimony, amounting to 118,500 Mcf per day, he concluded that Michigan Wisconsin's normalized future annual purchases from Midwestern would amount to 49,217,000 Mcf. (Exh. 58, Col. 10) However, assuming that Midwestern should exercise its contractual right to file for an increase in the minimum monthly bill from 75 percent to 87.5 percent, Browning estimated that Michigan Wisconsin's normalized future annual purchases from Midwestern would amount to 53,443,500 Mcf, based on a contract minimum of 138,250 Mcf per day. (Exh. 58, col. 11; 7:1103-4)

Subsequent to Browning's testimony, Midwestern on September 13, 1963, filed revised tariff sheets increasing the monthly minimum bill from 75 percent to 87.5 percent under its CD-2 Rate Schedule. By order issued October 14, 1963, in Docket No. RP64-8, Midwestern's filing was suspended for 1 day and was thereafter permitted to go into effect, subject to refund, as of October 16, 1963. The question whether Midwestern's shift to an 87.5 percent minimum bill should be approved by the Commission is now being litigated in that proceeding, and the Staff is there taking the position that it should *not* be allowed.

In the context of the above facts Midwestern on the one hand, and the Staff and Michigan Wisconsin on the other hand, take conflicting positions as to the volume of gas which should be attributed in this proceeding to Michigan Wisconsin's purchases from Midwestern on its Northern System. Midwestern insists that the most reliable figure in the instant record is an original estimate of 44,773,250 Mcf which Michigan Wisconsin submitted to Midwestern in November 1962 as its "latest available estimate" *for the 1963 calendar year.*

Staff witness Goyne, after using the 44.7 million Mcf figure in his case-in-chief presentation, adjusted his estimate upward in his rebuttal presentation by 8,226,750 Mcf to a total of 53,000,000 Mcf. This revised figure was based upon a letter dated May 27, 1963, addressed to Staff by Michigan Wisconsin witness Browning, in response to a Staff request that it be supplied with the latest estimate furnished to Midwestern "covering purchases for the year 1963." In that letter (4:790) Michigan Wisconsin stated that in response to a February 19, 1963 call from Midwestern requesting an estimate of its purchases *for the year 1963*, Michigan Wisconsin had advised that it was contemplating the purchase of "about 53 million Mcf annually." The letter further stated:

> You also requested further information relative to normalized purchases from Midwestern *for the future.* In this regard, assuming an increase in Midwestern's minimum bill provision to 87½ percent, Michigan-Wisconsin contemplates the purchase in the future of about 53.4 billion cubic feet annually. (4:790) [Emphasis supplied.]

Although witness Browning's responses at various stages of his cross-examination presented a sometimes muddy and confusing picture, the following clear facts finally emerged:

1) Browning's estimate of a 53 million Mcf take for the year 1963 in his letter of May 27, 1963 was based *"on certain conditions in 1963."* (7:1112, lines 19–22)[21]

2) However, *on a year-in and year-out basis after 1963*, assuming that the minimum bill provision remained at 75 percent, it was his judgment that Michigan Wisconsin would actually be taking not 53 million Mcf per year, but rather the 49.2 million Mcf figure shown in Col. 10 of his Exh. 58. (7:1105–6; 7:1113, lines 8–16)

3) His reference to takes at the 53 million Mcf annual volume *in the future* was tied to the assumption that Midwestern's minimum bill would increase to 87.5 percent commencing October 15, 1963. (7:1104; 7:1115, line 17—1116, line 3)

At the end of this colloquy, Michigan Wisconsin counsel Shannon volunteered to make a statement to clear up any remaining confusion (7:1116, line 6), and the following then occurred:

> Mr. SHANNON: That is right. We will never be in a position where we pay for gas that we don't take, but in connection with the next expansion program, the company will have to sit down and decide one of several points, including the possibility of cutting Midwestern back to the minimum, whatever minimum that is, because there will be pipeline supply, there will be a question of comparative cost.
>
> PRESIDING EXAMINER: What you are really saying, Mr. Shannon, I take it, is that any effort to draw any firm conclusions here as to what the actual volumes above the minimum volumes might be in any area following '64 would really be quite unrealistic?
>
> Mr. SHANNON: I think that is correct. I think Mr. Browning is in a position to tell you what his best estimate is in '63, but in 1964 I don't know what the expansion will be because the program hasn't been decided. (7:1116–1118)

As already noted above, witness Browning concluded that the normalized purchases of Michigan Wisconsin from Midwestern during the five winter peak months would be the average daily *contract demand* (at 100 percent load factor) of 158,000 Mcf per day, on a year-in-year-out basis. Midwestern argues that Michigan Wisconsin's monthly takes, *winter* as well as summer, should be estimated on the basis of the 75 percent *minimum* contract volumes; that the question whether Michigan Wisconsin's future winter takes from Midwestern will be above *minimums* depends, *inter alia*, upon still unformulated expansion plans of Michigan Wisconsin, and upon the availability of gas to it from its other suppliers, since Midwestern unquestionably constitutes Michigan Wisconsin's most expensive source of gas. (7:1106)

These arguments are not persuasive in view of the evidence presented by Michigan Wisconsin's witness Browning (Exh. 58) as to the historical pattern of Michigan Wisconsin's purchases from Midwestern since the inception of service on the Midwestern system. Accordingly, it is concluded here that for the purpose of the instant proceeding Michigan Wisconsin's takes from Midwestern during the five winter peak months should be estimated at 23,858,000 Mcf, based on an assumed purchase of contract demand throughout the winter period.

As also noted above, Michigan Wisconsin witness Browning concluded that his company's year-in-year-out takes from Midwestern during the seven off-peak

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[21] For example, during the winter months of January, February and March 1963, Michigan Wisconsin experienced unusually cold weather, with the degree day deficiencies in its service area averaging more than 10 percent above normal. This unusually cold weather imposed substantial additional requirements upon Michigan Wisconsin's system. (8:1279)

months would be at the level of the *minimum* contract volumes, with the result that estimated annual takes would amount to 49.2 million Mcf if the 75 percent minimum bill provision were retained, and 53.4 million Mcf in the event the 87.5 percent minimum bill were approved.

Curiously, however, we now find Michigan Wisconsin itself (in its reply brief) taking the position that even if the 87.5 percent minimum bill should *not* be approved by the Commission, 53 million Mcf would still be a reasonable estimate of Michigan Wisconsin's annual takes from Midwestern for the purpose of this proceeding. (pp. 5–8) Michigan Wisconsin bases this position upon recent Commission approval of a Michigan Wisconsin expansion program in Docket No. CP63–230, *et al.* (Commission order of November 12, 1963, 30 FPC 1239), and other developments which it cites as "necessarily" resulting in "a substantial increase in the firm requirements on Michigan Wisconsin's system." The current Michigan Wisconsin argument, however, completely ignores and overlooks the statement which its counsel Shannon volunteered on the record at the conclusion of witness Browning's interrogation, when Shannon referred expressly to the very same Michigan Wisconsin expansion programs, and then emphasized that even if these expansion programs were approved, there were still other factors which Michigan Wisconsin would have to consider at the appropriate time in determining whether and to what extent such expanded requirements would be satisfied by increasing the Michigan Wisconsin takes *from Midwestern*. (7:1116–8)[22]

Under all the circumstances it is concluded that this particular Michigan Wisconsin contention is not entitled to serious consideration here, and that the proper volume of gas to be attributed in this proceeding to Michigan Wisconsin's purchases from Midwestern is either 49,217,000 Mcf or 53,443,500 Mcf—depending upon whether Midwestern's 75 percent minimum bill provision is retained, or the change to an 87.5 percent minimum bill is approved in the pending *Midwestern* proceeding in Docket RP64–8.

The final problem to be resolved here accordingly is primarily a procedural one, resulting from the fact that Midwestern's attempt to shift to the 87.5 percent minimum bill provision is being opposed by the Staff in RP64–8, and that case is still undecided as of this date.[23] On this problem Midwestern takes a rigid position that the impact of its change to the 87.5 percent minimum bill provision is not involved in the instant proceeding, on the ground that the Commission has made that question the subject of a separate proceeding in Docket No. RP64–8. Under these circumstances, Midwestern contends that the effect of the 87.5 percent minimum bill provision, if finally approved by the Commission, must be left to determination in the other case.

The Staff, on the other hand, contends that the controlling fact here is that the 87.5 percent minimum bill has now become a reality, since the Commission by order of October 14, 1963, in Docket RP64–8 permitted it to go into effect, subject to refund, as of October 16, 1963. Staff notes that at least until a final decision is issued in RP64–8, Michigan-Wisconsin will undoubtedly purchase gas at no less than 87.5 percent load factor, in view of its general policy against placing itself in a position where it would be paying for gas not taken.[24] Staff

[22] Including the comparative cost of available supplies from other pipelines.

[23] The hearing in RP64–8 concluded on February 25, 1964, and the case is now awaiting initial decision by the Presiding Examiner.

[24] Michigan-Wisconsin states categorically in its reply brief (p. 5) that even if the 87.5 percent minimum bill were ultimately disallowed in RP64–8, this would not result in any refund to Michigan-Wisconsin for the reason that there is "not even a remote possibility" that its purchases from Midwestern during the interim period would be at less than the minimum monthly volume.

accordingly contends that in order to avoid a windfall to Midwestern the only reasonable course in the instant proceeding would be to predicate normalized purchases of Michigan-Wisconsin on the 87.5 percent minimum bill. Staff suggests that Midwestern's rights would be fully protected under this proposal, because if the 87.5 percent minimum bill should ultimately be disapproved in Docket RP64–8, the Commission would have Midwestern's rates before it *in that case* and would be able to consider what adjustments, if any, would need to be made at that time in the Northern System rates fixed for Midwestern in our instant proceeding, in order to permit Midwestern to recover its full cost of service.

The dilemma presented here is that if Midwestern's rates were fixed in the instant decision on the basis of assumed Michigan Wisconsin takes in the amount of 49.2 million Mcf, and if the Commission subsequently should approve the 87.5 percent minimum bill in RP64–8, there would clearly be a resultant windfall to Midwestern as pointed out by the Staff. On the other hand, however, it is to be noted that if Midwestern's rates are here fixed on the basis of assumed Michigan Wisconsin takes in the amount of 53.4 million Mcf, reflecting the 87.5 percent minimum bill, and if the Commission should subsequently disallow the 87.5 percent minimum bill in RP64–8, the technique suggested by Staff, *supra*, would require the Commission *in that proceeding* to order an *increase* in Midwestern's rates above the level fixed in the instant decision—and this would be in spite of the fact that none of Midwestern's customers are parties to the RP64–8 proceeding, which involves only the limited issue of Midwestern's 87.5 percent minimum bill.

Under the circumstances, it is concluded that any adjustment required to deal with this particular problem should be accomplished under the terms of the order to be issued *in the instant case*. Accordingly, in order to avoid any unnecessary windfall to Midwestern, while still protecting that company against any unjustifiable loss in the event the 87.5 percent minimum bill should be disallowed in RP64–8, Midwestern's rates in the instant case will be determined upon the basis of assumed Michigan Wisconsin takes in the amount of 49,217,000 Mcf.[35] However, the instant order will include a contingent refund condition requiring Midwestern, in the event the Commission's final decision in RP64–8 should approve the 87.5 percent minimum bill, to promptly file substitute tariff sheets reducing the rates adopted in the instant decision to the level required to reflect Michigan Wisconsin takes at the level of 53.4 million Mcf. The contingent refund condition will further require Midwestern, under such circumstances, to promptly refund to its customers, for the period from the date of the instant decision to the filing of such substitute tariff sheets, any excess revenues collected under the instant decision reflecting the difference between the 49.2 million Mcf sales volume here assumed on the basis of the 75 percent minimum bill and the 53.4 million Mcf sales volume estimated on the basis of the 87.5 percent minimum bill. The order will further provide that in the event the 87.5 percent minimum bill provision should be disallowed by the Commission's final decision in Docket No. RP64–8, Midwestern will thereafter make similar refunds to its customers for the period from the date of the instant decision to the date of the final decision in RP64–8.

Midwestern's initial brief notes in passing (p. 10) that if effect *is* to be given to the 87.5 percent minimum bill in the instant decision, then fairness requires

[35] The use of this volume in place of Staff's estimated volume of 53,000,000 Mcf requires a corresponding downward adjustment in Staff's purchased gas cost and compressor station fuel cost. The net result is that although use of the 49.2 million Mcf reduces Staff's proposed total revenue figure by $985,498, it also decreases Staff's recommended cost of service by $747,233.

that there also be taken into account the increase, effective December 15, 1963, in Midwestern's take-or-pay obligations to Trans-Canada to a 95 percent annual load factor, which was the basis for Midwestern's shift to the 87.5 percent minimum bill. However, it is to be noted that Midwestern made no effort in the instant proceeding to show what, if any, the impact of the Trans-Canada 95 percent take-or-pay requirement might be if the 87.5 percent minimum bill is approved, and the matter is not further referred to in Midwestern's instant reply brief.[20] Furthermore, it is of interest to note that in the RP64–8 hearing Midwestern witness O. H. Simonds, Jr., was asked by his own counsel to state whether in the event the 87.5 percent minimum bill should be approved Midwestern would have any objection to the fixing of its rates on a basis which recognized sales consistent therewith. The Midwestern witness answered that there would be *no objection*, and he offered no suggestion or *caveat* at that point that under the circumstances it would be necessary to reflect a counterbalancing upward adjustment in Midwestern's purchased gas costs as a result of the Trans-Canada 95 percent take-or-pay provision. (RP64–8, Vol. 4, Tr. 292–3) Under all these circumstances, it is concluded that the Trans-Canada 95 percent take-or-pay provision does not militate against the contingent refund condition technique here adopted.

B. *Unaccounted-for Loss or Gain*

Midwestern in the test year sold (and charged for) a greater volume of gas than it actually purchased. The Staff computed this unaccounted-for gain for the test year by relating the known categories of gas consumption to the known volume of purchases. Staff witness Goyne determined that the unaccounted-for gain of the test year was representative of Midwestern's historical pattern of unaccounted-for losses and gains, and he accordingly extended the test year experience to represent the normalized test year. (1:56; Exh. 2, Sch. 3) Midwestern, on the other hand, assumes that its normal pattern *in the future* will be an overall unaccounted-for loss due to pipeline leakage. Midwestern has accordingly adjusted its actual test year experience to reflect an unaccounted-for loss amounting to 0.3 percent of total deliveries, including company-used gas. (Exh. 25, Sch. 2, column 13; 3:611) The amount in dispute here is $136,683.

Unaccounted-for loss on a pipeline system results, among other things, from leakages. In the case of unaccounted-for gain, however, it is conceded that a pipeline cannot manufacture or gain gas as a physical matter, so as to deliver more gas to its customers than was actually received from its suppliers. Accordingly, Midwestern witness Simonds contends that the most reasonable explanation of unaccounted-for gain is that it is due to measurement variations somewhere along the pipeline system. (3:611)

Midwestern does not question the fact that since its initial year of operation in 1959, it has experienced an unaccounted-for gain on its Northern and Southern Systems taken as a whole, with the exception of the calendar year 1961 which showed a small loss. However, Midwestern contends that since it checks its meters regularly and corrects deviations as found, it is reasonable to expect measurement variations pro and con largely to offset each other and the gain to disappear, with the result that the company in the future will experience a true net unaccounted-for loss due to leakage occurring during transmission, compression, and measurement. (3:611) Midwestern notes, in this connection, that it is not unusual for a long-line transmission company to have an unaccounted-for gain in its initial years of operation while its sys-

[20] Certainly the effect of adoption of the 87.5 percent minimum bill provision would be in the direction of reducing or eliminating any possibility that Midwestern would have to pay Trans-Canada for gas it cannot take.

tem is being stabilized; that this was in fact the experience of its parent, Tennessee Gas Transmission Company, which had unaccounted-for gain during the first four years of its operation and has had unaccounted-for loss for the succeeding 13 years. (8:1297) On the other hand, it is contended that it is unusual for a long-line transmission company to experience an unaccounted-for gain indefinitely. In support of this conclusion, Midwestern points to the fact, that, according to "Statistics of Natural Gas Companies for the year 1961" as published by this Commission, only 8 of the 78 reporting natural gas companies had unaccounted-for gains in 1959, 1960 and 1961; that less than half of these 8 companies were long-line transmission companies. (8:1295–6) Midwestern concludes that since the average lost and unaccounted-for gas shown for all of the 78 companies listed was approximately 0.7 percent of total deliveries and company-used gas, its recommended 0.3 percent allowance for lost and unaccounted-for gas is a highly conservative figure and should be adopted by this Commission.

Staff, however, contends that the confident prediction of Midwestern witness Simonds that the unaccounted-for gain will shortly disappear and leave Midwestern with a net loss caused by leakage, is not persuasive enough to overcome the solid facts of Midwestern's historical pattern of unaccounted-for losses and gains, including its test year experience and the experience of subsequent months. Staff emphasizes that although most of the reporting pipeline companies showed net losses for 1959, 1960 and 1961, it is nonetheless true that some companies showed unaccounted-for gains, including such important companies as Transcontinental, Coastal Transmission, and Kentucky Gas Transmission Company.[37] Under these circumstances, Staff contends that there is no justification for relying here upon the average experience of *all* companies, rather than upon the past experience of Midwestern itself.

Midwestern's historical experience with respect to unaccounted-for losses and gains may be summarized as follows:

(1) *Southern System*—(a) Twelve months ending December 31, 1960—net gain of 305,186 Mcf; (b) 12 months ending June 30, 1961—net gain of 189,138 Mcf; (c) 12 months ending December 31, 1961—net gain of 155,825 Mcf; test year, ending June 30, 1962—net gain of 160,019 Mcf.

(2) *Northern System*—(a) Twelve months ending December 31, 1961—net loss of 195,273 Mcf; (b) test year ending June 30, 1962—net loss of 29,095 Mcf.

(3) *Changes on Both Systems*—Since the end of the test period, the Southern System changed from a net gain to a net loss, while the Northern System changed from a net loss to a net gain.

(4) *Entire Company on an Overall Basis*—(a) Net gain for each year since the beginning of operations, with the exception of calendar year 1961 which showed a net loss of 39,448 Mcf; (b) test year ending June 30, 1962—net gain of 130,924 Mcf; (c) first 4 months of 1963—total company net gain of 164,810 Mcf; (d) first 5 months of 1963—total company net gain exceeded the net gain on a company-wide basis which Staff witness Goyne had forecast for a full 12 months. (1:56—57; 4:764, 801; 8:1294–5)

It is concluded here that the Midwestern adjustment, converting the test year actual unaccounted-for gain into a 0.3 percent allowance for lost and unaccounted-for gas, is based entirely upon speculation. Although it is, of course, entirely possible that Midwestern's experience in the future will change in such

[37] The 1962 Annual Reports for these companies reveal that Transcontinental and Kentucky Gas Transmission again showed gains for that year. Coastal Transmission, however, has subsequently merged with Houston, Texas Oil and Gas Company into Florida Gas Transmission Company, and the merged company showed a loss in 1962.

a way as to reflect consistent unaccounted-for losses, as has happened in the case of a majority of the pipeline companies, it is nevertheless also possible that Midwestern may in the future consistently experience unaccounted-for gains, as has been the case with respect to Transcontinental, Coastal Transmission, and Kentucky Gas Transmission Company. Under the circumstances, it is concluded that for the purpose of the instant proceeding the Staff has correctly reflected Midwestern's actual net unaccounted-for gain of the test year, which is representative of the historical pattern of Midwestern's own company-wide operations, rather than relying upon the *average* experiences of *all* pipeline companies in general. In the event that Midwestern should at some time in the future convert to a pattern showing consistent net unaccounted-for losses, it might thereafter be appropriate to consider the type of allowance for lost and unaccounted-for gas which is here recommended by the company.

C. *Costing of Exchange Gas Between Midwestern's Northern and Southern Systems*

This issue, involving a disputed amount of only $73,232, does not affect the total dollar amount of Midwestern's cost of service, but only the manner in which it is divided between Midwestern's Northern and Southern Systems. (4:764; Staff initial brief, p. 73) Under an exchange agreement with Michigan Wisconsin, Midwestern may deliver up to 30,000 Mcf a day to that company at Marshfield, Wisconsin, on Midwestern's Northern System, and Michigan Wisconsin will redeliver, on an exchange basis, an equivalent quantity into Midwestern's Southern System at Joliet, Illinois. The purpose of this exchange agreement was described by the Commission in Op. No. 331, 22 FPC 775, 783, as follows:

> * * * to effectuate the sale of Midwestern gas in the Chicago area if necessary to avoid paying Trans-Canada, under the latter's 95 percent annual minimum bill requirement, for gas Midwestern might not be able to sell to its customers on its Northern System.

By use of the exchange agreement, Midwestern has continually been able to take sufficient gas from Trans-Canada to meet the minimum bill provision and thus avoid having to pay for gas not taken. (1:59) On the other hand, the use of such exchange gas to supply a portion of the Southern System's gas needs has never resulted in Midwestern's being required to pay for gas not taken from its Southern System supplier, Tennessee Gas Transmission Company, under the latter's 66⅔ percent minimum bill. (1:61)

Midwestern in the instant case charges the Southern System at the rate of 21.5 cents per Mcf for the 4,510,343 Mcf of gas received from Michigan Wisconsin under the exchange agreement during the test year—representing the commodity rate at which Midwestern purchases gas from its supplier, Tennessee, on the Southern System. (4: 764) On the other hand, Staff prices the gas so exchanged during the test year at 19.19375 cents per Mcf, this being the commodity rate at which Midwestern purchases gas from Trans-Canada.[20] (1:61–2)

In support of its position that the exchange gas should be priced to the Southern System at 21.5 cents per Mcf, Midwestern alleges that in the absence of the exchange agreement it would have had to purchase equivalent volumes for its Southern System customers from Tennessee at that same rate; that accordingly under this approach the Southern System customers neither gain nor lose as a result of the exchange; that under the Staff approach, however, the Southern System

[20] Adjusted to reflect the Staff's conversion factor of 92.5 for Canada-U.S. currency, *supra*.

customers would be favored. Staff, on the other hand, contends that under Midwestern's 21.5-cent pricing the Southern System customers would be required to absorb a part of the Northern System's fixed costs; that this would not be reasonable or appropriate in view of the fact that the exchange is primarily for the benefit of the Northern System.

It is important to note at the outset that the Trans-Canada take-or-pay provision affects only the commodity side of the rate charged to Midwestern; that accordingly the total dollar amount paid by Midwestern to Trans-Canada under the take-or-pay provision during the test year for the 4,510,343 Mcf of gas here involved amounted to $865,704 (Exh. 57, Sch. 1, line 3—derived by multiplying this volume by the 19.19375 cents per Mcf commodity rate at which Midwestern purchases gas from Trans-Canada). The difference between the Staff and Midwestern approaches lies merely in the fact that Staff eliminates from Northern System gas supply expense at line 3 of Exh. 57, Sch. 1, and adds to Southern gas supply expense at line 12, only the actual $865,704 cost paid by Midwestern to Trans-Canada for this particular volume. Midwestern, however, removes from Northern System gas supply expense on line 3, and adds to Southern System gas supply expense on line 12, the sum of $938,271, an amount in excess of the actual purchased gas cost paid to Trans-Canada for this volume under the take-or-pay provision. Midwestern derives this figure by applying to the 4.5 million Mcf volume *not* the rate at which Midwestern purchases this gas from Trans-Canada, but rather the higher 21.5-cent rate at which Midwestern purchases other gas from Tennessee on its Southern System.

It seems clear that in the absence of a take-or-pay provision in the Trans-Canada contract, if Midwestern had had no market on its Northern System for this volume of gas during the test year it would simply have reduced its take from Trans-Canada by that amount. Under such circumstances Midwestern's total purchased gas cost paid to Trans-Canada for its Northern System would have been lower by $865,704. The Staff approach is intended to accomplish this same result, and no more.

It is true that under the Staff approach the Southern System obtains 4.5 million Mcf of exchange gas at a lower rate than it otherwise would have been required to pay for the same volume of gas had it been purchased from Tennessee. However, it is difficult to see why this cost saving to the Southern System should be used to decrease the overall costs charged to the Northern System. Since the purpose of the exchange agreement is to benefit the Northern System by enabling it to avoid incurring a loss under the Trans-Canada take-or-pay provision, it is concluded that the exchange gas should be costed here in such a way as merely to eliminate *the actual loss* which otherwise would have occurred to the Northern System under the Trans-Canada take-or-pay provision; that it should not, however, be treated in a manner which goes *beyond that*, and which would result in Southern System customers absorbing a portion of the fixed costs of the Northern System. Any other approach would mean that the Southern System would be used to take this excess gas off the hands of the Northern System *not at cost*, but at a profit which would be used to pay off a portion of the Northern System's fixed costs.[20]

[20] Two other Staff adjustments to Midwestern revenues need not be discussed here, since Midwestern has now adopted these adjustments in its initial brief, Appendix A—*i.e.*, (1) Staff's upward adjustment of Northern System revenues in the amount of $32,182, reflecting allowable variations in the computation of demand revenues attributable to the Michigan Wisconsin sale (Staff initial brief, p. 65); and (2) Staff's upward adjustment of Southern System excess revenues in the amount of $617,000 to reflect the net effect of the additional sale to Northern Illinois Gas Co. per Docket No. CP63-149 (Staff initial brief, p. 70).

VIII. Conclusion

The total overall cost of service here determined for Midwestern, based upon its operations in the test year ending June 20, 1962, as adjusted, is $64,435,917 of which $22,348,597 is attributable to the Northern System and $42,087,320 to the Southern System. Total revenues are determined in the amount of $71,483,171, of which $24,928,037 is attributable to the Northern System and $46,555,134 to the Southern System. On this basis, excess revenues amount to $7,047,254, of which $2,579,440 is attributable to the Northern System and $4,467,814 to the Southern System. (See Appendix 1–6).

The instant order will require a reduction of Midwestern's rates, effective from the date of this decision calculated to eliminate all excess revenues. As previously noted, consideration of the controverted *rate design* issues in this case is being deferred for a later stage, and the rate reduction required as a result of this decision will accordingly be applied on the basis of Midwestern's existing rate design. In order to accomplish this objective, the existing *commodity* charges on both the Northern and Southern Systems will be retained, and the entire required rate reduction will be applied to the *demand* charge. (Appendix 7 and 8)

Findings and Conclusions

Upon consideration of the entire record in this proceeding, the evidence adduced and the briefs filed, the Presiding Examiner finds and concludes, in addition to the findings and conclusions hereinbefore stated, that

(1) Midwestern Gas Transmission Company is a "natural-gas company" subject to the provisions of the Natural Gas Act, and the sales of natural gas for resale which are the subject of this order are sales of natural gas in interstate commerce and are subject to the jurisdiction of the Commission.

(2) Midwestern's just and reasonable rates in Docket Nos. RP61–19 and RP62–7 from and after the date of the instant decision, subject to the adjustments referred to in paragraph (B) of the instant order, are as follows:

Rate schedule	Demand charge	Energy charge (cents)
Southern System: CDX-1	$2.92	22.0
Northern System:		
SR-2		53.6
CR-2	3.45	25.2
CD-2	3.45	25.2
I-2		25.2
CRL-2	3.70	25.2

(3) Midwestern should be required to file substitute tariff sheets, subject to the approval of the Commission, containing the rates herein found to be just and reasonable in Docket Nos. RP61–19 and RP62–7 as set forth in paragraph (2) above.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission on appeal, or upon its own motion as provided in the Commission's Rules of Practice and Procedure, that:

(A) Within 45 days from the date of issuance of this order, Midwestern Gas Transmission Company shall file substitute tariff sheets satisfactory to the Commission containing the rates herein found to be just and reasonable in Docket Nos. RP61–19 and RP62–7, as set forth in finding paragraph (2).

(B) The rates herein found to be just and reasonable are hereby made subject to the following conditions:

(1) In the event that the Commission's final decision in *Midwestern Gas Transmission Co.*, Docket No. RP64–8, should approve the 87.5 percent minimum bill provision under Midwestern's contract with Michigan Wisconsin, Midwestern within 45 days thereafter shall file substitute tariff sheets satisfactory to the Commission, reducing the rates adopted in the instant decision to the level required to reflect annual sales to Michigan Wisconsin of 53,443,500 Mcf, rather than the 49,217,000 Mcf volume reflected here; and Midwestern shall at the same time refund to its customers, for the period from the date of the instant decision to the filing of such substitute tariff sheets, any excess revenues collected under the instant decision reflecting the difference between the 49,217,000 Mcf volume of sales to Michigan Wisconsin here assumed on the basis of the 75 percent minimum bill provision, and the 53,443,500 Mcf volume of sales estimated on the basis of the 87.5 percent minimum bill provision.

(2) In the event that the Commission's final decision in Docket No. RP64–8 should disallow the 87.5 percent minimum bill provision, Midwestern within 45 days thereafter shall refund to its customers, for the period from the date of the instant decision to the date of the final decision in Docket No. RP64–8, any excess revenues collected under the instant decision, as per ordering paragraph (B) (1), *supra*.

(3) Within 15 days after making refunds in accordance with paragraph (B) (1) or (2), *supra*, Midwestern shall report to the Commission in writing and under oath the amount of the refunds made and the relevant calculations with respect thereto, together with releases from each of its jurisdictional customers.

JOSEPH ZWERDLING,
Presiding Examiner.

APPENDIX 1

MIDWESTERN GAS TRANSMISSION COMPANY
COST OF SERVICE AND EXCESS GAS SERVICE REVENUES
12 MONTHS ENDED JUNE 30, 1962
(PER EXAMINER)

	Total company	Systems	
		Northern	Southern
Operating expenses:			
Other gas supply expenses	$51,592,200	$15,677,319	$35,914,881
Transmission expenses	1,654,872	761,964	892,908
Administrative and general expense	1,177,893	562,071	615,822
Total operating expenses	54,424,965	17,001,354	37,423,611
Depreciation	3,042,054	1,515,759	1,526,295
Amortization	39,285	19,552	19,733
Taxes:			
Federal income	107,531	90,146	17,685
State income	1,313,393	923,936	389,457
Other than Federal and State income	(10,938)	(6,600)	(4,338)
Other gas revenues—credit	5,519,327	2,804,450	2,714,877
Return on rate base at 6.5%	64,435,917	22,348,597	42,087,320
Total cost of service	71,483,171	24,928,037	46,555,134
Gas sales for resale	7,047,254	2,579,440	4,467,814
Excess of gas service revenues at present rates			

APPENDIX 2

MIDWESTERN GAS TRANSMISSION COMPANY
RATE BASE AND RETURN
12 MONTHS ENDED JUNE 30, 1962
(PER EXAMINER)

	Total company	Systems	
		Northern	Southern
Cost of plant—average (Ex. 1, Sch. 2 and 3; Ex. 55, Sch. 2)	$89,354,500	$44,516,131	$44,838,369
Accumulated provision for depreciation and amortization—average [1]	5,154,045	1,848,735	3,305,310
Average net plant investment	84,200,455	42,667,396	41,533,059
Working capital—net (Appendix 3)	712,262	477,986	234,276
Total rate base	84,912,717	43,145,382	41,767,335
Return @ 6.5%	5,519,327	2,804,450	2,714,877

[1] Ex. 1, Sch. 2 and 3; Ex. 55, Sch. 2; reflects 3.5% depreciation for test year.

APPENDIX 3

MIDWESTERN GAS TRANSMISSION COMPANY
COMPUTATION OF ALLOWANCE FOR WORKING CAPITAL
12 MONTHS ENDED JUNE 30, 1962
(PER EXAMINER)

Particulars	Total company	Systems	
		Northern	Southern
Cash working capital:			
Operating expenses:			
Purchase gas [1]	$51,885,205	$15,770,321	$36,114,884
Gas used in utility operations	(293,005)	(93,002)	(200,003)
Transmission	1,654,872	761,964	892,908
Administrative and general expense	1,177,893	562,071	615,822
Total operating expenses	54,424,965	17,001,354	37,423,611
Deduct:			
Purchase gas	51,885,205	15,770,321	36,114,884
Depreciation clearing	112,060	58,617	53,443
Transmission of gas by others			
Compression of gas by others			
Total operating expenses—net	2,427,700	1,172,416	1,255,284
Cash working capital (⅛ of operating expenses—net)	303,463	146,552	156,911
Materials and supplies	117,635	70,561	47,074
Prepayments	57,271	26,980	30,291
Working capital required due to lag between payments for purchased gas and collections from customers	233,893	233,893	
Gross working capital	712,262	477,986	234,276
Less 47.22% Federal income tax			
Net working capital	712,262	477,986	234,276

[1] Purchase gas:

Exhibit 55, Sch. 4	$50,541,865	$16,517,554	$34,024,311
Staff adjustments (brief appendix):			
Docket No. CP63-149 purchases	2,315,000		2,315,000
Tennessee rate reduction	(224,427)		(224,427)
Examiner's adjustment: Reflecting reduced sales to Michigan Wisconsin Pipe Line Co.	(747,233)	(747,233)	
As adjusted	51,885,205	15,770,321	36,114,884

APPENDIX 4

MIDWESTERN GAS TRANSMISSION COMPANY
FEDERAL INCOME TAX COMPUTATION AND CREDIT TO WORKING CAPITAL
12 MONTHS ENDED JUNE 30, 1962
(Per Examiner)

	Reflecting flow through of liberalized depreciation			Before flow through of liberalized depreciation (for State income tax calculation)		
	Total company	Systems		Total company	Systems	
		Northern	Southern		Northern	Southern
Net investment in plant (Appendix 2)	$84,200,455	$42,667,396	$41,533,059	$84,200,455	$42,667,396	$41,533,059
Working capital (preliminary) (Appendix 3)	712,262	477,986	234,276	712,262	477,986	234,276
Rate base (preliminary)	84,912,717	43,145,382	41,767,335	84,912,717	43,145,382	41,767,335
Return @ 6.5% on preliminary rate base	5,519,327	2,804,450	2,714,877	5,519,327	2,804,450	2,714,877
Working capital (preliminary)	712,262	477,986	234,276	712,262	477,986	234,276
Less: 47.22% of Federal income tax				970,014	515,993	454,021
Working capital adjusted	712,262	477,986	234,276			
Rate base adjusted	84,912,717	43,145,382	41,767,335	84,200,455	42,667,396	41,533,059
Return @ 6.5% on adjusted rate base (Appendix 2)	5,519,327	2,804,450	2,714,877	5,473,030	2,773,381	2,699,649

Federal income tax						
Return on preliminary rate base	5,519,327	2,804,450	2,714,877	5,519,327	2,804,450	2,714,877
Less: 48.465% [1] tax deductions (Appendix 5)	2,718,616	1,381,123	1,337,493	1,642,003	805,709	832,234
Balance	2,800,711	1,423,327	1,377,384	3,877,324	1,994,681	1,882,643
Less: Surtax exemption adjustment [2]	6,785	3,448	3,337	6,785	3,490	3,295
Balance	2,793,926	1,419,819	1,374,047	3,870,539	1,991,191	1,879,348
Return and tax (above balance÷51.535%) [1]	5,421,415	2,755,174	2,666,241	7,510,505	3,863,764	3,646,741
Return and tax as above	5,421,415	2,755,174	2,666,241	7,510,505	3,863,764	3,646,741
Less: Tax deductions (Appendix 5)	5,609,441	2,849,732	2,759,709	3,388,018	1,670,833	1,717,185
Taxable income	0	0	0	4,122,487	2,192,931	1,929,556
Tax at 50%				2,061,244	1,096,466	964,778
Less: Surtax exemption				7,000	3,723	3,277
Federal income tax	0	0	0	2,054,244	1,092,743	961,501
47.22% of Federal income tax credited to working capital	0	0	0	970,014	515,993	454,021

[1] 50%×6.5%×47.22%=1.535%
50% less 1.535%=48.465%
100% less 48.46%=51.535%
50%—Tax rate
6.5%—rate of return
47.22%—Percentage of tax available for working capital

[2] $7,000×6.5%×47.22%=$215
$7,000 less $215=$6,785

APPENDIX 5

MIDWESTERN GAS TRANSMISSION COMPANY
FEDERAL INCOME TAX DEDUCTIONS
12 MONTHS ENDED JUNE 30, 1962
(PER EXAMINER)

	Total company	Systems	
		Northern	Southern
Depreciation, per books adjusted	($3,042,054)	($1,515,759)	($1,526,295)
Depreciation, income tax straight line (3.5%)	2,940,905	1,474,832	1,466,073
Amortization of debt, discount and expense	53,980	26,488	27,492
Interest on long-term debt	3,404,000	1,670,343	1,733,657
Administrative salaries—T. G. Corcoran			
Outside services, legal—Arvey, Hodes & Mantyband and Little, Presbrey & Ohse	31,187	14,929	16,258
Subtotal	3,388,018	1,670,833	1,717,185
Excess of declining balance depreciation over straight line	2,221,423	1,178,899	1,042,524
Total tax deductions	5,609,441	2,849,732	2,759,709

APPENDIX 6

MIDWESTERN GAS TRANSMISSION COMPANY

COMPUTATION OF STATE(S) INCOME TAX ALLOWANCE 12 MONTHS ENDED JUNE 30, 1962

(PER EXAMINER)

Particulars	Federal	North Dakota	Minnesota	Wisconsin	Total Northern System	Kentucky	Indiana	Total Southern System	Total all States
50% of Federal taxable income (before flow through of liberalized depreciation)	$2,061,244								
Federal income tax—100%	2,061,244								
Income before Federal and State income taxes (before flow through)	4,122,488	$4,122,488	$4,122,488	$4,122,488		$4,122,488	[1] $5,435,371		
Applicable apportionment factors (from year 1961 tax return)		0.3952%	10.8278%	25.8987%		5.5883%	9.3110%		
State(s) taxable income (apportioned)		16,292	446,375	1,067,671		230,377	506,087		
Less: Specific credit			500						
FIT applicable—50% of State taxable income (apportioned)		8,146	223,188			115,189			
Limited to 10% of State income tax				106,767					
Net taxable income		8,146	222,687	960,904		115,188	506,087		
Income tax allowance (at following rates):									
$90 (3% of $3,000), plus 4% of next $5,000, plus 5% of excess of $8,000		297							
8.25% plus additional 1.98% privileges and income tax (total 10.23%)			22,781						
$225 (1st $6,000) plus 7% of excess				67,068					
5% on 1st $25,000, plus 7% of excess						7,563			
Income tax at 2% of taxable income							10,122		
Total State(s) income tax allowance		297	22,781	67,078	90,146	7,563	10,122	17,685	107,831

[1] Taxes—Other than Federal and State—per examiner	$1,313,393
Less: Highway use (Exh. 1, Sch. 8)	510
Total Franchise and ad valorem	1,312,883
Income before Federal and State income taxes (see above)	4,122,488
	5,435,371

APPENDIX 7

MIDWESTERN GAS TRANSMISSION COMPANY

DETERMINATION OF UNIT COSTS FROM CLASSIFIED COST OF SERVICE

	Costs		
	Total	Demand	Commodity
1. Southern System:			
2. Cost of service	$42,067,320	[1] $12,343,401	[1] $29,743,919
3. Adjusted cost of service	42,067,320	14,025,770	28,061,550
4. Billing determinants (Mcf)		4,800,000	127,552,500
5. Average unit costs		$2.92	22.0¢
6.			
7. Northern System:			
8. Cost of service	22,348,597	[1] 8,299,008	[1] 14,049,589
9. Adjusted cost of service	22,348,597	8,160,659	14,187,938
10. Billing determinants:			
11. Schedule CRL-2		372,360	5,795,248
12. Other schedules		1,967,422	50,506,093
13. Total		2,339,782	56,301,341
14. Average unit costs:			
15. Schedule CRL-2		$3.70	25.2¢
16. Other schedules		3.45	25.2¢
17.			
18.			
19.			
20. Total company	64,435,917		

[1] The total classified costs here shown were arrived at by employing the methods followed by the Staff in Exhibit 57, Schedules 3-A and 3-B.

APPENDIX 8

MIDWESTERN GAS TRANSMISSION COMPANY

RATES FOUND BY EXAMINER AND REVENUES RESULTING THEREFROM

Rate schedule	Examiner's rate		Billing units		Revenues
	Demand	Commodity (cents)	Demand	Commodity	
1. Southern System:					
2.					
3. CDX-1	$2.92	22.0	4,800,000	127,552,500	$42,077,550
4.					
5.					
6.					
7. Northern System:					
8. SR-2		[1] 53.6		247.767	132,803
9.					
10. CR-2	3.45	25.2	51,058	750,470	365,269
11.					
12. CD-2	3.45	25.2	1,896,000	49,217,000	18,943,884
13.					
14. I-2		25.2		290,856	73,295
15.					
16. CRL-2	3.70	25.2	372,360	5,795,248	2,838,134
17.					
18. Total Northern System			2,319,418	56,301,341	22,353,385
19.					
20. Total system					64,430,935

[1] Reflects CD-2 rate level at 40% load factor.

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. RP64-8

ORDER ADOPTING EXAMINER'S ORDER APPROVING INCREASED MINIMUM BILL AND TERMINATING PROCEEDING

(Issued October 13, 1964)*

Syllabus

1. Pipeline's proposal to increase monthly minimum bill of its Northern system's Rate Schedule CD-2 from 75% to 87.5% load factor found just and reasonable. P. 1090.
2. During winter periods proposed minimum bill would have no practical effect upon Michigan Wisconsin's pattern of takes or substantially alter its overall pattern of purchases. P. 1094.
3. Commission *terminates* proceeding initiated under Section 4(e) of the Natural Gas Act and *discharges* pipeline from any further refund obligation. P. 1097.

Jack Werner, Harry S. Littman, Melvin Richter, L. R. Pankonien, and *B. J. Williamson* for Midwestern Gas Transmission Company and Tennessee Gas Transmission Company

Charles V. Shannon and *Louis Flax* for Michigan Wisconsin Pipe Line Company

Joel Yohalem and *Milton Grossman* for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman, L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

This proceeding under Section 4 of the Natural Gas Act involves a proposal by Midwestern Gas Transmission Company (MGT) to increase the minimum bill in its Northern System Rate Schedule CD-2 from 75 percent to 87.5 percent. MGT filed its revised tariff sheets on September 13, 1963, to become effective October 15, 1963, the date on which its take-or-pay obligation to its Canadian gas supplier, Trans-Canada Pipe Line, Ltd. (Trans-Canada), was to be increased to 95 percent. The Commission, by order issued October 14, 1963, suspended the proposed increase for one day; and on October 16, 1963, the increased minimum bill became effective subject to refund pending final determination of the propriety of the increase in this proceeding.

Michigan Wisconsin Pipe Line Company (Michigan Wisconsin), an intervener, and the only purchaser under the CD-2 rate, agreed not to object to the increased minimum bill and has adhered to this position throughout the proceeding. The Commission's staff opposed the increase at the hearing before the examiner on the ground that the 95 percent take-or-pay obligation to Trans-Canada could be met by increased transfers of Canadian gas to MGT's Southern System.

The presiding examiner issued his initial decision on July 15, 1964. He concluded that the changes in its tariff sheets proposed by MGT were just and reasonable, and not unduly discriminatory, preferential, or otherwise unlawful;

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*Initial decision appears on p. 1083.

and that the proceedings should be terminated and MGT discharged from any further refund obligation under the order of October 14, 1963.

No exceptions to the ultimate conclusion of the examiner have been taken. MGT, however, has filed an exception disagreeing with the examiner's subsidiary finding with respect to the volumes of sales to Michigan Wisconsin under the 87.5 percent minimum bill. Staff has also filed a statement of its disagreement with certain language in the examiner's decision, to which MGT and its parent, Tennessee Gas Transmission Company, have filed a joint answer. Regarding the volumes of sales to Michigan Wisconsin, the examiner's finding is fully substantiated by the record in this proceeding. Moreover, his finding is the same as that of another examiner in a related proceeding involving the same question of sales to Michigan Wisconsin.[1] With respect to staff's statement, the questions of language raised do not bear on the examiner's ultimate conclusion, nor are they of such materiality as to warrant further discussion by us at this time. Without necessarily adopting all of the examiner's language, namely, those portions questioned by staff, we agree with his decision and his finding that the 87.5 percent minimum bill should be approved. Accordingly, we shall adopt his recommended order.

The Commission finds:

(1) Without necessarily adopting all of the language of the examiner's decision, namely, those portions questioned by staff, that decision, together with the examiner's further findings and conclusions and recommended order, should be adopted as the decision of the Commission as of the date of issuance of this order.

(2) Except as herein granted, the exceptions to the examiner's decision should be denied.

The Commission orders:

(A) Consistent with the foregoing, and subject to the limitation set forth in Paragraph (1) above, the examiner's decision, together with his further findings and conclusions and recommended order, are hereby adopted as the decision of the Commission as of the date of issuance of this order.

(B) Except as herein granted, the exceptions to the examiner's decision are hereby denied.

[1] See Opinion No. 444 issued today in *Midwestern Gas Transmission Co., et al.*, Docket No. RP61–19, *et al.*, *supra*, p. 993.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON PROCEEDINGS UNDER SECTION 4 OF THE NATURAL GAS ACT INVOLVING RATES AND CHARGES

(Issued July 15, 1964)

SIMPSON, *Presiding Examiner:* This proceeding arises under Section 4 of the Natural Gas Act (Act) and concerns the lawfulness of the rates, charges, classifications and services contained in Midwestern Gas Transmission Company's (Midwestern's) FPC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2, as proposed to be amended by First Revised Sheet No. 10 and revised title pages.

On September 13, 1963, Midwestern tendered for filing the foregoing revised tariff sheets, to become effective October 15, 1963, which by Commission's Order issued October 14, 1963,[1] were suspended and use deferred until October 16, 1963, when the same were permitted to become effective subject to refund as required

[1] Entitled, "Order Providing for Hearing, Suspending Proposed Revised Tariff Sheets, Fixing Date of Hearing, and Allowing Proposed Revised Tariff Sheets to Become Effective Subject to Refund Obligation."

by final order of the Commission, with interest at 7 percent, and the execution and filing of a compliance agreement and undertaking.

By its First Revised Sheet No. 10, aforesaid, Midwestern proposed to increase the monthly minimum bill of its northern system Rate Schedule CD–2 from a 75 percent load factor to an 87½ percent load factor minimum, to reflect a 95 percent annual minimum load factor imposed by its contract with its northern system supplier, Trans-Canada Pipe Line, Ltd. (Trans-Canada), effective October 15, 1963.[2]

Michigan Wisconsin Pipe Line Company (Michigan Wisconsin), the only purchaser under the CD–2 rate, agreed with Midwestern in writing under date of May 16, 1960, not to object to the anticipated proposed increase in monthly minimum bill.[3]

In its order issued October 14, 1963, aforesaid, the Commission stated that the proposed change had not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful, and, finding that it necessary and proper in the public interest so to do, ordered a hearing be held on a date to be fixed by notice of the Presiding Examiner concerning the lawfulness of the rate, charge, classification and service involved, to be preceded by a prehearing conference to be held before the Presiding Examiner, at a time, date and place therein fixed, for certain specified purposes including the definition of issues, agreement and stipulation as to facts relevant thereto, and, as necessary, the determination of procedures for hearing.[4]

By order issued November 26, 1963, the Commission denied Midwestern's motion to vacate the order issued October 14, 1963, filed October 28, 1963, wherein Midwestern contended, principally, that the current record in the Section 5(a) rate proceedings in Docket No. RP61–19, *et al.*, would afford adequate information in the premises.[5]

Two prehearing conference sessions were held prior to that directed by the Commission's Order of October 14, 1963, to consider various matters presented by a motion filed by Midwestern,[6] and the Commission's denial of the motion to vacate aforesaid,[7] following which, on December 24, 1963, the Presiding Examiner issued his order and ruling relating thereto which, among other things, provided dates for the service of prepared testimony and statements, variously by Midwestern, Michigan Wisconsin, and Staff, and for compliance by Midwestern with the filing requirements of Paragraph G of the Commission's Order of October 14, 1963.

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[2] There is no proposal to change Midwestern's presently effective CD–2 demand rate of $4.55 and commodity rate of 25.2 cents per Mcf (14.73 psia).

[3] Midwestern's contract demand with Trans-Canada is 204,000 Mcf per day while Michigan Wisconsin's with Midwestern is 158,000 Mcf per day, or some 77 percent of the former figure.

[4] The Commission's Order provided that the prehearing conference commence on January 6, 1964, and by Paragraph (G) thereof that Midwestern serve on or before November 12, 1963, material required by Section 154.63 of the Regulations under the Act, and that Staff and all interveners serve their testimony and exhibits on or before December 13, 1963.

[5] No answers were filed to the motion.

[6] On October 28, 1963, Midwestern moved for an extension of time for filing the material referred to in Paragraph (G) of the Commission's Order of October 14, 1963, and suggested the holding of a prehearing conference to curtail issues and scope of testimony by stipulations. Such a conference was held on November 26, 1963, as directed by the Presiding Examiner in his ruling issued November 6, 1963.

[7] The prehearing conference session of December 10, 1963, a reconvening of the session of November 26, 1963, directed by order of the Presiding Examiner issued November 29, 1963, was for the purpose of reconsidering the scope of Midwestern's then proposed case-in-chief in the light of Commission's Order, aforesaid, denying Midwestern's motion to vacate.

At the prehearing conference held, as directed by Commission's Order, on January 6, 1964, prepared testimony of Midwestern's witnesses-in-chief was transcribed in the record and certain exhibits and items to be offered were identified, the Presiding Examiner directing that Midwestern file with the Commission its motion for conditional relief from further requirements of Paragraph G of the Commission's Order of October 14, 1963, and that, on specified dates fixed, Michigan Wisconsin serve certain prepared evidence, Staff its prepared evidence constituting its case-in-chief, and Midwestern its prepared rebuttal.[8] Hearing in the proceedings was duly set to commence February 24, 1964.

Previously, on November 4, 1963, notices of intervention were filed by the Michigan Public Service Commission and the Public Service Commission of Wisconsin; on November 12, 1963, a petition to intervene was filed by Michigan Wisconsin; and on February 4, 1964, a petition to intervene was filed by Tennessee Gas Transmission Company (Tennessee) to answer Staff's prepared exhibits and testimony served January 31, 1964. By orders issued December 31, 1963, and February 24, 1964, the Commission permitted intervention by Michigan Wisconsin and Tennessee, respectively.

Pursuant to the direction of the Presiding Examiner entered of record in the prehearing conference of January 6, 1964, the proceedings came on for hearing commencing February 24, 1964, concluding on the following date. Applicant (Midwestern), two interveners (Michigan Wisconsin and Tennessee), and Staff participated in the hearing.[9] Midwestern presented two witnesses on its case-in-chief and two on rebuttal, and Michigan Wisconsin and Staff presented one witness, each. Fourteen exhibits and eight items by reference were offered and received in evidence.[10] Simultaneous initial and reply briefs were duly filed by counsel for Midwestern and Tennessee, jointly, and by Staff, and an initial brief by counsel for Michigan Wisconsin.

THE ISSUES

The basic contested issue in this proceeding arises under Section 4 of the Act and concerns, in brief, whether the 87½ percent load factor minimum Midwestern proposes for monthly billing of its customer, Michigan Wisconsin, under the former's northern system's Rate Schedule CD–2, is just and reasonable.[11]

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[8] These dates were: for the intervener Michigan Wisconsin's service, January 20, 1964; for Staff's service, January 31, 1964; and for Midwestern's rebuttal, February 10, 1964. On joint motion filed February 4, 1964, by Midwestern and the intervener Tennessee Gas Transmission Company (Tennessee), for good grounds stated, and without objection, Midwestern was granted an extension of time for filing its rebuttal to February 17, 1964, and Tennessee was given until the same date for filing its evidence in answer to that previously served by Staff.

[9] The intervener state commissions did not participate or appear at either the prehearing conferences or hearing, and did not file either brief or memorandum.

[10] Exhibits: Midwestern, 7; Michigan Wisconsin, 5; Staff, 2. Items by reference: Midwestern, 4; Staff, 4.

[11] Section 4(a) of the Act provides, in effect, that all rates and charges made by a natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable; and Section 4(b) provides, in effect, that with respect to any such transportation or sale, a natural gas company shall make or grant no undue preference or advantage to any person, or subject any person to any undue prejudice or disadvantage, or maintain any unreasonable difference in rates, or charges, as between localities or classes of service. Finally, Section 4(e) places the burden of proof to show that an increased rate of charge is just and reasonable upon the natural-gas company. Jurisdiction, as determined in prior decisions of the Commission, with respect to both person and identical subject matter, is not contested in this proceeding.

THE CONTENTIONS

Applicant

Midwestern and Tennessee contend, in brief, that the current 95 percent minimum load factor applicable to deliveries from Trans-Canada represents a part of the price which had to be paid in order to obtain the Canadian supply; that Midwestern will be subjected to penalties should it fail to comply with the Trans-Canada contract minimum; that the proposed change to an 87½ percent minimum bill to Michigan Wisconsin together with transfer of 30,000 Mcf per day to Midwestern's southern system will substantially eliminate payments to Trans-Canada for gas not taken; that without the change it is likely that purchase by Michigan Wisconsin during the present calendar year would not attain certain levels estimated by either Michigan Wisconsin or Staff; and that revenue excesses which might result from the authorization of the change proposed would be minimal.

Midwestern further contends that in the past the Commission has approved minimum bills at levels higher than its proposed 87½ percent.[12]

Midwestern also contends that the proposed change in minimum bill would not necessitate any reduction by Michigan Wisconsin in purchases from other suppliers, and would not adversely affect the latter's ability to eliminate prepayments made to gas producers in the Woodward area of Oklahoma.

Midwestern finally contends that Staff's proposal that present transfers from Midwestern's northern system to its southern system be increased from 30,000 Mcf to 49,446 Mcf per day would not serve to eliminate the pay-for problem related to its Trans-Canada supply; that the southern system customers could not be depended upon to purchase amounts substantially above their respective 75 percent contract minima; and that the increased transfers would result in an aggravation of Tennessee's current take-or-pay problem related to its system purchases of producer-suppliers.

The Intervener Customers

Michigan Wisconsin contends that assuming market development predicted by its customers and normal economic and weather conditions[13] the increase in minimum bill would have no material long-term impact upon it.

Staff

Staff contends that the impact of the proposed increase on Michigan Wisconsin would be substantial; that by increasing the limit on exchange gas, Midwestern could avoid the take-or-pay impact of Trans-Canada's current 95 percent annual minimum bill; and, that Tennessee's prepayment difficulties are not relevant to the matter of eliminating the increase in Midwestern's minimum bill.

Staff further contends that the historical pattern of purchases by Michigan Wisconsin, estimates of future purchases, a possible decline in Btu value of

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[12] Referencing El Paso Natural Gas Company and Transwestern Pipeline Company at 91 percent minima.

[13] That is, on these assumptions Michigan Wisconsin would require full contract volumes from all suppliers. The intervener also asserts that on the basis of average monthly volumes purchased the past 3 years the minimum bill would have had no practical effect November to March (5 months); and that, as to the remaining months, increasing use of gas for firm loads, further storage developments, and new firm entitlements authorized in Docket No. CP63-230 will all result in an increase in annual requirements. However, as of this time, Michigan Wisconsin's consent to the 87½ percent minimum bill rests on its assumption that the determination of Midwestern's CD-2 rate in RP61-19 will be based upon annual sales of 53,443,500 Mcf, estimated on the basis of purchases by it of 100 percent of its contract demand with Midwestern for 5 months and 87.5 percent during the remaining 7 months.

Midwestern's northern system supply (5 percent), and additional firm sales authorized in Docket No. CP63-230, all combine to support its estimate of normalized annual purchases by Michigan Wisconsin in the amount of 49,200,000 Mcf under a 75 percent monthly minimum bill; that the resulting 4,100,000 Mcf of gas which Midwestern would have to take from Trans-Canada to avoid penalty can be transferred to Midwestern's southern system;[14] that Michigan Wisconsin has indicated that it is willing and able to effect such transfer; that during the entire off-peak season in 1963 the market on Midwestern's southern system was adequate to absorb such transfer without encountering take-or-pay situations with respect to deliveries by Tennessee; and that estimates by southern customers for 1964 show an even greater system capability in this respect.[15]

THE EVIDENCE AND FINDINGS

Contract Minimum Quantities

The gas supply for Midwestern's northern system is provided by a firm 25-year contract with Trans-Canada Pipe Lines, Ltd. (Trans-Canada), dated April 14, 1960, which requires the former to take, and the latter to deliver, 204,000 Mcf of natural gas per day.[16] It provides a minimum monthly bill for the term thereof equal to the demand charge for the month plus a commodity charge equal to the commodity rate multiplied by the number of days in the month and 75 percent of the contract quantity, and, effective with the commencement of the fourth year of deliveries, December 15, 1963, a minimum annual bill, consisting of the sum of the monthly demand charges plus a commodity charge equal to the commodity rate multiplied by the number of days in the year and 95 percent of the contract quantity.

At the time Midwestern applied for its northern system certificate in Docket No. G-18313 it proposed to provide in its tariff (Rate Schedule CD-X3) an initial monthly minimum bill based on a 75-percent load factor for the first 3 years of service and thereafter 87½ percent, when the minimum annual bill in the Trans-Canada contract would take effect. The Commission rejected on the ground that this constituted a periodic increase contrary to Section 154.38 (d)(3) of its Regulations under the Act stating, however, that the rejection would not preclude a timely filing by Midwestern in regard thereto 3 years thereafter.[17] By letter dated May 16, 1960, Michigan Wisconsin agreed it would not oppose such a filing.

By contract with Midwestern, the intervener Michigan Wisconsin is obligated to take near Marshfield, Wisconsin, under the former's Rate Schedule CD-2, a demand quantity of 158,000 Mcf per day for resale to customers principally in Wisconsin and Michigan.

Against the possibility that Midwestern could not sell the volumes of gas contemplated the parties also entered into the exchange agreement dated September 21, 1960, which provides, in general, that at its election Midwestern may deliver to Michigan Wisconsin for redelivery at a point near Joliet, Illinois, up to 30,000 Mcf of gas a day, for disposition by the latter in the Chicago area.[18]

[14] Staff reduces the initial estimate of 4,900,000 Mcf as the volume which Midwestern would have to pay for, though not able to use, by 800,000 Mcf of estimated additional sales to other northern system customers.

[15] Staff contends that 1962 sales on the southern system are not representative of future expectations.

[16] All volumes are stated at a pressure base of 14.73 psia.

[17] *Midwestern Gas Transmission Company*, 22 FPC 775, 786-787 (1959).

[18] *Ibid.*, at 799; where the Commission also stated that Michigan Wisconsin proposed to purchase from Midwestern at 100 percent load factor, for the time Michigan Wisconsin intended to employ storage facilities to enable it to use the purchase to increase its peak day capacity by 191,600 Mcf (p. 788).

Deliveries by Midwestern to Michigan Wisconsin

Midwestern's deliveries to Michigan Wisconsin started October 14, 1960.[19] During the first three winters these averaged approximately 162,300 Mcf daily or in excess of the contract demand, and during the seven off-peak months averaged over-all some 127,100 Mcf per day as compared with the contract minimum (75%) of 118,500 Mcf.[20] While in only two instances were winter month averages less than the 87½ percent here proposed, off-peak monthly averages frequently approximated the amount of the then minimum bill.[21]

Estimates of Midwestern's Sales and Transfers

At the 95 percent minimum annual load factor now in effect under the Trans-Canada contract, to avoid having to pay for gas which it does not take, Midwestern must purchase 70,737,000 Mcf. It estimates that if Michigan Wisconsin is obligated merely to make purchases on a straight minimum bill of 75 percent, or in the amount of 44,773,250 Mcf,[22] it (Midwestern) would have to pay Trans-Canada for 7,329,887 Mcf of gas which it cannot take,[23] as compared with 1,528,846 Mcf on the basis of a straight minimum bill of 87½ percent.[24] In the former instance the Midwestern computes a net loss of $1,477,952 and in the latter a net loss of $44,576.[25]

However, on the assumption that Michigan Wisconsin would take at 100 percent load factor during the winter months and at the minimum of 87½ percent during the remainder of the year, or 51,626,500 Mcf, Midwestern estimates that gas paid for but not taken would come to 1,252,290 Mcf for a net gain of $61,749, assuming transfers during the peak months at a daily average of 30,000 Mcf.

Actual purchases by Michigan Wisconsin from Midwestern's northern system have averaged over the 3 past years 51,700,870 Mcf.[26] By order of the Commission issued November 12, 1963, at Docket No. CP63–230, *et al.*, Michigan Wisconsin has been authorized to sell on a firm basis gas previously available for sale only as interruptible; and, accordingly, on the basis of estimated customer's requirements of 303,714,000 Mcf for 1963–64 and 319,816,221 Mcf for 1964–65, it expects its requirements of suppliers, including Midwestern, to be greater than in the past.

To meet these estimated requirements, Michigan Wisconsin lists future purchases of firm gas supplies from pipe line sources of 324,332,000 Mcf, including 57,670,000 Mcf from Midwestern,[27] and anticipates the necessity of additional purchases of interruptible gas from Midwestern, Northern Natural, or of other sources.[28]

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[19] As initial deliveries. Under an interim agreement initial deliveries to Midwestern by Trans-Canada were smaller than contract quantities. Deliveries under the main contract commenced December 15, 1960.

[20] The minimum at the proposed 87½ percent load factor amounts to 138,250 Mcf.

[21] So in September and October 1961; April 1 through October 31, 1962; and April 1 through September 30, 1963.

[22] Determined on the basis of estimates submitted by customers for the year 1963, but closely approximating the result obtained by applying a 75 percent minimum on a month by month basis (43,252,500 Mcf).

[23] After allowance for volumes absorbed in the company use, losses and unaccounted for gas in the total of 599,522 Mcf, and the transfer of 10,950,000 Mcf to the southern system.

[24] Computing sales to Michigan Wisconsin to be 50,461,250 Mcf.

[25] Crediting Transfers at Tennessee's commodity rate.

[26] Thus, 1960–61: 57,491,110 Mcf; 1961–62: 47,563,255 Mcf; and 1962–63: 50,048,245 Mcf.

[27] The 324,332,000 Mcf of total purchases, after company use and losses, yields a total salable supply of 310,000,000 Mcf which is 9,816,221 Mcf less than the previously stated customer requirements for 1963–64.

[28] In addition to its firm supply from Midwestern, Michigan Wisconsin has the option under the exchange agreement of September 21, 1960, of taking some 8,000,000 to 10,000,000 Mcf of transfer gas pursuant to Midwestern's Rate Schedule I–2.

However, as none of Michigan Wisconsin's suppliers has a unit cost as high as Midwestern's it would be less expensive for Michigan Wisconsin to purchase additional gas from others. Thus, Northern Natural's commodity rate is approximately 1½ cents per Mcf less than Midwestern's, and it can be assumed that but for Midwestern's minimum bill Michigan Wisconsin would be purchasing more gas than it is from Northern Natural and less from Midwestern.[29]

Although, in designing its annual expansion programs Michigan Wisconsin takes into account its contract obligations, it could well decide, as its counsel concedes, that on the basis of comparative costs it would reduce takes from Midwestern to the level provided in the minimum bill and arrange for its other supplier to meet its increased requirements. Also, in the event of a warm winter, and depending upon a like situation with respect to supplies, its takes from Midwestern would be subject to a probable similar reduction. On these bases, and in such events, there would be a complete failure on the part of Midwestern to conform its sales to its commitment under Trans-Canada's minimum bill.[30]

Michigan Wisconsin's witness testified that based upon actual purchases for the full 3 years since the first full month of delivery (November 1960), and substantial increases in actual sales to resale customers, the proposed change in minimum bill would have no practical effect upon it during the five winter months (November–March). It appears from the evidence that in winters, Michigan Wisconsin has generally taken gas month by month at approximately the full contract demand and has averaged overall even more than such demand. Further, despite the warmer weather prevailing in February 1964, which caused a reduction in takes to the minimum (87½%) Michigan Wisconsin expected, by exercise of its option applicable to transfer gas, to average its full contract demand over the whole winter period.

It is therefore concluded that at least during winter periods Midwestern's proposed minimum bill would have no practical effect upon Michigan Wisconsin's pattern of takes.

On the assumption that it would take at 100 percent load factor or its equivalent during five winter and at the proposed minimum during the seven off-peak months, Michigan Wisconsin estimates normalized future annual purchases at 53,443,500 Mcf,[31] and it is computed that, after allowance for sales to others (7,084,341 Mcf) and losses (739,546 Mcf), Midwestern would be required to pay for 596,882 Mcf of gas not taken, assuming the transfer of 8,872,791 Mcf to the southern system.

Staff bases its contention that Midwestern can avoid the impact of Trans-Canada's 95 percent annual minimum bill by increasing the volume of gas transferred to its southern system by 4,161,356 Mcf per year or 19,446 Mcf per day, upon the assertion that load factors of Midwestern's southern system customers, taken as a group, are high enough to permit an increase in transfers without creating a take-or-pay situation under Midwestern's supply contract with Tennessee, which carries a minimum monthly bill of 66⅔ percent. Sales to Michigan Wisconsin are computed by Staff on the basis of deliveries at the full contract quantity for five winter months and at a 75 percent minimum for the seven off-peak months. These totaling 49,217,000 Mcf, along with sales to others adjusted for new sales authorized, combined with Midwestern's estimate of fuel and losses, and transfers equivalent to 30,000 Mcf per day, gives a net gas

[29] Its purchases from Northern Natural are near minima.

[30] The acceptability of Trans-Canada's Contract not only is not at issue in this proceeding but is to be deemed a matter disposed of in the initial certificate proceeding; *Midwestern Gas Transmission Company, et al.*, 22 FPC 775, 782 (1959).

[31] Or, at 49,200,000 Mcf if the present minimum of 75 percent were retained.

requirement of 66,575,644 Mcf. The difference of 4,161,356 Mcf between this figure and takes required from Trans-Canada at 95 percent minimum annual load factor (70,737,000 Mcf), distributed to the off-peak months, gives the increase over 30,000 Mcf in daily transfers (19,446 Mcf) required on these premises to balance Midwestern's necessary purchases and sales.

The Transfer Market

On the evidence of record, as above set forth, it must be concluded that, Michigan will make substantially full use of its contract demand, during the five winter months, but that, due both to the high cost of Midwestern's supply and the availability of other lower cost sources, it will, during the seven off-peak months, tend to purchase from Midwestern at whatever should be the minimum bill.

There remains for consideration, therefore, Staff's recommended use of a minimum of 75 percent over an off-peak period of 7 months, with particular reference to the capacity of the southern system to absorb some 19,446 Mcf per day in addition to the 30,000 Mcf provided under the exchange agreement of September 21, 1960.

Because of Trans-Canada's minimum bill summer transfers from the northern system to the southern system have been mandatory and even winter transfers have been sold to customers on an overrun or surplus interruptible basis. While transfers have been, within the limits of the exchange agreement, and will be, continual in nature, Staff's proposal assumes that Midwestern's southern system major customers[32] will always purchase above minimums without particular regard to the fact that the market available is not unlimited and is dependent upon weather, business conditions, and competitive fuel prices.

Further, Midwestern's southern system major customers having alternate sources of supply which provide commodity charges lower than Midwestern's[33] it is reasonable to assume that curtailments and off-peak cut-backs would be applied first to Midwestern and that its sales could thus easily decline to minimum quantities. Indeed, in the last 3 years, Northern Illinois Gas Company and Peoples Gas Light & Coke Company, two major southern system contract demand customers, have cut back to Midwestern's contract minimum of 75 percent, or close thereto, during most of the seven off-peak months, leaving only Northern Indiana Public Service Company to provide substantial margins of average day volumes over minimums, such as are indicated in the following for 1963:

	Average day volumes (Mcf)	Minimum volumes (Mcf)	Margin over minimum volumes (Mcf)
April	198,000	150,000	48,000
May	194,200	150,000	44,200
June	192,600	150,000	42,600
July	199,000	150,000	49,000
August	197,800	150,000	47,800
September	198,800	150,000	48,800
October	197,600	150,000	47,600

[32] Northern Illinois Gas Company, Northern Indiana Public Service Company, and Peoples Gas Light & Coke Company.

[33] Northern Illinois purchases gas from Northern Natural Gas Company at a commodity rate of 23.14 cents as compared with the corresponding rate of 22.0 cents in Midwestern's Rate Schedules CD–1 and CDX–1. But these purchases represent but 5 percent of the total pipeline supply to the area.

While it may thus seem that nearly sufficient volumes are available to absorb a transfer of 49,446 Mcf the margins disclosed above are close and, of particular significance in connection with Midwestern's status as a high cost supplier, some 75,000 Mcf per day of Northern Indiana's summer interruptible industrial load is subject to curtailment overnight as the consequence of competitive fuel conditions.

Staff infers that the difference between Tennessee's 66⅔ percent and Midwestern's 75 percent minimum bill requirements offers a guarantee for the absorption of some 33,333 Mcf of transfer gas. However, in certificating Midwestern's southern system in Docket No. G–16841, the Commission took note of this differential but held that as the record indicated the economic feasibility of the project depended upon a load factor of at least 75 percent, Midwestern's minimum was both justifiable and necessary.[24] While this conclusion makes no reference to Tennessee, nevertheless, it bears upon the latter as Midwestern's sole source of supply for the southern system. Neither the evidence of record in this proceeding nor the opinion of the Commission in the certificate case discloses Tennessee's reasons for accepting a 66⅔ percent minimum bill, but it cannot be said that the 75 percent minimum was of substantially less significance to Tennessee than the 66⅔ percent minimum of its own contract.

The fact that some of the additional gas proposed for transfer might be used to provide cushion gas in storage developments on the southern system does not add significant support to the claim that the southern system can absorb the quantities proposed on a recurring basis.

Tennessee's Current Take-or-Pay Situation

Tennessee has not been able to take the minimum quantities provided under gas purchase contracts with its producer-suppliers, and in 1963, became obligated to pay for 30,200,000 Mcf which it could not take and for 1964 estimates that it will incur an additional deficiency of approximately 45,000,000 Mcf. Despite efforts to negotiate for relief it expects to be in such difficulties for the next several years. This situation requires consideration and is entitled to weight. Staff's proposal would simply add to these difficulties without apparent justification.

Other Considerations

Staff's suggestion that benefits would accrue to Midwestern's southern system customers through costing transfer gas at Trans-Canada's commodity rate in terms of Canadian funds overlooks the fact of ensuing transportation over Midwestern's transmission and Michigan Wisconsin's exchange facilities. Further, the various downward adjustments which have been, and apparently are yet to be, made in Tennessee's commodity rate because of the passing on of certain rate reductions received from producer suppliers leaves Staff's suggestion of benefits to southern system customers with insufficient support to justify acceptance.

In view of the fact that Michigan Wisconsin expects to be capable of taking substantially full contract volumes from Midwestern and its other suppliers under normal conditions in the future it cannot be found that the proposed increase in Midwestern's minimum bill will substantially alter its pattern of purchases, or necessitate a reduction in purchases from other suppliers, or unjustifiably increase its cost of purchased gas. Nor would the evidence support a finding that the proposed minimum bill would have any effect on Michigan

[24] *Midwestern Gas Transmission Company, et al.*, 21 FPC 653, 663 (1959).

Wisconsin's ability to make up prepayments incurred in connection with the dedication obtained by it in 1960–61 for developed and undeveloped acreage in the Woodward area of Oklahoma. This acquisition was necessary to enable Michigan Wisconsin to meet anticipated declines in deliveries from acreage previously dedicated to it in the Hugoton area. The make-up of deferred takes is thus directly related to the decline in the latter deliveries, and as Michigan Wisconsin proposes to continue the operation of its main line close to a 100 percent load factor the increase in Midwestern's minimum bill would not be expected to have any adverse effect in the liquidation of this account.[35]

The Commission's opinion in the original certificate proceedings discloses the necessities then confronting Michigan Wisconsin's customers in the matter of deficient gas supplies, and indicates the substantial nature of the benefits to Michigan Wisconsin and its resale customers in having access to Trans-Canada's source of gas.[36] There is no basis in the evidence in this proceeding for concluding that such benefits have not been fully realized or that Michigan Wisconsin would be unjustly burdened by having to bear a substantial portion of the associated consequences of Trans-Canada's minimum annual bill.

FURTHER FINDINGS AND CONCLUSIONS

Upon the findings and conclusions hereinabove set forth, it is herewith further found and concluded that the changes proposed by Midwestern in the First Revised Sheet No. 10 to its FPC Gas Tariff, First Revised Volume No. 1 and title sheets to its tariff Volumes Nos. 1 and 2 are just and reasonable, and are not unduly discriminatory, preferential, or otherwise unlawful; that the proceedings herein should be terminated; and that Midwestern should be discharged of the obligations of the compliance agreement and undertaking executed and filed by it as required by Paragraph D of the Commission's Order issued herein October 14, 1963.

ORDER

Upon consideration of the record herein, the contentions set forth in the briefs and proposed findings of respective counsel, and for the reasons and upon the findings and conclusions set forth in the foregoing portions of this decision, of which this Order is a part,

IT IS BY THESE PRESENTS ORDERED, subject to review by the Commission on appeal, or on its own motion, as provided by its Rules of Practice and Procedure, that:

(A) The proceedings herein be and the same are hereby terminated.

(B) Midwestern Gas Transmission Company be and it hereby is discharged of all obligations of the compliance agreement and undertaking heretofore executed and filed by it as provided in Paragraph D of the Commission's Order in these proceedings issued October 14, 1963.

EWING G. SIMPSON,
Presiding Examiner.

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[35] As of December 31, 1963, prepayments totaled $7,694,000, but Michigan Wisconsin has the life of the contract to make up most of its prepayments and 10 years to make up the remainder.

[36] *Midwestern Gas Transmission Company, et al.*, 22 FPC 875 (1959).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., and David S. Black.

ST. MICHAELS UTILITIES COMMISSION, AND COMMISSIONERS OF ST. MICHAELS, MARYLAND v. THE EASTERN SHORE PUBLIC SERVICE COMPANY OF MARYLAND, DOCKET NO. E-7114; STOCKTON LIGHT AND POWER COMPANY (OF MARYLAND), AND STOCKTON LIGHT AND POWER COMPANY (OF VIRGINIA) v. THE EASTERN SHORE PUBLIC SERVICE COMPANY OF MARYLAND, DOCKET NO. E-7117; DELAWARE POWER & LIGHT COMPANY, THE EASTERN SHORE PUBLIC SERVICE COMPANY OF MARYLAND, THE EASTERN SHORE PUBLIC SERVICE COMPANY OF VIRGINIA, DOCKET NO. E-7137; CITY OF DOVER, DELAWARE v. DELAWARE POWER & LIGHT COMPANY, DOCKET NO. E-7175

ORDER ACCEPTING RATE SCHEDULE FOR FILING AND AMENDING ORDER INSTITUTING INVESTIGATION AND PROVIDING FOR HEARING

(Issued October 13, 1964)

On July 17, 1964, Eastern Shore Public Service Company of Maryland (Maryland Eastern Shore), Eastern Shore Public Service Company of Virginia (Virginia Eastern Shore) and Delaware Power & Light Company (Delaware Power) submitted rate schedule filings to supersede currently filed schedules of the three companies as follows:

RATE SCHEDULE DESIGNATIONS

	Other party	Date of instrument	Description
Eastern Shore Public Service Company of Maryland: Rate Schedule FPC No. 10 (Supersedes Rate Schedule FPC No. 2 and Supplements No. 1 and 2 thereto).	Eastern Shore Public Service Company of Virginia; Delaware Power & Light Company.	July 16, 1964	Agreement.
Eastern Shore Public Service Company of Virginia: Rate Schedule FPC No. 5 (Supersedes FPC No. 2 and Supplements No. 1 and 2 thereto).	Eastern Shore Public Service Company of Maryland; Delaware Power & Light Company.	July 16, 1964	Certificate of concurrence.
Delaware Power & Light Company: Rate Schedule FPC No. 33 (Supersedes No. 17 and Supplements No. 1 and 2 thereto).	Eastern Shore Public Service Company of Maryland; Eastern Shore Public Service Company of Virginia.	July 16, 1964	Certificate of concurrence.

Under the proffered rate schedules, the companies inter-company transactions known as the "Vienna Power Pool" would be enlarged and the method of allocating inter-company pool generation and transmission costs would be changed. The rate schedules to be superseded by the proffered filings are currently the subject of investigation and hearing in the above docketed matters.[1] In filing the proposed rate schedules, the companies request alternatively effective dates therefore, of January 1, 1964, or August 17, 1964, 30 days after filing.

[1] See orders of the Commission issued November 18, 1963, 30 FPC 1305, February 7, 1964, 31 FPC 395, and August 3, 1964, 32 FPC 511, Docket Nos. E-7114, E-7117, and E-7137. By order issued August 26, 1964 [Unreported] the Commission consolidated Docket Nos. E-7114, E-7117, and E-7137 with Docket No. E-7175, order consolidating proceedings for hearing purposes and granting leave to intervene.

The Commission finds:

(1) It is necessary and appropriate for purposes of the Federal Power Act that the rate schedules of Maryland Eastern Shore, Virginia Eastern Shore and Delaware Power as identified above, be allowed to take effect as of August 17, 1964, 30 days after submittal of those filings and that Paragraph (A) of the Commission's Order issued November 18, 1963, in Docket Nos. E–7114, E–7117 and E–7137, as amended, be further amended to include these schedules.

(2) Good cause has not been shown for allowing the foregoing rate schedules to take effect as of January 1, 1964.

The Commission orders:

(A) Maryland Eastern Shore's, Virginia Eastern Shore's and Delaware Power's rate schedules identified and designated in the recital above, are hereby accepted for filing pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations under that Act, to become effective as filed rate schedules of those companies on August 17, 1964.

(B) Paragraph (A) of the Commission's Order issued November 18, 1963, in Docket Nos. E–7114, E–7117 and E–7137, as amended, is hereby further amended to include the rate schedules herein accepted for filing.

(C) This acceptance for filing does not constitute approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service provided for in the above designated rate schedules; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the foregoing companies.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

LOUP RIVER PUBLIC POWER DISTRICT, PROJECT NO. 1256

ORDER FURTHER AMENDING LICENSE (MAJOR)

(Issued October 14, 1964)

Application was filed on March 22, 1963, under Section 6 of the Federal Power Act, by Loup River Public Power District, licensee for major Project No. 1256, for further amendment of its license for the project located on Loup River in Nance, Madison, Stanton, Wayne, Dixon, Colfax, Dodge, Douglas, Butler, Saunders and Lancaster Counties, Nebraska, and affecting navigable waters of the United States.

Specifically, the licensee seeks authority to increase the storage capacity of Lake Babcock (a part of the project works) by: (1) enclosing with dikes approximately 230 acres of land located northeast of and adjacent to Lake Babcock; (2) constructing one reinforced concrete control structure between Lake Babcock and the proposed addition thereto; and (3) reinforcing the dikes between Lake Babcock and the proposed addition, which will be subject to wave action from the addition.

The licensee states that the proposed changes are necessary and desirable for the reasons that: (1) by increasing the storage capacity available thereto, the peaking capacity of the Columbus powerhouse will be increased; and (2) it will

add to Lake Babcock, about 1,400 acre-feet of its storage capacity which has been lost to siltation.

The Department of the Army and the Chief of Engineers have reported that the proposed enlargement of the forebay storage capacity would have no significant effect on the interests of navigation, and that the plans of the project structures are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, recommended for inclusion in the license of certain conditions in the interest of fish and wildlife and in the interest of providing free access to the public. Lake Babcock is administered as a waterfowl preserve by the Nebraska Game, Forestation and Parks Commission under an agreement with the licensee.

The Commission finds:

(1) Public notice of the application has been given. No protests or petitions to intervene have been received.

(2) The license for Project No. 1256, further amended as hereinafter provided, is in the public interest.

(3) Exhibit K, Sheet 11 (FPC No. 1256–97), and Exhibit L, Sheet 9 (FPC No. 1256–98), showing the additional lands included in the extension of Lake Babcock and the design at the dikes enclosing the extension of Lake Babcock, conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) The license for Project No. 1256 is hereby further amended, effective as of September 1, 1964, (1) to authorize and include thereunder the project changes specifically described in the second paragraph of this order: and (2) to include in the license the following additional articles:

Article 31. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: Provided, that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and Provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 32. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be prescribed by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the Nebraska Game, Forestation, and Parks Commission, after notice and opportunity for hearing and upon a finding based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 33. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interests in lands, reservoirs, waterways, and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be prescribed by the Commission consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provision of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

(B) The exhibits designated and described in finding (3) above are hereby approved as part of the license for the project.

(C) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

FRANK E. PEACOCK, PROJECT NO. 2427

ORDER ISSUING PRELIMINARY PERMIT

(Issued October 14, 1964)

Application was filed on November 13, 1963 by Frank E. Peacock (Applicant) of Wilmette, Illinois, for a preliminary permit under Section 4(f) of the Federal Power Act (Act) for a period of 12 months for proposed Project No. 2427, known as the Glen Park Project, to be located on the Black River in the Village of Glen Park in Jefferson County, New York.

Applicant proposes under any preliminary permit issued to study redevelopment of a site occupied by a run-of-river paper-mill dam and powerhouse abandoned in about 1930 and located on a site now owned by Niagara Mohawk Power Corporation. Applicant would lease the property from Niagara Mohawk for a period of 30 years and would sell the project output to Niagara Mohawk. The latter has expressed its willingness to discuss the proposed lease and purchase of output with Applicant. The redeveloped project would have an installed capacity of about 5,000 kilowatts and an estimated average annual output of about 40,000,000 kwh.

The Glen Park Project is located on the Black River at mile 4.5. According to available records, various sections of the Black River and its tributaries have been used for log driving at one time or another. In 1826 and 1837, respectively, a saw-mill and a grist-mill were built at the village of Dexter, located just above the mouth of Black River for the manufacture of lumber from logs floated down the river. During the year 1873, 140 vessels entered

and cleared Dexter with an average tonnage of lumber of 6,580 tons. In 1823–24, a saw-mill was built at Felts Mills (river mile 17) and in 1842 another and larger mill was built downstream. The Pine Plaines immediately adjacent to the river on its north bank furnished for many years the logs supplying these mills, but when that source became exhausted, the logs were taken from the forests in the eastern part of Lewis County and were floated down the Black River to the mills. There is historical evidence of the transportation of logs on the Black River between Brownville and Carthage at mile 31. Black River was improved by the State for navigation by locks and dams between Carthage and Lyons Falls, at mile 72, and was connected by a canal which extended from Lyons Falls overland to the Mohawk River and the Erie Canal.

The Secretary of the Army and the Chief of Engineers have stated that there is no objection to the issuance of a preliminary permit for the project.

The Department of the Interior, in commenting on the application, stated that the proposed project would not affect significantly wildlife resources and could afford opportunities for the conservation and development of fishery resources. The Department recommended for inclusion in any preliminary permit for the project, a condition in the interests of fish and wildlife resources.

The Department of Health, Education, and Welfare, in commenting on the application, stated that neither the Department nor the New York State Department of Health anticipate any problems involving water supply, water quality control or mosquito control in connection with the proposed project.

No construction is authorized under a preliminary permit. Such a permit gives the permittee, during the period of the permit, the right of priority of application for license while the permittee undertakes the necessary studies and examinations required by Section 9 of the Federal Power Act in order to determine the economic feasibility of the proposed project, the means of securing the necessary financial arrangements for construction, the market for power, and all other information necessary for inclusion in an application for license, should one be applied for under the permit. A license would authorize construction of a project.

The Commission finds:

(1) The Black River from its mouth in Lake Ontario to a point upstream at least to Lyons Falls at river-mile 72, is a navigable waterway of the United States.

(2) Applicant is a citizen of the United States.

(3) Public notice of the filing of the application has been given as required by the Act. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The proposed project will not affect lands of the United States or a Government dam, and no reason is apparent at this time for development of the proposed project by the United States.

The Commission orders:

(A) This preliminary permit is hereby issued to Frank E. Peacock (Permittee) for a period of 12 months, effective as of September 1, 1964, for the sole purpose of maintaining priority of application for license for Project No. 2427, to be located on the Black River, a navigable water of the United States, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this permit, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Proposed Project No. 2427 will consist of the redevelopment of a site occupied by an abandoned dam and powerhouse which would require a new

diversion dam 10 feet high, a powerhouse with an installed capacity of 6,250 kva in one unit, a tailrace and a short transmission line.

(C) This permit is also subject to the terms and conditions set forth in Form P–1, entitled "Terms and Conditions of Preliminary Permit" (16 FPC 1303–1305), which terms and conditions, designated therein as Articles 1 through 8, are attached hereto and made a part hereof; and further subject to the following special conditions set forth herein as additional articles:

Article 9. The Permittee shall submit at the close of each 6-month period from the effective date of this permit to the Regional Engineer, Federal Power Commission, New York, New York, having supervision over the project, or to such other officer as the Commission may designate, accurate statements of the work accomplished during the period and of the work contemplated under this permit for the ensuing period.

Article 10. The Permittee shall during the period of project planning, cooperate with the United States Fish and Wildlife Service and the New York State Conservation Department for the purpose of planning and designating adequate conservation measures: (1) to prevent loss of or damage to existing fish and wildlife resources, (2) to mitigate and compensate for the loss of or damage to these resources, and (3) to develop and improve these resources where practicable.

Article 11. The Permittee shall, during the early period of project planning, consult with Federal, State, and local agencies having an interest in outdoor recreation on project lands and waters, in the preparation of an "Exhibit R" required for the filing of an application for license pursuant to Section 4.41 of the Commission Regulations under the Federal Power Act.

Article 12. The Permittee shall, for the purpose of assuring the cooperation required by the terms of the permit, designate a liaison officer to act for the Permittee in keeping the several agencies specified in this permit currently informed, and such liaison officer shall communicate with such agencies within 60 days from the date of issuance of this permit.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this preliminary permit. In acknowledgment of the acceptance of this preliminary permit, it shall be signed by the permittee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PUBLIC SERVICE COMPANY OF COLORADO, PROJECT NO. 2351

ORDER AMENDING LICENSE (MAJOR)

(Issued October 14, 1964)

Application was filed on May 12, 1964, and supplemented by filings of May 28 and June 4, 8, and 15, 1964, by Public Service Company of Colorado, licensee for Cabin Creek Pumped Storage major Project No. 2351, for amendment of the license for the project to include therein revised Exhibits J, K, L and M.

The revised Exhibit L drawings show the final design of the project works. The revised Exhibits J and K show the project lands and location of the project works to be included in the project boundary.

The application requests authorization for the following principal changes in the project:

(1) With respect to the Upper Dam—relocate the Upper Dam about 400 feet upstream from the presently authorized site; change its type from dumped rock-fill with concrete facing to compacted earth and rock-fill with concrete facing; increase its height by 28 feet to 202 feet change the spillway from ungated open-channel type to weir type and reduce its capacity; raise the maximum operating water level of the reservoir by 27 feet to elevation 11,196 feet; and increase the gross storage capacity 200 acre-feet to 1,600 acre-feet;

(2) With respect to the Lower Dam—relocate the Lower Dam about 1,000 feet upstream from the presently authorized site; change its type from compacted rock-fill and impervious core to compacted earth and rock-fill and impervious core; decrease its height by 18 feet to 80 feet; change the spillway type from ungated open-channel to intake-tunnel unit; and raise the maximum operating water level of the reservoir by 14 feet to elevation 10,012 feet, without change to minimum operating water level or gross storage capacity;

(3) Realign the power tunnel as required by the new location of Upper Reservoir; change its profile; and reduce upper sections from 20-foot diameter to 15-foot diameter;

(4) Change the installed generating capacity of the powerhouse from 225,000 kw in three units to 300,000 kw in two units; and

(5) Relocate the switchyard from north of the powerhouse to south of the powerhouse.

Subsurface investigations completed by the licensee since the issuance of the license for the project reveal conditions which require most of the changes proposed in the application. Relocation of Lower Dam to a site with suitable foundation conditions required raising the reservoir level to maintain the same reservoir capacity. Relocation of other project structures also resulted from the more extensive subsurface investigations as well as from the need of maintaining the overall project characteristics as related to the relocated Lower Reservoir.

A Commission staff review and analysis of the proposed changes in the project show that the project structures will be safe and adequate. Although the estimated project cost, including interest during construction, has increased from $26,091,000 to $31,960,990, the dependable capacity has been increased from 225,000 kw to 268,000 kw, resulting in a reduction of estimated installed cost from $116/kw to $106/kw. With respect to the project as changed, the estimated annual benefit of $5,809,000 would exceed by $654,000 the estimated annual cost of $5,155,000, giving a benefit-ratio of 1.13 as against 1.14 for the project as originally licensed.

The Chief, Forest Service, has reported that the proposed changes to the project will not interfere or be inconsistent with the purposes for which the Arapaho National Forest was created or acquired.

Assessment of annual charges for occupancy by the project of lands of the United States will be made when revised Exhibits F and K are filed as required by Article 36 of the license.

The Commission finds:

(1) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received.

(2) The authorized installed capacity of the project under this amendment is 400,000 horsepower, and the increased annual charges for reimbursing the United

States for the costs of administration of Part I of the Federal Power Act, based on such capacity, as hereinafter provided is reasonable.

(3) The following described revised exhibits conform to the Commission's rules and regulations and should be approved as part of the license as amended:

Exhibit	FPC No. 2351	Entitled: Cabin Creek Pumped Storage Hydroelectric Project
Amended Exhibit J	-17	"General Map," superseding Exhibit J (FPC No. 2351-4).
Amended Exhibit K	-18	"Project Area" superseding Exhibit K (FPC No. 2351-5).
Amended Exhibit L:		
Sheet 1A of 3	-19	"Dams and Waterways" superseding Exhibit L, Sheet 1 of 3 (FPC No. 2351-6).
Sheet 2A of 3	-20	"Powerhouse Structure" superseding Exhibit L, Sheet 2 3 (FPC No. 2351-7).
Supplementary Exhibit L:		
Sheet 1 of 21	-30	"Plans—Project Structures."
		Lower Dam
Sheets 3 and 4 of 21	-23 and -24	"Relief Wells."
Sheets 5 and 6 of 21	-25 and -26	"Sections."
Sheet 7 of 21	-27	"Spillway and Outlet."
Sheet 8 of 21	-28	"Spillway, Tunnel and Outlet Excavation."
Sheet 9 of 21	-83	"Spillway, Retaining Wall and Outlet."
		Upper Dam
Sheets 11 and 12 of 21	-30 and -34	"Sections."
Sheet 13 of 21	-31	"Face Slab and Parapet Wall."
Sheet 14 of 21	-32	"Face Slab and Spillway Details."
		Power Tunnel
Sheet 15 of 21	-35	"Plan and Profile."
Sheets 16 and 17 of 21	-36 and -37	"Concrete Lined—Details."
Sheet 18 of 21	-38	"Distribution System—Details"; and
Amended Exhibit M entitled "General Description of Equipment" in four typewritten sheets filed May 28, 1964, superseding Exhibit M in five typewritten sheets filed March 7, 1963.		

of which exhibits, those sheets of Exhibit L pertaining to the Lower and Upper Dams together present information that completely supersedes that shown on Exhibit L, Supplement Sheets 1 and 2 (FPC Nos. 2351-10 and -11).

(4) The exhibits described in finding (3) above as being superseded should be eliminated from the license for the project.

The Commission orders:

(A) The revised exhibits designated and described in finding (3) above are hereby approved as part of the license for Project No. 2351, and the exhibits referred to in the same finding as being superseded are hereby eliminated from the license for the project.

(B) Article 47(i) of the license for the project is hereby amended by substituting "400,000 horsepower" for "300,000 horsepower" as the authorized installed capacity of the project.

(C) This amendment in the manner set out above shall not operate to alter to amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision, or condition of the license.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

OPINION NO. 430-A

UNITED FUEL GAS COMPANY, DOCKET NO. G-20270; ATLANTIC SEABOARD CORPORATION, DOCKET NO. G-20272

MEMORANDUM OPINION AND ORDER MODIFYING OPINION NO. 430 AND ACCOMPANYING ORDER AND PERMITTING THE FILING OF REPLY

(Issued October 14, 1964)*

Syllabus

1. Opinion No. 430 modified to provide that supplier rate reductions and refunds, prior and subsequent to issuance date of opinion, be reflected on "as received" basis. P. 1108.
2. There is no logical or equitable basis for determining refunds for past period on different basis than for future and every reason to apply just and reasonable rate design for entire period in controversy. PP. 1108-1109.
3. Apart from this modification [and minor change], Commission *affirms* discussion of *Seaboard* formula and rate design contained in prior opinion. P. 1109.
4. Data, brought before Commission for first time, reflecting supplier rate reductions exclusively in demand charges, shows significantly heavier impact in reducing pipeline's demand charges in relation to commodity charges than appeared in Opinion No. 430—resulting rates would tend decidedly in direction of straight *Seaboard* rates and be inconsistent with prior holding that a material departure from *Seaboard* method and rates is justified. P. 1109.
5. "All in demand" method would, by producing lower demand charges, run counter to two Commission objectives of encouraging retention and growth of interruptible industrial sales and installation of storage and peak shavings. P. 1109.
6. Rates for pipeline designed to reflect supplier rate reductions and refunds on "as received" basis will better satisfy requirements and meet needs here. P. 1109.
7. Supplier refunds should be passed on by pipelines in the same manner as received by them. P. 1110.
8. Since costs were initially classified on basis of *Seaboard*, it is appropriate that transfer of facilities [Boldman Compressor Station, etc.] should be reflected in demand and commodity charges of rates to be filed on basis of *Seaboard* cost classification. P. 1110.
9. Refund requirements of prior opinion do not extend to matters Commission authority cannot lawfully reach, such as refunds to retail customers. P. 1110.
10. Commission *affirms* Opinion No. 430 as herein modified and otherwise *denies* applications for rehearing.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

O'CONNOR, *Commissioner:*

On July 20, 1964, 32 FPC 224, we issued an order granting rehearing of Opinion No. 430 and accompanying order issued herein on June 2, 1964, 31 FPC 1342, for

*Order issued November 23, 1964 denying rehearing, 32 FPC 1360.

the purpose of considering further the numerous applications filed.[1] That order also stayed the provisions of Opinion No. 430 requiring United Fuel Gas Company (United Fuel) and Atlantic Seaboard Corporation (Atlantic Seaboard), the respondents in this rate proceeding under Section 4 of the Natural Gas Act (Act), to file revised tariff sheets providing for reduced rates, and make refunds.

In Opinion No. 430, we were concerned primarily with the proper design of respondents' CDS (contract-demand) rates, *i.e.*, the determination of the proper levels of the demand and commodity components of the rates. Consideration of this issue also involved determining the method by which reductions in the demand and commodity charges of the rates of respondents' suppliers[2] should be reflected in the demand and commodity charges of respondents' rates for the period April 5, 1960, to the date of the Commission's opinion (June 2, 1964), and for the period subsequent to that opinion.

We held that refunds for the period prior to the issuance of Opinion No. 430 (and the effect of certain property transfers)[3] should be based on reductions made exclusively in the demand charges of respondents' rates. We further decided that rate refunds by respondents' suppliers in this period should likewise flow through respondents to their customers exclusively on the demand side. However, we held that supplier rate reductions made subsequent to June 2, 1964, should be reflected in respondents' rates on the same basis, in the distribution between demand and commodity, as received from the suppliers.

Most of the applicants (Washington Gas is the major exception) object principally to the above-described "all in demand" method of reflecting supplier rate reductions and refunds made prior to June 2, 1964, urging that instead they should be distributed between demand and commodity on the same basis as they are received from the suppliers. These applicants' principal arguments can be summarized under four headings.

First, these applicants contend that the above-described "all in demand" method would drastically reduce respondents' demand charges while leaving their commodity charges unaffected, and would thereby produce rates effective as of the date of the opinion that closely approach so-called straight *Seaboard* rates, see

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[1] Applications for rehearing were filed by The Dayton Power and Light Company on June 29, 1964; Baltimore Gas and Electric Company on June 30, 1964; Commonwealth Natural Gas Corporation on July 1, 1964; The City of Columbus, Ohio, on July 1, 1964; the Independent Natural Gas Association of America on July 2, 1964; United Fuel Gas Company and Atlantic Seaboard Corporation on July 2, 1964; Washington Gas Light Company on July 2, 1964; The United Gas Improvement Company on July 2, 1964; The Manufacturers Light & Heat Company and Cumberland and Allegheny Gas Company on July 2, 1964; The Ohio Fuel Gas Company on July 2, 1964; and Roanoke Gas Company on July 6, 1964.

Washington Gas Light Company filed an answer to the application for rehearing of United Fuel and Atlantic Seaboard on August 4, 1964, as permitted by our regulations.

United Fuel and Atlantic Seaboard filed on August 12, 1964, a request for leave to file a reply to the answer of Washington Gas Light Company, to which Washington Gas Light Company filed opposition on August 21, 1964. By this opinion, we shall permit the filing of United Fuel's and Atlantic Seaboard's reply, as set forth hereinafter.

[2] United Fuel's suppliers include Tennessee Gas Transmission Company and various southwestern producers; Atlantic Seaboard's principal supplier is United Fuel.

[3] Opinion No. 430 at p. 1352, provides that respondents' costs of service should reflect the transfer of the Boldman compressor station to United Fuel effective as of April 5, 1960, and the transfer of the remainder of the facilities (principally a portion of the KA–20 line) effective as of October 1, 1963.

Atlantic Seaboard Corporation, 11 FPC 43.[4] They say that this would be contrary to our holding elsewhere in Opinion No. 430 that a material departure from the *Seaboard* formula and *Seaboard* rates is warranted.

Second, these applicants contend that the "all in demand" method and the resulting low-demand charge rates are inconsistent with the rate design conclusions stated elsewhere in Opinion No. 430, respecting the desirability of high demand charges and low commodity charges to facilitate respondents' making interruptible industrial sales and to encourage storage and peak shaving on their systems. They further argue that this method discriminates against respondents' high load factor customers, in favor of Atlantic Seaboard's low load factor customer, Washington Gas. They argue that, in contrast, the "as received" method would better serve the stated objectives of Opinion No. 430.

Third, these applicants argue that the "all in demand" method improperly diverts sizable refunds from ultimate consumers in areas served by respondents' high load factor customers, to consumers served by low load factor customers. For example, Ohio Fuel, one of the high load factor customers of United Fuel, contends that its customers would receive some $1.6 million less in refunds under the refund procedure followed in Opinion No. 430 than they would if the refunds were made on the "as received" basis.

Finally, certain applicants, particularly Manufacturers Light & Heat Company, *et al.* (Manufacturers), contend that although Opinion No. 430 correctly found that use of the *Seaboard* formula has serious infirmities, it erred in not adopting another rate design method. Respondents in particular further contend that in designing their rates we did not give sufficient effect to considerations they deem important, including the claimed need of respondents for rates that, in the interest of stability, do not reflect a marked reduction in the demand charges; and for rates with commodity charges that would enable respondents to compete more successfully with other pipelines.

In contrast, Washington Gas contends that Opinion No. 430 erred in finding that use of the *Seaboard* formula in designing rates has serious infirmities, arguing that there is no warrant for departing from that formula. Also, it contends that the record does not support our finding that mitigating circumstances justify rates for respondents that would recover a larger portion of overall costs through the demand components of the rates than would *Seaboard* rates.

We have considered with care the entire problem of designing rates for respondents, and have come to the conclusion that Opinion No. 430 should be modified to provide that supplier rate reductions and refunds both prior and subsequent to the date of issuance of Opinion No. 430 shall be reflected on the "as received" basis requested by respondents and most of the applicants, and recommended by the Commission's Staff and approved by the Presiding Examiner. We agree that there is no logical or equitable basis for determining refunds for the past period on a different basis than we have prescribed for the future and

[4] The following compares the approximate indicated CDS–1 rates for respondents as of the June 2, 1964, date of issuance of Opinion No. 430, showing supplier rate reductions handled on various bases:

	United Fuel	Atlantic Seaboard
1. Op. 430 rates, no supplier reductions	$2.15–29.58¢	$2.86–32.16¢
2. Op. 430 rates, supplier reductions in demand	1.85–29.58¢	2.51–32.16¢
3. Op. 430 rates, supplier reductions as received	1.98–28.92¢	2.69–31.18¢
4. *Seaboard* rates, no supplier reductions	1.93–30.75¢	2.51–34.18¢
5. Staff recommended rates, no supplier reduction	1.93–30.75¢	2.80–32.50¢
6. Examiner approved rates, no supplier reductions	2.01–30.30¢	2.86–32.16¢
7. Company filed rates, no supplier reductions	2.25–31.04¢	3.25–32.18¢
8. Company advocated rates, no supplier reductions	2.15–29.58¢	3.10–30.74¢

every reason to apply what we consider the just and reasonable rate design for the entire period in controversy. Apart from this modification (and another minor change described hereafter), we affirm the discussion of the *Seaboard* formula and the design of rates contained in Opinion No. 430.

The above-described modification is supported by a number of considerations. First, data brought before us for the first time[6] by the parties' applications for rehearing and other filings disclose that the supplier rate reductions and refunds are considerably larger than formerly appeared.[6] It is clear from such data that reflecting supplier rate reductions "all in demand" would have a significantly heavier impact in reducing respondents' demand charges in relation to commodity charges than appeared to be the case when Opinion No. 430 was issued, see the comparison of rates in fn. 4, *supra*. The resulting rates, as applicants point out, would tend decidedly in the direction of straight *Seaboard* rates, which obviously would be inconsistent with our holding in Opinion No. 430 that a material departure from the *Seaboard* method and *Seaboard* rates is justified. No party, it may be mentioned, has objected to our considering the data now available showing the large size and heavy impact of supplier rate reductions and refunds; and such consideration is necessary and proper in the circumstances presented by this case.[7]

Furthermore, the "all in demand" method would, by producing relatively lower demand charges in relation to commodity charges, run counter to two of the principal objectives of Opinion No. 430, of encouraging the retention and growth of interruptible industrial sales, and encouraging the installation of storage and peak shaving. The importance of these objectives to respondents and most of their customers, and the means by which they may be attained in the proper design of rates, are discussed at length in Opinion No. 430. These considerations are no less persuasive because they involve a past period; otherwise a mere lapse of time rather than a decision on the record will be controlling. It is clear from that discussion that to achieve such objectives, it is necessary to design rates for United Fuel and Atlantic Seaboard that have higher demand charges and lower commodity charges for the future than would result from the "all in demand" method of reflecting supplier rate reductions. Accordingly, we have explored the various methods of reflecting supplier rate reductions and refunds, including the "as received" method, the "fifty-fifty" method originally advocated by respondents, and other possible methods and variations. Also, we have evaluated the effect of such methods on respondents' rates in light of the evidence in the record relative to the economic and operating requirements of respondents and their customers. In our judgment, based upon a consideration of all the circumstances, rates for respondents designed to reflect supplier rate reductions and refunds on the "as received" basis will satisfy the requirements and meet the needs of this case better than any other rates.[8] Such rates will facilitate the attainments of all the rate design objectives in this case. Further,

[5] Data respecting the bulk of the supplier rates reductions and refunds were not available until after the hearing in this case was closed.

[6] United Fuel states that its total refund obligation aggregates some $63,000,000 (exclusive of interest), of which some $16,500,000 has already been refunded pursuant to prior Commission orders.

[7] The issue of how supplier rates and refunds should be reflected in respondents' rates was reserved for decision in this proceeding by our order approving the settlement of respondents' cost of service, see Opinion No. 430, at p. 1358.

[8] This approach produces an indicated approximate CDS–1 rate for United Fuel as of June 2, 1964, and for the future of $1.98 demand and 28.92 cents commodity, compared with the Opinion No. 430 "all in demand" CDS–1 rate of $1.85 demand and 29.58 cents commodity. The indicated, approximate CDS–1 rate for Atlantic Seaboard following this approach would be $2.68 demand and 31.18 cents commodity, compared with the Opinion No. 430 "all in demand" CDS–1 rate of $2.51 demand and 32.16 cents commodity.

such rates will effect as fair an accomodation of the competing interests of respondents and of their high and low load factor customers as is reasonably practicable under the circumstances.

Consistent with the above, supplier refunds also should be passed on by respondents in the same manner as received by them. The supplier refunds in dispute arose during the period prior to the June 2, 1964, issuance date of Opinion No. 430. Obviously, the matter of main concern respecting such refunds is to make sure they are passed on to respondents' customers on as fair and equitable basis as possible. In the light of the facts now before us respecting the magnitude of the amounts involved, it is clear that use of the "all in demand" method in calculating and making refunds would be unfair and is unsupportable because it would unjustifiably shift large amounts of refunds to which high load factor customers are entitled, to low load factor customers, and thus wrongfully discriminate against the former. Here again, we have considered the possible alternative methods and the effect of their application, and have concluded that reflecting supplier refunds on the "as received" method would be more fair to respondents' customers and to the ultimate consumer than any other method.

In light of our findings and conclusions above and in Opinion No. 430, no discussion is required of the contentions of Manufacturers and Washington Gas summarized above, or of other allegations by applicants that we erred in the matter of rate design, and in our treatment of supplier rate reductions and refunds.

As indicated above, the rates for respondents mentioned in the preceding discussion are the approximate indicated rates. In arriving at the exact rates for respondents, we shall follow the procedure prescribed in Opinion No. 430, at p. 1358, *et seq.*, of requiring respondents to file rates acceptable to the Commission computed on the basis of the commodity charges there stated, but reflecting supplier rate reductions and refunds on the "as received" basis in conformity with the modification prescribed hereinabove.

Since the costs in these dockets were initially classified on the basis of the *Seaboard* formula, it is appropriate that the transfer of facilities authorized in CP61–107 (Boldman Compressor Station, etc.), should also be reflected in the demand and commodity charges of the rates to be filed on the basis of the *Seaboard* classification of costs.

The procedure to be followed in making refunds shall be as provided in Opinion No. 430, except as to time. The stay of Opinion No. 430 granted by our order issued July 20, 1964, should be dissolved as of the date of issuance of this opinion. Also, the time limits which under Opinion No. 430 run as of the date of issuance of that opinion, shall run as of the date of issuance of the present opinion.

Turning to another matter, certain applicants object to paragraph (E) of Opinion No. 430, which provides in part pertinent that all natural-gas companies subject to the jurisdiction of the Commission receiving directly or indirectly refunds as a result of Opinion No. 430, shall refund to their customers without additional interest all refunds received from respondents, within 45 days of receipt of such amounts. Thus, Manufacturers, Washington Gas, and Ohio Fuel contend that this provision is erroneous or ambiguous in that it appears to direct the disposition of refund money to the retail customers of integrated companies whose operations are both interstate and local and whose rates at the retail level are subject to State or local control. Also, they contend that in various respects they cannot feasibly comply with the refund requirements of Opinion No. 430.

Of course, the requirements of paragraph (E) do not extend to matters our authority cannot lawfully reach, such as refunds to retail customers. Any

party which questions the reach of paragraph (E), or considers itself unable to meet its requirements, may follow the procedures prescribed therein for the deciding of protests to the requirements of that paragraph.

Finally, respondents, and also the Independent Natural Gas Association of America (the latter having been permitted to participate as *amicus curiae*), contend that Opinion No. 430 errs in concluding that competing fuel interests which would be aggrieved by Commission approval of a proposed change in a pipeline's rates have a right to intervene and participate in a hearing respecting the appropriateness of the proposed rate change. In our view, Opinion No. 430 deals adequately and correctly with this question, and we see no need for any change in the discussion or conclusions there set forth.

To facilitate the fullest possible consideration of this case, we shall grant the request of respondents referred to in footnote 1, *supra*, for leave to file their reply heretofore tendered to Washington Gas's answer to respondents' application for rehearing.

The Commission further finds:

Except as hereinabove set forth, the applications for rehearing of Opinion No. 430 and accompanying order enumerated hereinabove should be denied.

The Commission orders:

(A) Opinion No. 430 and accompanying order issued herein on June 2, 1964, is modified as hereinabove set forth, and as so modified is hereby affirmed.

(B) Respondents' request filed August 12, 1964, for leave to file a reply to the answer of Washington Gas Light Company to respondents' applications for rehearing, is granted.

(C) Except as hereinabove granted, the applications for rehearing of Opinion No. 430 filed in this proceeding are denied.

(D) The stay of Opinion No. 430 and accompanying order granted by our order issued July 20, 1964, is hereby dissolved, and the time limits which under Opinion No. 430 run as of the date of issuance of that opinion, shall run as of the date of this opinion.

(E) Except as herein modified, the ordering paragraphs of Opinion No. 430 remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CENTRAL MAINE POWER COMPANY, PROJECT NO. 2325

ORDER ISSUING LICENSE (MAJOR)

(Issued October 15, 1964)

Joint application was filed on November 2, 1962, by Central Maine Power Company and Skowhegan Water Power Company, both of Augusta, Maine, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2325, known as the Weston Project, located on the Kennebec River, in Somerset County, Maine. On December 24, 1963, Central Maine Power Company filed a supplemental filing requesting, among other things, that Central Maine Power Company be substituted as sole Applicant for license for the project.[1]

[1] On December 16, 1963, Central Maine acquired the interests of Skowhegan Water Power Company in the water rights for the project.

According to the application for license, the project was constructed during the period 1919 through 1928. No significant changes in the project facilities were made thereafter. No lands of the United States are affected by the project.

The Secretary of the Army and the Chief of Engineers, in reporting on the application, advised that the plans of the project structures affecting navigation have been approved pursuant to Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project certain conditions in the interests of fish and wildlife resources.

Applicant requests a 50-year license, effective from the date of its issuance. In its order issued May 21, 1954, Docket No. E-6456 (13 FPC 1076), the Commission found the Kennebec River from its mouth at least up to Moosehead Lake to be a navigable water of the United States. The Weston Project is located downstream from Moosehead Lake. In accordance with the criteria set forth in our April 25, 1962, Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of May 1, 1954, and a termination date of December 31, 1993.

The Commission finds:

(1) The project is located on navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of Maine, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given as required by the Act. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Upon the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving and developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project for the purpose of computing the capacity component of the administrative annual charge is 16,000 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project for the costs of administration of Part I of the Act is reasonable.

(7) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of this license.

The Commission orders:

(A) This license is hereby issued to Central Maine Power Company (Licensee) of Augusta, Maine, under Section 4(e) of the Federal Power Act (Act) for a period effective as of May 1, 1954, and terminating December 31, 1993, for the continued operation and maintenance of Weston Project No. 2325, located on the Kennebec River, Maine, a navigable water of the United States, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2325 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by the following exhibits which formed a part of the application for license.

Exhibit J: Sheet 1 (FPC No. 2325–1) General Map, Flowage Dam & Power Plant Areas;

Exhibit K: Sheets 1 to 5, incl. (FPC Nos. 2325–3 to –7, inclusive) Detail Map, Reservoir.

(ii) Project works consisting of: (1) A concrete gravity overflow dam on the North Channel, Kennebec River, 529 feet long and about 38 feet high provided with five bays of stop-logs totaling 267 feet in length, 168 feet of hinged flashboards, and two tainter gates, each 16 feet by 28 feet; a composite structure on the South Channel, Kennebec River, 392 feet in length consisting of a concrete hollow gravity dam 215 feet long provided with five bays of stop-logs, net length 177 feet; 20 feet of flashboards, and a log sluice with a tainter gate 18 feet by 14 feet, three slide gates, each 5.5 feet by 7 feet, an integral concrete powerhouse intake and substructure about 188 feet long provided with 12 slide gates, each 9 feet by 19 feet; (2) a reservoir about 12.6 miles long with an area of about 930 acres at normal pool elevation of 156 feet (USGS Datum); (3) a steel frame and brick powerhouse superstructure containing four hydroelectric generating units with a capacity of 3,000 kw each; and (4) appurtenant electrical and mechanical facilities—the location, nature, and character of which structures are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which formed part of the application for license and which are designated as follows:

Exhibit L: Sheet 1 (FPC No. 2325–8) North and South Channel Dams, Plan.
Sheet 2 (FPC No. 2325–9) North Channel Dam, Elevation and Sections.
Sheet 3 (FPC No. 2325–10) South Channel Structures—Elevation. South Channel Dam—Sections.
Sheet 4 (FPC No. 2325–11) Powerhouse and Intake, Plan and Sections; and
Exhibit M: Seven typewritten pages "General Description and Specifications of Equipment and Appurtenances," filed in the Commission November 2, 1962.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–3 (Revised August 1, 1964), entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States", *infra*, p. 1114, which terms and conditions, designated as Articles 1 through 29, are attached hereto and made a part hereof; and subject to the following special conditions set forth herein as additional articles:

Article 30. The Licensee shall pay to the United States the following annual charge, effective as of May 1, 1954:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by

the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purposes is 16,000 horsepower.

Article 31. The Commission reserves the right to determine at a later date what transmission facilities, if any, shall be included in this license as part of the project works.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgement of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

FORM L–3

(REVISED AUGUST 1, 1964)

TERMS AND CONDITIONS OF LICENSE FOR CONSTRUCTED PROJECT AFFECTING NAVIGABLE WATERS OF THE UNITED STATES

Article 1. The entire project, as described in the order of the Commission, shall be subject to all the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, and statements described and designated as exhibits and approved by the Commission in its order as part of the license, until such change shall have been approved by the Commission: *Provided, however,* That if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval amended, supplemental, or additional exhibit or exhibits covering the proposed change which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. The project area and project works shall be in conformity with the approved exhibits referred to in Article 2 hereof. If the Licensee shall contemplate any substantial alteration in or addition to the project works, the Licensee shall submit to the Commission for approval amended, supplemental, or additional exhibits as provided in Article 2 hereof to show and describe such alteration or addition, together with the statement in writing setting forth the reasons which necessitate or justify such alteration or addition. Except when emergency shall require for the protection of life, health, or property, no substantial alteration or addition not in conformity with the approved exhibits shall be made to any dam or other project works under the license without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct.

Article 4. The project, including its operation and maintenance and any work incident to additions or alterations authorized by the Commission whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and of any such alteration thereof, and shall notify him of the date upon which work with respect to any

alteration will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than 1 week, and of its resumption and completion. Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 5. Insofar as any material is dredged or excavated in the prosecution of any work authorized under the license, or in the maintenance of the project, such material shall be removed and deposited so it will not interfere with navigation, and will be to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 6. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 7. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and its rights-of-way and such right of passage through its dams or other structures, and permit such control of pools as may be required to complete and maintain such navigation facilities.

Article 8. The Licensee shall furnish free of cost to the United States power for the operation and maintenance of navigation facilities at the voltage and frequency required by such facilities and at a point adjacent thereto whether said facilities are constructed by the Licensee or by the United States.

Article 9. The operation of any navigation facilities which may be constructed as a part of or in connection with any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

Article 10. The Licensee shall for the protection of navigation, construct, maintain and operate at its own expense such lights and other signals on fixed structures in or over navigable waters of the United States as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 11. The actual legitimate original cost, estimated where not known, and the accrued depreciation of the project as of the effective date of the license shall be determined by the Commission in accordance with the Act and the rules and

regulations of the Commission, and such cost less such accrued depreciation, so determined, shall be the net investment in the project as of such effective date.

Article 12. After the first twenty (20) years of operation of the project under the license, six (6) percent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings of the project for the establishment and maintenance of amortization reserves, pursuant to Section 10(d) of the Act; one-half of the project surplus earnings, if any, accumulated after the first 20 years of operation under the license, in excess of six (6) percent per annum on the net investment, shall be set aside in a project amortization reserve account as of the end of each fiscal year, provided that, if and to the extent that there is a deficiency of project earnings below six (6) percent per annum for any fiscal year or years after the first 20 years of operation under the license, the amount of such deficiency shall be deducted from the amount of any surplus earnings accumulated thereafter until absorbed, and one-half of the remaining surplus earnings, if any thus cumulatively computed, shall be set aside in the project amortization reserve account; and the amounts thus established in the project amortization reserve account shall be maintained therein until further order of the Commission.

Article 13. The Licensee shall install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 14. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 15. The Licensee shall, for the conservation, and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 16. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be prescribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 17. The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such recreational facilities including modifications thereto, such as access roads, wharves, launching ramps,

beaches, picnic and camping areas, sanitary facilities and utilities, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal and State agencies, after notice and opportunity for hearing and upon findings based upon substantial evidence that such facilities are necessary and desirable, and reasonably consistent with the primary purpose of the project.

Article 18. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: Provided, that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and Provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 19. The Licensee shall be responsible for and shall minimize soil erosion and siltation on lands adjacent to the stream resulting from construction and operation of the project. The Commission upon request, or upon its own motion, may order the Licensee to construct and maintain such preventive works to accomplish this purpose and to revegetate exposed soil surface as the Commission may find to be necessary after notice and opportunity for hearing.

Article 20. No lease of the project or any part thereof whereby the lessee is granted the occupancy, possession, or use of the project, or any part thereof, shall be made without prior written approval of the Commission; and the Commission may, if in its judgment the situation warrants, require that all the conditions of the license, of the Act, and of the rules and regulations of the Commission shall be applicable to such property so leased to the same extent as if the lessee were the Licensee: Provided, that the provisions of this article shall not apply to leases of land or buildings or other property while not required to achieve the purposes of the license.

Article 21. The Licensee, its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and none of such properties necessary or useful to the project and to the development, transmission, and distribution of power therefrom will be voluntarily sold, transferred, abandoned, or otherwise disposed of without the approval of the Commission: Provided, that a mortgage or trust deed or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article. In the event the project is taken over by the United States upon the termination of the license, as provided in Section 14 of the Act, or is transferred to a new licensee under the provisions of Section 15 of the Act, the Licensee, its successors and assigns will be responsible for and will make good any defect of title to or of right of user in any of such project property which is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and will pay and discharge, or will assume re-

sponsibility for payment and discharge, of all liens or incumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, that the provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear, or to require the Licensee, for the purpose of transferring the project to the United States or to a new Licensee, to acquire any different title to or right of user in any of such project property than was necessary to acquire for its own purposes as Licensee.

Article 22. For the purpose of determining the stage and flow of the stream or streams from which water is diverted for the operation of the project works, the amount of water held in and withdrawn from storage, and the effective head on the turbines, the Licensee shall install and thereafter maintain such gages and stream-gaging stations as the Commission may deem necessary and best adapted to the requirements; and shall provide for the required readings of such gages and for the adequate rating of such stations. The Licensee shall also install and maintain standard meters adequate for the determination of the amount of electric energy generated by said project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission and may be altered from time to time if necessary to secure adequate determinations, but such alteration shall not be made except with the approval of the Commission or upon the specific direction of the Commission. The installation of gages, the ratings of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of said project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient record of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 23. In the maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone, and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling and obstructing traffic and endangering life on highways, streets, or railroads.

Article 24. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the costs of making the determinations pursuant to the then current Commission Regulations under the Federal Power Act within 60 days from the date of rendition of a bill therefor and, upon failure

to do so, shall thereafter be subject to the payment of the penalties specified in the then current Regulations. The Licensee shall have the right to pay such amounts under protest within the 60-day period and to reconsideration of the amounts billed or a hearing as provided by the then current Regulations under the Act.

Article 25. The Licensee shall, within one year from the date of this license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 26. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without replacement, or shall abandon or discontinue good faith operation of the project for a period of 3 years, or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address to the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license, and not less than 90 days after public notice may in its discretion terminate the license.

Article 27. Upon abandonment of the project the Licensee shall remove all buildings, equipment and power lines to a condition satisfactory to the Commission's authorized representative and shall fulfill such other obligations under the license as the Commission may prescribe.

Article 28. The right of the Licensee and of its transferees and successors to use or occupy navigable waters of the United States under the license for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless a new license is issued pursuant to the then existing laws and regulations.

Article 29. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

CHATTANOOGA GAS COMPANY, COMPLAINANT v. EAST TENNESSEE NATURAL GAS COMPANY, DEFENDANT, DOCKET NO. RP65-3

ORDER AMENDING ORDER INSTITUTING INVESTIGATION

(Issued October 15, 1964)

On October 1, 1964, *supra*, p. 882, upon the basis of the complaint filed July 29, 1964, and subsequent pleadings in the above entitled proceeding we issued an order herein instituting an investigation of the issues raised by Chattanooga's complaint concerning East Tennessee's tariff and its service agreement with Chattanooga.

On September 8, 1964, defendant East Tennessee tendered for filing its proposed FPC Gas Tariff, Fourth Revised Volume No. 1, in purported compliance with Paragraph B(v) of the Commission's order issued July 17, 1964, in defendant's certificate proceeding at Docket No. CP64-21.

On September 22, 1964, by letter addressed to the Secretary, complainant Chattannoga submitted allegations and objections to the aforementioned revised

tariff. These objections relate to the proposed tariff in general and raise questions, among others, of whether it creates inconsistencies in the treatment of customers and whether it may constitute an unlawful restraint of trade.

The above-identified letter from complainant requests that defendant's tender be accepted subject to the same condition as is contained in Paragraph (B) of the Commission's order issued July 29, 1964, in Docket No. G–20072; that the effectiveness of the tariff be suspended for one day, and that the Commission set complainant's additional allegations for public hearing.

The initial complaint and order for hearing herein, related to a tariff then in effect, not to the proposed tariff. While Chattanooga's letter regarding the proposed tariff does not constitute a formal complaint under our Rules, it was served upon East Tennessee which by letter filed October 5, 1964, denies Chattanooga's allegations. Under the circumstances we consider Chattanooga's letter an informal amendment of its initial complaint and shall provide that it have an opportunity to adduce evidence in support of the new allegations in a public hearing under the procedure prescribed in our order issued herein on October 1, 1964. To that end, the scope of the issues in our initial order herein should be broadened to include for hearing the proposed tariff filed by East Tennessee on September 8, 1964, and the issues with respect thereto raised by Chattanooga's letter dated September 22, 1964. However, since the proposed tariff does not provide for any change in the rate levels of existing rate schedules and since the result of the complaint proceedings here instituted will have only prospective effect, the requested suspension of the proposed tariff does not appear to be necessary or appropriate.

The Commission finds:

It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the issues raised by the complainant in its letter dated September 22, 1964, be set for public hearing subject to the procedure prescribed in our order issued herein October 1, 1964, and that the foregoing order should be amended so as to include for hearing East Tennessee's proposed revised tariff and the issues raised in the above-identified letter.

The Commission orders:

(A) The revised tariff filed by East Tennessee on September 8, 1964, and the issues raised by the complainant in its letter to the Secretary dated September 22, 1964, hereby are included for public hearing in conjunction with issues set for hearing in the order issued herein October 1, 1964, and the additional issues shall be subject to the procedure prescribed in the above-identified order.

(B) Except to the extent herein amended, the order issued October 1, 1964, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

GEORGIA POWER COMPANY, PROJECT NO. 2341

ORDER ISSUING LICENSE (MINOR)

(Issued October 15, 1964)

Application was filed on February 18, 1963, by Georgia Power Company (Applicant) of Atlanta, Georgia, for a license under Section 4(e) of the Federal Power Act for constructed minor Project No. 2341, known as the Langdale Proj-

ect, located on the Chattahoochee River, in Chambers County, Alabama, and Harris County, Georgia.

The present powerhouse and a portion of the dam were constructed in 1908. The existing generating equipment was installed in 1924 and 1926 and no major construction or replacement of equipment was accomplished thereafter. The project was purchased by Applicant in 1930. By its order issued March 5, 1959, for Project No. 2177, the Commission found that the Apalachicola and the Chattahoochee Rivers from the mouth of the former at least up to a point on the latter in the vicinity of Atlanta, Georgia, at about river mile 300 are navigable waters of the United States (21 FPC 296, 302). The Langdale project is situated at mile 192.1 on the Chattahoochee River. No lands of the United States are affected by the project.

The Secretary of the Army and the Corps of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned, and recommended for inclusion in any license for the project, certain conditions in the interest of navigation, including a condition that the Langdale project will not be operated in a manner which would adversely affect accomplishment of the authorized functions of the Corps' upstream multi-purpose West Point project and (2) a condition that would relieve the United States of the responsibility to compensate Applicant for any damage resulting from construction and operation of the West Point Project.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project, certain conditions in the interest of fish and wildlife.

Although invited to do so, the Department of Health, Education, and Welfare has not reported on the application.

The State of Alabama, Department of Conservation, has advised that no evidence could be found that fish and wildlife resources are affected by the project.

For the reasons set forth in our Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of March 1, 1959, and a termination date of December 31, 1993.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Georgia, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(2) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(3) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(4) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(5) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative

annual charge is 1,387 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(6) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

Section 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a) insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to Georgia Power Company (Licensee) of Atlanta, Georgia, under Sections 4(e) and 10(i) of the Act, for a period effective as of March 1, 1959, and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2341, located on the Chattahoochee River a navigable water of the United States, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2341 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined.

(ii) a 15 foot high rubble masonry dam having a 1,362 foot long free-crest spillway (el. 547.7 feet) and 530 feet of diversion walls and abutments; a concrete and brick powerhouse (35 feet x 245 feet in plan) which contains two Leffel turbines connected to two 520 kw Westinghouse generators; all other structures, fixtures, equipment, or facilities which are located in the project area and are used or useful in the maintenance and operation of the project; all rights and interests the possession of which are necessary or appropriate to the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-9 (July 1, 1964) entitled "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States (32 FPC 577), which terms and conditions, designated as Articles 1 through 11, are attached hereto and made a part hereof; and subject to the following special conditions set forth herein as additional articles:

Article 12. The Licensee shall pay to the United States the following annual charge:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, $69.00.

Article 13. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its land and its rights-

of-way and such right of passage through its dams or other structures, and permit such control of pools as may be required to complete and maintain such navigation facilities.

Article 14. The Licensee shall furnish free of cost to the United States power for the operation and maintenance of navigation facilities at the voltage and frequency required by such facilities and at a point adjacent thereto whether said facilities are constructed by the Licensee or by the United States.

Article 15. The operation of any navigation facilities which may be constructed as a part of or in connection with any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

Article 16. The Licensee shall for the protection of navigation, construct, maintain and operate at its own expense such lights and other signals on fixed structures in or over navigable waters of the United States as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 17. The Langdale Project No. 2341 shall not be operated in a manner which will adversely affect accomplishment of any authorized function of the West Point Project as determined by the Chief of Engineers, Department of the Army, or his authorized representatives.

Article 18. The United States shall not be liable for damages to the Licensee resulting from the construction and/or operation of the West Point Project.

(D) The terms and conditions of the Act which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NOS. G–1116 AND G–2506

ORDER DENYING APPLICATION FOR REHEARING AND GRANTING STAY

(Issued October 15, 1964)

Panhandle Eastern Pipe Line Company (Panhandle) on September 16, 1964, filed a petition for rehearing of our Opinions Nos. 269–B and 344–A which were issued August 20, 1964, 32 FPC 634 and 636, respectively.

In these opinions we held that Panhandle had failed to demonstrate any basis for making an allocation of the costs or profits of the Sneed and Liberal extraction plants, or even that there was justification for making any allocation. We therefore adhered to the general court-approved rule that, in the absence of any such showing, we would include *all* extraction costs in the pipeline's

cost of service and credit revenues. The effect of this determination is to limit Panhandle to the same rate of return on its extraction operations as it secures on all other operations directly relevant to its jurisdictional pipeline operations.

In its present petition, Panhandle reiterates many of the arguments which we rejected after full discussion in Opinions 344–A and 269–B. We see no reason for repeating what we said there in answer to these contentions, but a brief reiteration of the reasons why we are not reopening the record to permit Panhandle to attempt a new showing to justify an allocation may be of value.

While these dockets relate to Panhandle's rates for periods ending on December 31, 1954, and August 31, 1958, respectively, and while we are naturally reluctant to delay concluding these proceedings, we did not rest our refusal to reopen the record on this basis. If Panhandle, either in its petition of April 17, 1963, or in the present petition for rehearing, had gone beyond its formal rehearing requests and statements of the general areas in which it proposed to introduce evidence, and made some reasonable showing that a reopening would be likely to be fruitful, we might have been inclined to grant Panhandle's request. In the absence of any of such showing, however, we believe it would be an abuse of our discretion to prolong the proceedings.

Panhandle now suggests that our failure to establish standards for making an allocation deprived it of the essential knowledge which would permit a meaningful showing of what it could prove if a new hearing were to be ordered. This contention is without merit. In the first place, it is not for the Commission to prescribe standards of proof for securing an exception to a general rule. If any allocation of extraction costs and revenues can be justified, it is the pipeline's responsibility to propose a proper segregation which will not deprive pipeline natural gas customers of the collateral benefits accruing from the costs incurred in performing essential pipeline activities and will recompense them for the disadvantages of such collateral pipeline activities. In any event, the implication that the Commission has left Panhandle in the dark as to what was wrong with its previous efforts is unwarranted. As Panhandle admits, the Commission brief in the previous appeal from Opinion No. 334 listed a number of areas of deficiency in Panhandle's proof. Yet, in its 1963 petition to reopen the record, Panhandle contented itself with the general statement (at p. 10) that it "stands ready to supply additional factual information regarding these two plants and will, in any event, present evidence to assist the Commission in arriving at a proper solution to their vexing problem." Now, after the issuance of Opinions 269–B and 344–A, which set forth the areas in which Panhandle's showing was deficient, Panhandle still does not attempt to describe, even in general terms, the nature of any of the evidence it might be in a position to introduce.

If the existing record indicated that, while Panhandle's methodology was faulty, its underlying claim that most of the extraction costs and revenues were unrelated to its jurisdictional pipeline operations was probably correct, we might nevertheless feel it appropriate to order a new hearing. As we pointed out in Opinion 344–A, however, Panhandle's principal witness testified that "costs would not have been very much less than they were" if the extraction of natural gasoline had been limited to that portion of the total which was beneficial for pipeline purposes. Moreover, even if some unrelated costs could be identified, before any proportionate share of the extraction revenues could be assigned to Panhandle's stockholders, consideration would have to be given to any adverse effect upon Panhandle's jurisdictional customers resulting from the loss of cheap

pipeline expansibility and overall reduction in the Btu content of the gas stream.[1] In short, Panhandle's portrayal of its extraction operations as "a business separate and distinct from the natural gas pipeline business" is not borne out by the facts.

The orders accompanying Opinions Nos. 269–B and 344–A provided that Panhandle should within 45 days after issuance of the opinions file and serve a report of its cost of service, rates and refunds recomputed in accordance with the amended opinions, subject to Commission approval, and within 60 days after issuance of the amended opinions, should make the additional refunds in accordance with its report.

On September 29, 1964, Panhandle filed a motion for stay of Opinions Nos. 269–B and 344–A and accompanying orders, stating that it intends to seek judicial review if its application for rehearing is denied. In support of its application, Panhandle asserts that unless the orders are stayed it will suffer irreparable injury.

On October 5, 1964, Panhandle filed a report pursuant to paragraph (B) of Opinion Nos. 269–B and 344–A, showing that $8,449,876.85 of principal and $4,685,632.29 of interest is due to be refunded to its jurisdictional customers in compliance with both opinions, or a total refund of $13,135,509.14. Panhandle's calculations as to the amounts due each customer are set out in the appendix to this order. Pursuant to our previous orders herein, this report is subject to Commission approval and customers will be allowed until October 15, 1964, in which to file any objections. While we see no reason to stay this phase of our opinions, we will stay the actual payment of the refunds pending any timely petition for review.

The Commission finds:

The assignments of error and grounds for rehearing set forth in Panhandle's application for rehearing present no new facts or principles of law which were not considered by the Commission when it issued Opinion Nos. 269–B and 344–A, or which having now been considered warrant any change in or modification of said order.

The Commission orders:

(A) The application for rehearing filed by Panhandle Eastern Pipe Line Company on September 16, 1964, is hereby denied.

(B) The provisions requiring refunds of excess charges contained in ordering paragraphs (D) accompanying Opinion Nos. 269–B and 344–A are stayed until 60 days from the date of this order provided, however, if Panhandle within that time files a petition for court review of those opinions and orders, the refund requirements hereby are further stayed until 20 days after the issuance of final mandate upon completion of such court review.

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[1] We note in passing, Panhandle's position that "[t]he propane butane extraction at Liberal could not, and did not, improve the efficiency of Panhandle's pipeline system". While it is not necessary to pass on this matter in view of our decision herein, we do not wish our silence to be understood as indicating that revenues from such extraction operation, to the extent the costs thereof could be segregated from the costs of "beneficial" extraction of natural gasoline, should not be credited in whole or in part. To the extent that such extraction reduces the Btu content of the pipeline gas stream below that which could be beneficial to its wholesale customers for natural gas, a serious question is presented as to whether the pipeline customers should not be compensated therefor. The factual basis for any such conclusion is now being considered in the *Sunray* case, Docket No. G–4281, *et al.* However, if it were otherwise appropriate to remand this case for further hearing we would need to receive evidence on this point as well.

APPENDIX A

PANHANDLE EASTERN PIPE LINE COMPANY

SUMMARY OF REFUNDS, INCLUDING INTEREST, COMPUTED IN ACCORDANCE WITH OPINION 269-B (DOCKET NO. G-1116) AND OPINION 344-A (DOCKET NO. G-2506) ISSUED AUGUST 20, 1964

	Principal	Total interest	Total
General Service Rate G-1			
Indiana:			
Central Indiana Gas Company	$574,203.81	$319,927.24	$894,131.05
Citizens Gas & Coke Utility	244,850.05	131,437.78	376,287.83
Greenfield Gas Company, Inc.	16,530.35	9,148.69	25,679.04
Indiana Gas Distribution Corporation	17,822.61	9,905.13	27,727.74
Indiana Gas & Water Company, Inc.	235,499.58	129,546.52	364,946.10
Kokomo Gas & Fuel Company	128,722.22	70,500.31	199,222.53
Northern Indiana Fuel & Light Company, Inc.	4,366.60	1,815.30	6,181.90
Northern Indiana Public Service Company	202,046.21	111,143.08	313,189.29
Ohio Valley Gas Corporation	19,900.79	10,797.79	30,698.58
Richmond Gas Corporation	30,920.56	17,285.24	48,205.80
Ohio:			
Ohio Gas Company	53,314.81	28,774.98	82,089.79
Toledo Edison Company, The	17,001.14	9,506.06	26,507.20
Michigan:			
Albion Gas Light Company, The	4,588.37	3,251.50	7,839.87
Battle Creek Gas Company	98,892.41	54,543.30	153,435.71
Citizens Gas Fuel Company	36,221.04	19,720.69	55,941.73
Michigan Gas Storage Company	411,229.15	221,807.99	633,037.14
Michigan Gas Utilities Company	65,008.63	35,646.70	100,655.33
Southeastern Michigan Gas Company	117,118.93	65,580.81	182,699.74
Small General Service Rate SG-1			
Indiana:			
Indiana Gas Distribution Corporation	979.14	569.07	1,548.21
Lapel, Town of	1,154.83	683.58	1,838.41
Montezuma, Town of	913.84	550.78	1,464.62
Northern Indiana Fuel & Light Company, Inc.	319.39	164.74	484.13
Pendleton Natural Gas Company	2,110.26	1,306.39	3,416.65
Pittsboro, Town of	526.04	302.49	828.53
Roachdale, Town of	628.13	358.24	986.37
Ohio:			
Central States Natural Gas Company, Inc.	3,092.82	1,868.92	4,961.74
	892.70		
Dayton Power & Light Company, The	182.00	531.42	1,424.12
Ohio Fuel Gas Company, The		82.59	264.59
Limited Service Rate LS-1			
East Ohio Gas Company, The	1,018,395.69	565,396.10	583,791.79
Michigan Consolidated Gas Company	1,268,459.08	721,538.20	1,989,997.28
Ohio Fuel Gas Company, The	671,005.92	386,538.54	1,057,544.46
Texas Gas Transmission Corporation	93,237.41	61,038.88	154,276.29
Storage Service Rate S-1			
East Ohio Gas Company, The	126,850.68	58,082.32	184,933.00
Michigan Consolidated Gas Company	23,403.01	12,540.09	35,943.10
Michigan Gas Storage Company	1,482,412.59	815,558.72	2,297,971.31
Interruptible Service Rate I-1			
Citizens Gas Fuel Company	2,627.76	1,302.76	3,930.52
General Service Rate G-2			
Missouri:			
Central West Utility Company	12,254.45	7,109.30	19,363.75
Citizens Gas Company of Hannibal	32,137.84	17,756.01	49,893.85
Fulton, City of	14,348.53	7,960.16	22,308.69
Gas Service Company, The	79,099.52	43,036.95	122,136.47
Missouri Edison Company	9,960.85	5,603.94	15,564.79
Missouri Power & Light Company	112,915.11	62,277.26	175,192.37
Missouri Public Service Company	9,058.42	3,739.69	12,798.11
Missouri Utilities Company	47,127.70	26,000.06	73,127.76
Missouri Western Gas Company	11,719.18	6,445.80	18,164.98
Illinois:			
Central Illinois Electric & Gas Company	31,694.46	17,341.19	49,035.65
Central Illinois Light Company	554,114.96	305,734.81	859,849.77
Central Illinois Public Service Company	152,591.59	83,241.57	235,833.16
Citizens Gas Company	21,289.57	11,760.48	33,050.05
Illinois Power Company	329,567.00	176,969.05	506,536.05
Morton Municipal Gas Company	5,001.05	2,291.65	7,292.70
Pittsfield, City of	4,029.48	1,842.71	5,872.19

APPENDIX A—continued

PANHANDLE EASTERN PIPE LINE COMPANY—continued

	Principal	Total interest	Total
Small General Service Rate SG-2			
Missouri:			
Bowling Green Gas Company	$2,235.98	$1,380.00	$3,615.98
Central West Utility Company	595.91	297.66	893.57
Gas Service Company, The	162.48	60.70	223.18
Macon, City of	129.66	55.15	184.81
Missouri Public Service Company	44.39	20.29	64.68
Montgomery City, City of	49.90	19.32	69.22
Illinois:			
Auburn, City of	148.30	61.91	210.21
Morton Municipal Gas Company	2,842.04	1,909.30	4,751.34
Pittsfield, City of	2,561.64	1,727.09	4,288.73
Pleasant Hill, Village of	20.83	7.14	27.97
Roodhouse, Village of	2,485.81	1,562.92	4,048.73
Rossville, Village of	55.07	16.70	71.77
Town Gas Company of Illinois	354.42	146.31	500.73
Waverly, City of	91.36	34.75	126.11
Westville, Village of	72.41	26.70	99.11
White Hall, City of	1,798.85	1,102.54	2,901.39
Winchester, City of	58.57	14.53	73.10
General Service Rate G-3			
Kansas: Gas Service Company, The	30,061.23	16,873.05	46,934.28
Small General Service Rate SG-3			
Kansas:			
American Gas Company, The	1,015.61	619.20	1,634.81
Louisburg Gas Compnay	834.39	467.36	1,311.75
Miami Pipe Line Company, The	2,029.74	1,346.10	3,375.84
Total refunds	8,449,876.85	4,685,632.29	13,135,509.14

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

COMMUNITY NATURAL GAS CO., INC., DOCKET NO. CP64-302; INDIANA NATURAL GAS CORPORATION, DOCKET NO. CP61-45

ORDER CONSOLIDATING PROCEEDINGS AND DEFERRING ACTION PENDING STATE JUDICIAL ACTION

(Issued October 16, 1964)

Community Natural Gas Co., Inc. (Community), an Indiana Corporation having its principal place of business in Owensville, Indiana, filed on June 17, 1964, an application (Docket No. CP64-302), and on August 13, 1964, a supplement thereto and on August 17, 1964, an amendment thereto, pursuant to Section 7(a) of the Natural Gas Act, for an order of the Commission directing Texas Gas Transmission Corporation (Texas Gas) to establish physical connection of its transportation facilities with the facilities which Community proposes to construct, and to sell and deliver to Community the volume of natural gas estimated to be required for resale and distribution in the third year of operations in the town of Worthington, Indiana, all as more fully represented in the application in Docket No. CP64-302.

Community estimates its natural gas requirements as follows:

Year	Peak day (Mcf) [1]	Annual (Mcf) [1]
1st	444	49,917
2d	490	54,778
3d	538	59,937

[1] At 14.73 psia.

Applicant proposes to construct and operate a distribution system in Worthington; approximately 2.25 miles of 4-inch lateral transmission line from the proposed interconnection with Texas Gas to the city-gate of Worthington; and the necessary regulating, odorizing and heating facilities.

Community estimates the cost of construction of its project will be $226,160, which it proposes to finance by the issuance of stock in the amount of $90,000 and issuance of $136,000 of 20-year first mortgage bonds bearing interest at not more than 6½ percent. Of the 1,800 shares of stock to be issued, 1,500 shares will be purchased by board members and officers of the company, while 300 shares will be sold by private sale to individuals.

The supplement to the application alleges that Indiana Natural Gas Corporation (Indiana Natural) is also requesting an order of this Commission directing Texas Gas to supply it with natural gas for distribution in the town of Worthington. Community states that it has been granted a gas franchise by Ordinance No. 3—1963, dated August 26, 1963, passed by the Board of Trustees of the town of Worthington and that subsequently, on November 6, 1963, said Board of Trustees adopted Ordinance No. 4—1963, which ordinance repealed its Ordinance No. 282 issuing a gas franchise to Indiana Natural. Community claims it has a gas franchise in full force and effect with respect to its authority to construct a gas distribution system and render service in Worthington. It further claims that Indiana Natural does not possess an effective and valid franchise to render such service.

On September 24, 1964, Indiana Natural advised this Commission by letter that it had filed with the Indiana Public Service Commission a petition requesting said Commission to issue a show cause order against Community requiring Community to show cause why it should not submit itself to the jurisdiction of the Commission for the purpose of obtaining approval for the financing of Community's proposed construction of a natural gas distribution system within the town of Worthington. Indiana Natural further advised this Commission that it plans to file a declaratory judgment action in the Green County, Indiana Circuit Court to determine the franchise rights for the town of Worthington of Community and Indiana Natural.

Notice of application and date of hearing was issued in Docket No. CP61–45 by the Secretary of the Commission on November 9, 1961 (26 F.R. 10817). Thereafter, on November 22, 1961, notice was issued postponing the hearing scheduled for December 20, 1961, to a date to be thereafter fixed by further notice. Said notice of postponement was published in the Federal Register on November 30, 1961 (26 F.R. 11310). By notice issued by the Secretary of the Commission on February 15, 1964 (29 F.R. 2529), Docket No. CP61–45 was consolidated for hearing with Indiana Natural Gas Corporation, Docket No. CP63–292 for the reason that the financing proposed by Indiana Natural Gas Corporation covered all its properties including the proposed construction in Docket No. CP61–45. Thereafter, separate plans of financing were proposed and pursuant to due notice issued June 23, 1964, Docket No. CP63–292 was heard upon a separate record on July 20, 1964.

Since both Indiana Natural and Community seek to serve Worthington, the Commission would ordinarily order that these applications be consolidated and set for hearing. However, impending court action by Indiana Natural to determine which party holds a valid franchise may make a consolidated formal hearing unnecessary, since under Section 7(a) an applicant must show that it is "legally authorized to engage in the local distribution" of natural gas. While we are of the opinion that we have jurisdiction to determine the question of the legal authority of the competitive 7(a) applicants to render service in Worthington, it appears that this is a matter better left for consideration in the local state courts. Accordingly we deem it appropriate to defer action on these applications pending state court action.

The Commission orders:

(A) Protests or petitions to intervene in Docket No. CP64-302 may be filed with the Federal Power Commission, 441 G Street NW. Washington, D.C., 20426, in accordance with the Rules of Practice and Procedure (18 CFR 1.8 or 1.10) on or before November 1, 1964.

(B) Action by this Commission on the above-docketed Section 7(a) applications is hereby deferred pending final determination by Indiana state courts as to the validity of the franchises held by applicants.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

JOHN B. HAWLEY, JR., TRUSTEE FOR TERRELL HAWLEY, DOCKET NO. CI65-148

DECLARATORY ORDER WITH RESPECT TO COVERAGE UNDER RATE SCHEDULE

(Issued October 16, 1964)

John B. Hawley, Jr., Trustee for Terrell Hawley (Hawley) on August 13, 1964, filed a petition for a declaratory order, pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure, in Docket No. CI65-148 requesting the Commission to determine that Hawley's interest in sales of gas from Imbler Bros. Gas Unit, Section 20-34S-34W, Seward County, Kansas, to Northern Natural Gas Company (Northern) by Hugoton Plains Gas & Oil Company (Hugoton), is covered by Hugoton's FPC Gas Rate Schedule No. 1, particularly Supplement No. 15 thereto. Supplement No. 15 contains the 15.75¢ settlement rate approved by the Commission in Docket No. RI60-102 by order issued October 8, 1963, 30 FPC 973, for Hugoton's sales to Northern. Hawley indicates that Hugoton has taken the position that there is doubt as to whether it can lawfully make payments to Hawley on the basis of the 15.75¢ settlement rate which became effective as of April 7, 1960. Hugoton apparently believes that Hawley must make his own rate filing before he is entitled to payment based on the 15.75¢ settlement rate. Hugoton, however, has not filed a response to Hawley's petition.

Hawley and Hugoton each own an undivided ½ interest in the property from which the sale involved here is made. Hawley's predecessor and Hugoton entered into two agreements on August 1, 1951, with respect to their interests. One agreement, the gas sales agreement, provided for the sale of gas from Hawley's predecessor's ½ interest to Hugoton for resale to Northern at a price

of 9¼¢ per Mcf until January 1, 1960. Thereafter the price was to be 1¼¢ below the price paid by Northern to Hugoton with a minimum of 9¼¢ per Mcf, subject to BTU adjustment. The other agreement provided for operation of the well by Hugoton.

In support of its petition, Hawley states that it has always considered itself covered by Hugoton's certificate authorization and the rate schedule filed by Hugoton in connection therewith, as supplemented. Hawley points out that Hugoton's certificate application specifically included Hawley's interest in accordance with Hawley's express authorization for Hugoton to do so. Hawley also has received payments from Hugoton in accordance with his contract with Hugoton and Commission orders affecting Hugoton FPC Gas Rate Schedule No. 1 prior to the period involved here. Hawley also claims that Hugoton has never notified Hawley that Hugoton did not intend to cover Hawley's interest in its rate filings.

Since Hugoton's certificate application in Docket No. G–6086 relating to the subject sale included Hawley's interest, it is clear that the certificate authorization granted to Hugoton covers Hawley's interest. While Hugoton's FPC Gas Rate Schedule No. 1 does not specifically refer to Hawley's interest, it must be deemed to have covered Hawley's interest in light of Hugoton's certificate application and the payment by Hugoton to Hawley for Hawley's share of the gas sold to Northern in accordance with the agreement between Hawley and Hugoton and Hugoton's rate schedule. Hugoton under these circumstances is in no position to question Hawley's right to be covered by its rate schedule. We therefore conclude that Hawley is and always has been covered under Hugoton's FPC Gas Rate Schedule No. 1.

The Commission orders:

For the reasons set forth above, we hereby determine that Hawley's interest in the above-designated property is and always has been covered under Hugoton's FPC Gas Rate Schedule No. 1, as supplemented.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr. and David S. Black.

KANSAS CITY POWER & LIGHT COMPANY, DOCKET NO. E–7177

ORDER AUTHORIZING SALE OF FACILITIES

(Issued October 16, 1964)

Kansas City Power & Light Company (Applicant), incorporated under the laws of the State of Missouri and qualified to do business as a foreign corporation in the State of Kansas, with its principal place of business at Kansas City, Missouri, filed an application on August 21, 1964, for an order pursuant to Section 203 of the Federal Power Act, requesting authorization to sell certain transmission facilities to the Board of Public Utilities of Kansas City, Kansas (Board).

Applicant is engaged in the generation, transmission, distribution, and sale of electric energy and to a minor extent in the distribution and sale of steam heat. Applicant furnishes electric service in Kansas City, Missouri, and portions of the surrounding territory in the counties of Cass, Carroll, Chariton, Clay, Howard, Jackson, Johnson, Lafayette, Pettis, Platte, Randolph and Saline, all

in the State of Missouri, and in the counties of Anderson, Bourbon, Coffey, Douglas, Franklin, Johnson, Leavenworth, Linn, Miami, Osage and Wyandotte, all in the State of Kansas. Steam heating service is furnished by Applicant in a portion of the downtown area of Kansas City, Missouri.

On January 31, 1964, Applicant acquired from the United States of America (Government) a certain 115 kw electric transmission line including substations and related rights-of-way which was authorized by Commission order issued August 20, 1963, in Docket No. E-7111, 30 FPC 515.

The Applicant and the Board of Public Utilities of Kansas City, Kansas, on July 8, 1964, entered into an agreement whereby the Applicant has agreed to sell and the Board has agreed to purchase a portion of the transmission facilities and related rights-of-way which the Applicant purchased from the Government. The facilities to be transferred from the Applicant to the Board consist of about seven miles of 115 kv line in Wyandotte County, Kansas, which extends from Johnson County, Kansas through Wyandotte County, Kansas to Missouri. The Applicant proposes to sell the facilities for $90,000, plus an amount equal to the amount of net additions, if any, to such facilities from June 28, 1963, to the closing date. The application recites that the consideration of $90,000 is the same as the Applicant's cost of these facilities from the Government.

The Agreement requires the Board to rebuild the line for 161 kv operation with June 1, 1965, the target date for completion. Applicant will rebuild the other recently purchased line sections for 161 kv operation and the total line will ultimately become part of the 161 kv loop around Kansas City, Missouri.

The Board will construct a new substation (Barber) interconnecting the purchased line section to its 69 kv system. The capacity of the substation will be in the range of 50,000 kva to 160,000 kva and the substation will be used as the principal point of interchange between the two systems. Transmission capacity of the line section, as reconstructed at 161 kv, is estimated to be 320,000 kw. Under the Agreement Applicant will be entitled to rent the line capacity not used by the Board. For this privilege, Applicant will pay a monthly rental calculated as follows: The sum of (a) fixed charges equal to $\frac{1}{12}$ of 7¼ percent of Applicant's pro rata share of the Board's investment in the transmission line including purchase price plus cost of voltage conversion, and (b) maintenance equal to $\frac{1}{12}$ of Applicant's pro rata share of the Board's costs for maintenance of the line. This rental is subject to the condition that it will not exceed 75% of the Board's fixed charges and costs of maintenance.

As a result of this disposition and the arrangements agreed upon by the Applicant and the Board, the Applicant represents that it will have available increased amounts of capacity for the transmission of power and energy between portions of its system and at the same time will be able to participate in coordinated electric operations mutually advantageous to the systems of Applicant and the Board.

Written notice of the application has been given to the State Corporation Commission of Kansas and the Public Service Commission of Missouri and to the Governor of each of those States. Notice was also published in the Federal Register on September 11, 1964 (29 F.R. 12857), stating that any person desiring to be heard or to make any protests with reference to said application should on or before September 21, 1964, file with the Federal Power Commission, Washington, D.C., 20426 petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No petition or protest or request to be heard in opposition to the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued May 14, 1957, *Interstate Power Company, Kansas City Power & Light Company*, Docket No. E-6737 (1 FPC 663).

(2) By the proposed sale of facilities, Applicant will dispose of part of its facilities subject to the jurisdiction of the Commission within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed sale of facilities of Applicant, as described above upon the terms and conditions set forth in the application and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

(4) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed sale by Applicant of the aforementioned transmission line facilities and related rights-of-way all as described above, are authorized and approved upon the terms and conditions and for the purposes set forth in the application, subject to the provisions of this order.

(B) Applicant shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) This authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, services, accounts, evaluation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body, and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted by the Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MOOSE CREEK RANCH, INC., PROJECT NOS. 2353 AND 1996

ORDER ISSUING A NEW LICENSE (MINOR) AND DISMISSING INCOMPLETE APPLICATION FOR NEW LICENSE (MINOR)

(Issued October 16, 1964)

Application was filed on March 11, 1963, and supplemented on March 9, 1964, by Moose Creek Ranch, Inc. (Applicant), of Orofino, Idaho, for a new license under the Federal Power Act (Act) for Project No. 2353, located on North Fork of Moose Creek, in Idaho County, Idaho, and affecting lands of the United States within the Nezperce National Forest.

The original license for the project, then designated as Project No. 1996, was issued to Moose Creek Ranches, Inc., of Lewiston, Idaho, for a period of 10 years, effective as of March 1, 1950. Prior to the expiration of that license, the licensee of record filed on February 16, 1960, an incomplete application for its renewal.

However, during the pendency of the incomplete application, the project properties comprising Project No. 1996 were sold to Moose Creek Ranch, Inc., which filed the March 11, 1963, application mentioned above. This latter application was docketed in the Commission as an application for license for Project No. 2353 although the project works are essentially the same as those comprising Project No. 1996. Inasmuch as the application for Project No. 1996 was never completed and is still pending, it should be dismissed.

The Forest Service, Department of Agriculture, in reporting on the application for Project No. 2353, recommended for inclusion in any new license for the project, certain conditions in the interests of fish and wildlife resources.

The Department of the Interior, in reporting on the same application, recommends for inclusion in any new license for the project, certain conditions also in the interests of fish and wildlife resources.

The Fish and Game Department of the State of Idaho recommended for inclusion in any new license for the project conditions in the interests of fish and wildlife similar to those recommended by the Department of the Interior.

The Department of Health, Education, and Welfare has stated that it is not expected that the project would cause any water supply, pollution control or vector control problems.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Idaho, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(2) Public notice of the application has been given. No protests or petitions to intervene have been received. Except for the aforementioned incomplete application for the project, which we are herein dismissing, no conflicting application is before the Commission.

(3) The project does not affect a Government dam, nor will the issuance of a new license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(4) The issuance of a new license for the project will not interfere or be inconsistent with the purposes for which the Nezperce National Forest was created or acquired.

(5) The amount of annual charges to be paid under the license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act, and for recompensing it for the use, occupancy and enjoyment of its lands by the project (3.7 acres) is reasonable as hereinafter fixed and specified.

(6) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

Section 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 11; 12; 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

(7) The exhibit designated and described in paragraph (B) below conforms to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued under Sections 4(e) and 10(i) of the Act to Moose Creek Ranch, Inc. (Licensee), of Orofino, Idaho, for a period of 10 years, effective as of March 1, 1960, for the continued operation and maintenance of minor Project No. 2353, located on North Fork of Moose Creek, in Idaho County, Idaho, and affecting lands of the United States within the Nezperce National Forest, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is hereby incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2353 consists of:

(i) all lands constituting the project area and enclosed by the project boundary, and the following constructed project works:

(ii) a concrete diversion dam 6 feet high and 108 feet long; a wood flume 97 feet long; a small frame powerhouse containing a 33-horsepower water wheel and a 24-kva generator; approximately .8 mile of 2,300-volt transmission line; and appurtenant facilities:

the said lands and project works being more specifically shown and described by a certain exhibit filed with the application for license and which is designated and described as follows:

Exhibit K: (FPC No. 2353–1) entitled "Power Site-Moose Creek Ranch, Inc.—Orofino, Idaho," signed on January 22, 1963, by D. Kenneth Christensen for Moose Creek Ranch, Inc.

(C) This license is also subject to the terms and conditions set forth in Form L–7, December 15, 1953, entitled "Terms and Conditions of License for Minor Project Affecting Lands of the United States" (17 FPC 486), which terms and conditions, designated as Articles 1 through 14, are attached hereto and made a part hereof; and subject to the following special conditions set forth herein as additional articles:

Article 15. The Denil-type fishway which has been constructed as part of the project shall be effectively operated from March 1 to July 31 annually. The licensee shall modify the period of operation upon request by the Forest Service.

Article 16. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways, and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be ordered by the Commission, consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provision of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 17. The Licensee shall pay to the United States the following annual charges:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, $5.00; and

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its land, $5.00.

(D) The exhibit designated and described in paragraph (B) above is hereby approved as part of this license.

(E) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(F) The aforementioned incomplete application for license for Project No. 1996 is hereby dismissed.

(G) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black

CITIES SERVICE GAS COMPANY DOCKET NO. RP64-9; AREA RATE PROCEEDING, ET AL. (HUGOTON-ANADARKO AREA), AR64-1, ET AL.; COLUMBIAN FUEL CORPORATION, RI61-316, RI61-518, RI62-49; CITIES SERVICE OIL COMPANY, RI63-485 AND RI65-269

ORDER GRANTING INTERVENTION, SEVERING PROCEEDINGS, CONSOLIDATING PROCEEDINGS, DENYING IN PART AND GRANTING IN PART MOTION FOR RECONSIDERATION AND MODIFICATION OF ORDER ISSUED SEPTEMBER 9, 1964

(Issued October 19, 1964)

By order issued on September 9, 1964, 32 FPC 720, the Commission, on motion filed by Cities Service Gas Company (Gas Company), provided that the issue of allowance for gas purchased from affiliated suppliers would be tried in a separate phase of Docket No. RP64-9. In that order the Commission stated that: "the test period to be used in the trial of the affiliated supplier issue is to be the same test period that is utilized in the trial of the other issues." Additionally, Gas Company was ordered to file its direct testimony and exhibits on the affiliated suppliers' cost on or before October 19, 1964.

On September 17, 1964, Cities Service Oil Company (Oil Company) and Columbian Fuel Corporation (Columbian) [1] filed a joint petition for leave to intervene in the above-entitled proceeding and, also, a joint motion for reconsideration and modification of our order issued September 9, 1964.

In their petition for leave to intervene, Movants state that they are affiliated with Gas Company and had assumed that the issue of gas sales made by them to the Gas Company would be tried in a separately docketed proceeding involving their rates for sales to the Gas Company. They further state that pursuant to the Commission's order of September 9, 1964, their rates for the sales to Gas Company will now be tried in this proceeding and, therefore, intervention in this proceeding is necessary to protect their interest in these premises.

In their motion for reconsideration and modification of our order issued September 9, 1964, Movants request:

(1) Deferral of the affiliated purchase gas cost issue in Docket No. RP64-9 pending determination of their rates in pending Section 4(e) proceedings and Area Rate Proceedings;

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[1] Hereinafter designated jointly as "Movants."

(2) In the alternative, if the Commission requires the parties to go forward with the trial of this issue in Docket No. RP64–9, then Movants request the following relief:

(a) This issue be tried in a separately docketed proceeding;

(b) Movants be granted additional time to January 7, 1965, for service of their testimony and exhibits in this proceeding; and

(c) Calendar year 1963 be designated as the test period;

(3) That the Commission grant such other and further relief as it may deem appropriate in the premises.

In support of their request for deferral, Oil Company and Columbian state that all of the rate schedules under which they sell gas to Gas Company are presently the subject of pending Section 4(e) proceedings or the Area Rate Proceeding in Docket No. AR64–1, *et al.* Additionally, they state that the question of the proper basis for computing the allowance in a pipeline cost of service for gas purchased from an affiliated producer has been made a special issue by the Commission in Docket No. AR64–1, *et al.*, a proceeding wherein Oil Company and Columbian are Respondents.

The collection by a pipeline company of any possible excessive rates and charges for any prolonged period of time even though collected under a refund obligation, as here, affords the consumers only a "somewhat illusory" bond of protection (*Federal Power Commission* v. *Tennessee Gas Transmission Co.*, 371 U.S. 145, 154). Therefore the deferral of the trial of the affiliated supplier cost issue is not consistent with the public interest. However, as an alternative to their request for deferral in their petition for leave to intervene, Movants request the Commission to consolidate their pending dockets involving sales to the Gas Company with the proceeding in Docket No. RP64–9. The consolidation of those pending Section 4(e) proceedings would permit a final determination of the just and reasonable charges for the transactions herein involved and would be consistent with our responsibilities under the Natural Gas Act. Accordingly, we will order the consolidation of the pending Section 4(e) proceedings[2] with the trial of the affiliated purchased gas cost issue in Docket No. RP64–9. Inasmuch as Docket Nos. RI61–316, RI61–518, and RI62–49 have been previously consolidated in the Hugoton Anadarko Area Rate Proceeding, Docket No. AR64–1, *et al.*, those proceedings will be severed from that area rate proceeding.

Movants request that the affiliated purchased gas cost issue be docketed as a separate proceeding "so that [they] will not be required to participate and be charged with the proceedings in other phases of this case which do not affect their rates for sales to the Gas Company" (joint petition for leave to intervene, p. 12). However, there is no need to add to the number of docketed proceedings on hand by assigning a separate number to the trial of an issue inherently involved in a Section 4(e) pipeline proceeding. Furthermore, the separate trial of this issue provided by our order issued September 9, 1964, will permit Movants to concentrate on this issue without being burdened by the trial of the issues in which they may have no interest. Therefore, the request to separately docket the trial of this issue should be denied.

In support of their request for additional time for preparation of evidence with regard to the subject issue, Movants state that the personnel responsible for the presentation of their evidence are presently "actively engaged in preparing data and doing other work in connection with various Commission pro-

[2] Those cases are as follows: Oil Company: Order issued October 12, 1960 (no docket number assigned), and Docket No. RI63–485. Columbian: Docket Nos. RI61–316, RI61–518, and RI62–49.

ceedings, including among others, those at Docket No. AR61–2, *et al.*, AR64–1, *et al.*, AR64–2, *et al.*" Additionally, Movants state that their accounting procedures and methods are presently in the process of being changed from a conventional tabulating equipment to a full computer data processing system. Movants request for additional time should be granted to the extent hereinafter ordered.

In support of their request to designate the calendar year of 1963 as the test period, Movants state that the data for 1963 would conform to the "known changes doctrine" and would be more representative and reliable for the purposes herein involved, as well as being more susceptible of compilation in a much shorter period of time. Additionally, Movants state that "the Gas Company has agreed to stipulate that data for the calendar year 1963 shall be considered as typical and representative of similar data for the test year on which the Gas Company is basing its rate increase." In view of these representations, and Gas Company's stipulation, Movants' request to submit evidence using the calendar year 1963 as the test period should be granted.

The Commission finds:

(1) Good cause exists for accepting for filing Movants joint petition for leave to intervene and for permitting Movants to intervene in Docket No. RP64–9 as hereinafter ordered.

(2) The motion filed on September 17, 1964, by the Oil Company and Columbian should be granted in part and denied in part as hereinafter ordered.

The Commission orders:

(A) Oil Company and Columbian are hereby permitted to intervene in Docket No. RP64–9 subject to the Rules and Regulations of the Commission: *Provided, however,* that the participation of each petitioner shall be limited to matters affecting asserted rights and interests specifically set forth in the petition to intervene; and, *Provided, further,* that the admission of each petitioner shall not be construed as recognition by the Commission that it may be aggrieved by any order or orders entered in Docket No. RP64–9.

(B) The request by Oil Company and Columbian to defer the trial of the purchased gas cost issue in this proceeding pending determination of their rates in pending Section 4(e) proceedings and Area Rate Proceedings is hereby denied.

(C) Docket Nos. RI61–316, RI61–518, and RI62–49 are hereby severed from the proceedings in Docket No. AR64–1, *et al.* The proceedings instituted by order issued October 12, 1960, relating to Supplement No. 3 to Oil Company's FPC Gas Rate Schedule No. 42 (hereinafter to be designated as Docket No. RI65–269 and the proceedings at Docket Nos. RI63–485, RI61–316, RI61–518, RI62–49 are hereby consolidated with Docket No. RP64–9 for the purposes of hearing and determination of the affiliated purchase gas cost issue.

(D) The request to separately docket the affiliated purchased gas cost issue is hereby denied.

(E) The request by Oil Company and Columbian for an extension of time within which to file their prepared testimony on the affiliated purchase gas cost issue is granted to the following extent: Paragraph (D) of the order issued September 9, 1964, is hereby modified to provide that the testimony and exhibits shall be filed with the Presiding Examiner and all parties of record as follows: Gas Company, Oil Company, and Columbian on or before December 21, 1964; Staff on or before February 23, 1965; Interveners on or before March 8, 1965.

(F) Paragraph (E) of the order issued herein on September 9, 1964, is hereby modified so that the prehearing conference established therein shall be held on

March 23, 1965, without limitation upon the authority of the Presiding Examiner to convene conferences prior to, or subsequent to, the date herein fixed.

(G) The order issued herein on September 9, 1964, is hereby modified to permit Movants to submit evidence using the calendar year 1963 as the test period.

(H) In all other respects our order issued on September 9, 1964, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65-53

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 19, 1964)

On August 24, 1964, El Paso Natural Gas Company (Applicant) filed in Docket No. CP65-53 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 4.5 miles of 8⅝-inch O.D. pipeline looping a portion of the pipeline facilities providing natural gas service to the City of El Paso, Texas, and surrounding areas, all as more fully set forth in the application.

The proposed facilities are for the purpose of enabling delivery of approximately 29,000 Mcf per day from Applicant's California mainline system into the area presently served by Applicant's 16-inch and 12¾-inch O.D. pipeline from its El Paso mainline system. The proposed facilities will permit operation of the combination 16-inch and 12¾-inch O.D. pipelines at pressures approximating the original design pressure of 125 psig instead of the present 175 psig maximum.

The estimated cost of the facilities is $99,700, which will be financed out of current working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on October 16, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G-242 and G-257 (3 FPC 851).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP65-46

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 19, 1964)

On August 10, 1964, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP65-46 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities to deliver natural gas to Marathon Oil Company (Marathon) in interstate commerce in Cass County, Missouri, all as more fully set forth in the application on file with the Commission.

Applicant proposes to construct and operate a measuring and regulating station on its "State Line Lateral" in the vicinity of Cass County, Missouri, and Johnson County, Kansas, and to construct and operate 2.4 miles of 2½-inch pipeline connecting the proposed station with a delivery point to Marathon in the vicinity of its secondary recovery oil project in Cass County, Missouri.

Marathon has entered into an industrial contract with Panhandle which provides for Panhandle to deliver an estimated 150,000 Mcf of natural gas annually on an interruptible basis to Marathon, with daily obligations not to exceed 500 Mcf.

The measuring and regulating station will be constructed at an estimated cost of $5,200 and the pipeline at an estimated cost of $37,800. Panhandle will pay

for construction of the station with funds on hand, but will be reimbursed by Marathon for all costs incurred in the construction of the pipeline and will enter all funds received under account 271 of the Uniform System of Accounts.

A temporary certificate was issued to Applicant in this docket by Commission letter dated September 11, 1964.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on October 16, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and delivery of natural gas by Applicant by means of the proposed facilities are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Panhandle Eastern Pipe Line Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 90 days from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PUBLIC SERVICE COMPANY OF COLORADO, PROJECT NO. 2187

ORDER DENYING APPLICATION FOR REHEARING

(Issued October 19, 1964)

On September 24, 1964, Public Service Company of Colorado (Applicant), filed application for rehearing, pursuant to Section 313(a) of the Federal Power Act, on the Commission's license order issued August 27, 1964, 32 FPC 663, for Project No. 2187, located on South Clear Creek, a tributary stream of the South Platte River in Clear Creek County, Colorado, and affecting lands of the United States within the Aarapaho National Forest and other lands of the United States.

Applicant seeks modification of the license order to exempt from provisions of Articles 16 and 20 of said order, the Green Lake Reservoir and certain land and property owned in fee by the Green and Clear Lakes Company, its wholly owned subsidiary, hereinafter referred to as the "subsidiary."

Applicant contends that Articles 16 and 20 provide free access to the public for recreational purposes on property owned by the "subsidiary" which is not a party to this proceeding. It further contends that these Articles are so broad that they would unlawfully take from the "subsidiary" for public recreational use, without a hearing before the Commission, vested property rights in the Green Lake Reservoir and land owned by the "subsidiary" in fee since 1887. As noted by the Applicant the "subsidiary" is, as such, not a party to this proceeding.

The Green Lake Reservoir was included by Applicant in its application as part of the complete project works sought to be licensed. Furthermore, Applicant in its application cited full ownership over the Company which apparently owns in fee the Green Lake Reservoir and certain lands necessary for the project. There is no indication that Applicant desires to withdraw the Green Lake Reservoir from Project No. 2187 or that its "subsidiary" seeks a license for the project or any portion thereof. It should be noted that in the original application for the project filed in 1955, the Green and Clear Lakes Company was a joint applicant. The evidence before the Commission as presented by Applicant clearly establishes the Green Lake Reservoir as a part of Project No. 2187 and thereby subject to all the conditions of the license issued therefor, including Articles 16 and 20.

In further support of its application Applicant alleges that the depth of the water in Green Lake Reservoir, limited access routes to its waters and lack of protected recreational facilities are all hazards which would endanger the lives of the public if access were permitted.

In this regard we wish to point out that Article 16 of the license makes provision for reserving from public access hazardous project areas for the purpose of protecting life, health and property. Article 20 requires Applicant to file a recreational use plan for the project, within one year of the effective date of the license, for Commission approval. Applicant may at that time propose the reservation of those areas which it deems hazardous in accordance with Article 16, subject to Commission approval. The licensee will be afforded opportunity for a hearing on all license conditions, in which the issues have not already been determined and thus, will receive adequate protection under the license.

The Commission finds:

It is appropriate and in the public interest in administering Part I of the Federal Power Act (16 U.S.C. 791a–825r), that the Public Service Company of Colorado's application filed September 24, 1964, for rehearing of the order issued August 27, 1964, granting a license for Project No. 2187 be denied.

The Commission orders:

The aforesaid application for rehearing of the Commission's order issued on August 27, 1964, for Project No. 2187 be and is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP65–33

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 19, 1964)

On August 6, 1964, Tennessee Gas Transmission Company (Applicant) filed in Docket No. CP65–33 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of metering facilities and the transportation of natural gas in interstate commerce to the American Potash and Chemical Corporation (American Potash) for special heat processing purposes in two existing plants and a proposed plant, all as more fully set forth in the application.

American Potash is now building a new plant to be completed January 1, 1965, which in addition to two existing plants will require on November 1, 1966, and thereafter 3,000 Mcf of 1,000 Btu natural gas daily to be delivered at points near Applicant's Main Line Valve No. 547 in Lowndes County, Mississippi (near Hamilton, Mississippi), at a pressure base of 15.025 psia. Natural gas requirements may be (1) increased in accordance with option provisions of the contract dated July 10, 1964, up to a maximum contract demand of 20,000 Mcf daily and (2) interrupted or curtailed under specified conditions of necessity of use by firm resale customers.

The estimated cost of the proposed metering facilities is $15,900, which will be defrayed from general funds or revolving credit funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on October 16, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued July 15, 1947, in Docket No. G–910 (6 FPC 777).

(2) The proposed construction and operation of facilities and transportation of natural gas as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Tennessee Gas Transmission Company, authorizing the construction and operation of facilities and transportation of natural gas as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 3 months from the date on which this order issues.

(D) The certificate issued hereby shall not entitle the industrial customer to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(E) Applicant shall not utilize facilities certificate in paragraph (A) above for the transportation of more than 3,000 Mcf daily to American Potash and Chemical Corporation.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

AREA RATE PROCEEDING ET AL. (PERMIAN BASIN), DOCKET NO. AR61-1, ET AL.

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR RECONSIDERATION AND FOR ADDITIONAL TIME

(Issued October 20, 1964)

The presiding examiner's initial decision and proposed order in the above-entitled matter was issued on September 17, 1964. On September 25, 1964, this

Commission issued its order extending to November 23, 1964, the time for filing exceptions to the initial decision, extending to December 24, 1964, the time for filing replies to the exceptions, setting December 7, 1964, as the date for requests for allotments of time on oral argument and fixing January 12, 1965, for commencement for oral argument. Motions for extension of time received prior to September 25, 1964, were disposed of by the same order.

On October 5, 1964, Continental Oil Company, The Pure Oil Company, Shell Oil Company, Socony Mobil Oil Company, Inc., Humble Oil & Refining Company, Gulf Oil Corporation, Pan American Petroleum Corporation, and Texaco Inc. filed a motion for reconsideration of our aforesaid order of September 25, 1964, requesting that the time for filing briefs on exceptions be extended to December 21, 1964, that the time for filing briefs opposing exceptions be extended to February 22, 1965, that the oral argument be deferred until March 2, 1965, and that 3 days be permitted for oral argument. By letter filed October 12, 1964 Sinclair Oil & Gas Co. joins in Continental's motion.

We have carefully considered the reasons advanced for the requested extensions of time. We are aware of the difficulties faced by counsel for the moving parties. The novelty and importance of the case, the extent of the record, the complications attending the presentation of joint briefs, and the pendency of other matters involving the moving parties were among the factors which led the Commission to provide for extensions of time in its order of September 25, 1964. Under all the circumstances, we do not think that an additional extension should be granted with respect to the filing of exceptions to the initial decision. In view of the statements of the moving parties with respect to the time required for preparing joint replies to the exceptions, we think the time for filing such replies should be extended to January 15, 1965. By reason of this extension, it is necessary to reschedule the commencement of oral argument from January 12, 1965, to February 8, 1965. The time for filing requests for allotments of time for oral argument will be extended from December 7, 1964, to December 30, 1964.

The aforesaid order of September 25, 1964, fixed no limit upon the time to be devoted to oral argument, but provided that no less than two days should be allotted thereto. No determination of the limits of oral argument will be made prior to receiving the requests for time allotments.

The Commission finds:

(1) No new facts or principles of law have been presented on this motion for reconsideration, and for additional time, with respect to the requested extension of time for filing briefs on exceptions, which either were not fully considered by the Commission prior to its order herein or, having been now considered, warrant further hearing, modification, reconsideration, or revocation of said order in this respect.

(2) Good cause has been shown by the moving parties for extending the time for filing briefs opposing exceptions to January 15, 1965.

(3) The time for filing requests for allotment of time on oral argument, and the time for commencing oral argument, should be fixed as hereinafter provided.

The Commission orders:

(A) The time for filing briefs opposing exceptions in the above-entitled matter is hereby extended to January 15, 1965.

(B) The time for commencing oral argument in the above-entitled matter is hereby rescheduled for 10 a.m. on February 8, 1965.

(C) The time for filing requests for allotments of time for oral argument is hereby extended to December 30, 1964.

(D) The motion for reconsideration and for additional time filed herein by Continental Oil Company, The Pure Oil Company, Shell Oil Company, Socony Mobil Oil Company, Inc., Humble Oil & Refining Company, Gulf Oil Corporation, Pan American Petroleum Corporation, and Texaco Inc. and the joinder therein by Sinclair Oil & Gas Company be and the same hereby is in all other respects denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, DOCKET NO. CP64-309

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued October 20, 1964)

On June 24, 1964, Central Illinois Public Service Company (Applicant) filed in Docket No. CP64-309 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Panhandle Eastern Pipe Line Company (Panhandle) to establish physical connection of its natural gas transmission system with facilities proposed to be constructed by Applicant at Woodson, Illinois, and to sell and deliver natural gas to Applicant for resale and distribution in the Village of Woodson, Illinois, all as more fully set forth in the application on file with the Commission.

Applicant proposes to construct and operate lateral transmission facilities from a proposed metering and regulating station of Panhandle to the Village of Woodson. Applicant will also construct and operate the necessary distribution facilities to provide the proposed service. The estimated cost of the project is $39,360, and is to be financed with internal funds.

The application shows the estimated annual and peak day requirements of natural gas in Mcf to Applicant are as follows:

	1st year	2d year	3d year
Annual (Mcf)	10,850	14,610	16,390
Peak day (Mcf)	103	139	157

Approvals of this proposal by the President and Board of Trustees of the Village of Woodson and by the Illinois Commerce Commission were issued March 9, 1964, and June 2, 1964, respectively.

On July 30, 1964, Panhandle answered the application stating it had no objection to the granting of the application, and if directed by the Commission it will construct a metering and regulating station to which the proposed facilities of Applicant will be connected.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on September 24, 1964 (29 F.R. 13285). No protest or petition to intervene in opposition to the granting of the application has been filed.

The Commission finds:

(1) Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas com-

pany" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(2) Applicant, Central Illinois Public Service Company, an Illinois corporation having its principal place of business in Quincy, Illinois, is a corporation legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and convenient and in the public interest that Panhandle Eastern Pipe Line Company be directed to establish physical connection of its natural gas transmission facilities with the facilities proposed by the Applicant and to sell and deliver through such connecting facility the required volume of natural gas to Applicant, as set forth in the application and as hereinafter ordered.

(4) The requirement that Panhandle serve Applicant, as proposed, will not place any undue burden upon Panhandle nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Panhandle Eastern Pipe Line Company be and is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant, Central Illinois Public Service Company, and to sell and deliver up to 157 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully set forth in the application in this proceeding.

(B) Applicant shall be prepared to receive natural gas from Panhandle within 6 months from the date of issuance of this order.

(C) Panhandle shall report to the Commission in writing the date of commencement of service to Applicant within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

COLUMBIA GULF TRANSMISSION COMPANY, DOCKET NO. CP64–296

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued October 20, 1964)

On June 10, 1964, Columbia Gulf Transmission Company (Applicant) filed in Docket No. CP64–296 an application pursuant to Section 7(b) of the Natural Gas Act for authority to abandon certain natural gas facilities all located in St. Mary Parish, Louisiana, all as more fully set forth in the application.

Specifically, Applicant proposes (1) to abandon by sale to Humble Oil & Refining Company, or a subsidiary thereof, (Humble) 12.5 miles of Applicant's 13.1 mile, 12-inch, Lake Sand Field Line; (2) to abandon in place 0.1 mile of its 4-inch Bayou Sale Line, and (3) to abandon and salvage two measuring stations.

The facilities to be abandoned were constructed to take gas for the account of United Fuel Gas Company (United Fuel) from properties operated by Pan American Petroleum Corporation in the Lake Sand Field, St. Mary and Iberia Parishes, Louisiana, and from properties operated by Texaco Inc. in the Bayou Sale Field, St. Mary Parish, Louisiana. Applicant states that United Fuel has entered into new contracts with Texaco Inc. and Pan American providing for a

new delivery point for gas purchased by United Fuel; hence, when the delivery point changes take place, the facilities to be abandoned will no longer be required. Further, Applicant has been advised by United Fuel that for the foreseeable future the latter does not contemplate the purchase of gas supplies in the area in which the subject facilities are located.

Humble will pay Applicant a price equal to the original cost less accumulated depreciation for the portion of the Lake Sand Field Line herein proposed to be abandoned. The application indicates that Humble will utilize said line in connection with pressure maintenance operations in the Bayou Sale Field, St. Mary Parish, Louisiana.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on October 16, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Columbia Gulf Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued November 5, 1958, in Docket No. G–15524 (20 FPC 681).

(2) The facilities to be abandoned, as hereinbefore described, are subject to the jurisdiction of the Commission and the abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity, and an order authorizing and approving same should be issued as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application in this proceeding, be and the same are hereby granted.

(B) Applicant shall advise the Commission of the date of said abandonment within 10 days of the date thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOCONY MOBIL OIL COMPANY, INC., DOCKET NOS. CI61–1024, CI61–1244, CI61–1281 AND CI63–615

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 20, 1964)

Socony Mobil Oil Company, Inc. (Socony), has filed in the above-indicated dockets applications pursuant to Section 7(c) of the Natural Gas Act for certificates of public convenience and necessity authorizing the sale of natural gas in interstate commerce for resale as set forth in the tabulation which is appended hereto, and as more fully set forth in the respective applications and any amendments or supplements thereto, all on file with the Commission.

It appears that the purported granting of certificate authorization in these four dockets by the Presiding Examiner's Initial Decision in Docket No. CI61–153, *et al.*, issued July 13, 1964, was ineffectual because said four dockets were severed from Docket No. CI61–153, *et al.* (originally designated as Docket No. G–19417, *et al.*), by our order issued May 28, 1964, 31 FPC 1325, which amended the rate settlement order issued May 5, 1964, 31 FPC 1101, in Docket No. G–12196, *et al.*, by specifically providing for such severance, among others.

Accordingly, the subject applications in Docket Nos. CI61–1024, CI61–1244, CI61–1281 and CI63–615 remain open and should be disposed of as hereinafter ordered.

Socony has filed related FPC Gas Rate Schedules and proposes to initiate natural gas service in interstate commerce as indicated in the appended tabulation. The sales certificated herein are at prices set forth in the Commission's Order Approving Rate Settlement Proposal, etc., issued May 5, 1964, as supplemented on May 28 and June 26, 1964, in Docket No. G–12193, *et al.*, 31 FPC 1593.

After due notice, no petition to intervene, notice of intervention or protests to the granting of any of the subject applications has been filed.

At a hearing held on October 16, 1964, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications, exhibits, amendments and supplements thereto, submitted in support of the respective authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Socony Mobil Oil Company, Inc., a New York corporation having its principal place of business in New York, New York, is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sales of natural gas hereinbefore referred to and as set forth in the tabulation appended hereto, as more fully described in the respective applications, amendments and/or supplements herein, will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sales by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The sales of natural gas by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

The Commission orders:

(A) Certificates of public convenience and necessity be and the same are hereby issued, upon the terms and conditions of this order, authorizing the sales by Applicant, Socony Mobil Oil Company, Inc., of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary for such sales, all as hereinbefore referred to and as set forth in the tabulation appended hereto, as more fully described in the respective applications, amendments, supplements and exhibits in the proceedings.

(B) The certificates granted in paragraph (A) above are not transferable and shall be effective only so long as Applicant continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(C) The grant of the certificates issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the Applicant herein. Further, our action in these proceedings shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. Nor shall the grant of the certificates aforesaid for service to the particular customers involved imply approval of all of the terms of the aforesaid contracts, particularly as to the cessation of service upon termination of said contracts, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificates aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of the sale of natural gas subject to said certificates.

(D) Any allowance for take-or-pay provisions and any upward B.t.u. adjustment provisions in the related rate schedules involved in these four dockets are subject to the ultimate disposition with respect to such provisions in the rule making proceedings in Docket Nos. R–199 and R–200; however, Socony will not be required to file take-or-pay provisions for less than 80 percent of the annual contract quantities.

Filing code: A—Initial service certificate application
B—Application to amend pending certificate application
C—Application to amend certificate by adding acreage
D—Application to amend certificate by deleting acreage

Docket No. and filing date	Field and location	Purchaser	Initial price per Mcf and psia pressure base	Related rate schedule	
				No.	Supp.
CI61-1024, Socony Mobil Oil Company, Inc. (A-1/9/61).	North Custer City Field, Custer County, Oklahoma.	Natural Gas Pipeline Company of America.	15.0¢ @ 14.65..	266	1
CI61-1244, Socony Mobil Oil Company, Inc. (A-2/20/61).	Seiling Field, Major County, Oklahoma	Panhandle Eastern Pipe Line Company	15.0¢ @ 14.65..	325	1
CI61-1281, Socony Mobil Oil Company, Inc. (A-2/27/61)	Cedardale Field, Woodward County, Oklahoma (Oklahoma Panhandle).	Michigan Wisconsin Pipe Line Company	17.0¢ @ 14.65..	322	1-6
	and Major and Dewey Counties, Oklahoma (Oklahoma—Other).	do	15.0¢ @ 14.65..		
(B-10/26/62)	(statement invoking Section 157.28 of Commission Regulations)				
(B-6/18/63)	Cedardale Field, Dewey County, Oklahoma (Oklahoma—Other).	Michigan Wisconsin Pipe Line Company	15.0¢ @ 14.65..	322	7
CI63-615, Socony Mobil Oil Company, Inc. (A-11/9/62).	Chitwood (Deep) Field, Grady County, Oklahoma	Natural Gas Pipeline Company of America	15.0¢ @ 14.65..	323	------

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-31

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT

(Issued October 20, 1964)

On August 5, 1964, Southern Natural Gas Company (Applicant), filed in Docket No. CP65-31, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural-gas facilities by sale to Alabama Gas Corporation (Alabama Gas), all as more fully set forth in the application.

Applicant proposes to sell to Alabama Gas, one of its existing customers, 6.588 miles of its 8-inch Montgomery line and loop, its Coosada-Millbrook tap line and measuring station, and its Montgomery measuring station site.

Applicant proposes to retire its present Montgomery measuring station and replace it and the Coosada-Millbrook measuring station with a single measuring station having the approximate equivalent design capacity of the stations being replaced. The abandonment by sale of the above-described facilities will not have any effect upon Applicant's present and future operations and service.

Applicant will receive a total of $140,953 for the facilities abandoned by sale.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

At a hearing held on October 16, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued October 6, 1942, in Docket No. G-296 (3 FPC 822).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities by sale to Alabama Gas is permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application in this proceeding, are hereby granted to Applicant, Southern Natural Gas Company.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within 10 days of such abandonment.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64-99

FINDINGS AND ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 21, 1964)

On July 20, 1964, El Paso Natural Gas Company (Applicant) filed in Docket No. CP64-99 an application to amend further the Commission's order, issued February 18, 1964, 31 FPC 422, in said docket, as amended, by authorizing Applicant to continue to participate, as to its one-third interest, in the testing of the Jackson Prairie Storage Unit through December 31, 1964, all as more fully set forth in the application to amend.

The order of February 18, 1964, authorized Applicant to construct and operate certain facilities; to sell and deliver natural gas and, with respect to Applicant's interest therein, to share in the cost of the facilities to be constructed and operated by The Washington Water Power Company, all solely for the purpose of testing the Jackson Prairie Storage Unit. Such authorization was granted to terminate at 12:01 a.m., August 1, 1964.

Applicant states that testing operations have not proceeded within the authorized time limit because the gas injection rate has been considerably less than anticipated; therefore, Applicant requests an extension of the time limit on its participation in the testing project through December 31, 1964.

By letter, dated July 30, 1964, Applicant was issued a temporary certificate authorizing the subject extension.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on September 11, 1964 (29 F.R. 12856). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued February 18, 1964, in Docket No. CP64-99, as amended, be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued February 18, 1964, in Docket No. CP64-99, as amended, be and the same is hereby further amended by authorizing Applicant to continue to participate, as to its one-third interest, in the testing of the Jackson Prairie Storage Unit, including the sale and delivery of natural gas for such purpose, through December 31, 1964, all as hereinbefore described and as set forth in the application to amend.

(B) In all other respects said order, as amended, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

IOWA SOUTHERN UTILITIES COMPANY, DOCKET NO. CP65-4

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE AND DELIVERY OF NATURAL GAS

(Issued October 21, 1964)

On July 6, 1964, Iowa Southern Utilities Company (Applicant) filed in Docket No. CP65-4 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by the Applicant and to sell natural gas to Applicant for distribution in Middletown, Iowa, all as more fully set forth in the application.

Applicant proposes to construct and operate a local distribution system in the community of Middletown, Iowa, and environs. The natural gas requirements for the proposed distribution system will be obtained from Michigan Wisconsin at a new delivery point adjacent to the north corporate limits of Middletown. Approval for the proposed distribution system and service has been issued by Middletown but not by the Iowa Commerce Commission.

Applicant is presently providing electric service to the community of Middletown, Iowa.

Applicant estimates the volumes of natural gas necessary to meet annual and maximum day requirements for the first 3 years of operation are as follows:

	1st Year	2d Year	3d Year
Annual (Mcf)	10,263	13,300	15,365
Maximum (Mcf)	105	136	157

All gas volumes are at 14.73 psia.

The estimated cost of the proposed facilities in the third year will be $30,987 and financed by Applicant.

Michigan Wisconsin filed its answer on August 6, 1964, stating that it had no objection to the granting of the order since Applicant is an existing customer and it proposes to serve the *de minimis* requirements of Middletown without the allocation of an additional gas supply, and since Applicant is not requesting the construction of any lateral line facilities by the pipeline company.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on September 15, 1964 (29 F.R. 12948). No protest, petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order dated November 30, 1946, in Docket G-669 (5 FPC 953).

(2) Applicant, Iowa Southern Utilities Company, a Delaware corporation having its principal place of business in Centerville, Iowa, is a corporation legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Michigan Wisconsin to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant with Michigan Wisconsin in accordance with the Commission's Regulations, up to 157 Mcf of natural gas on a maximum day and 15,365 Mcf annually for distribution and resale as hereinbefore described.

(4) The requirement that Michigan Wisconsin serve Applicant, as hereinafter ordered, will not (a) place an undue burden upon Michigan Wisconsin, (b) require Michigan Wisconsin to enlarge its transportation facilities or (c) impair Michigan Wisconsin's ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Michigan Wisconsin for distribution in Middletown, Iowa, within 1 year from the date of the issuance of this order.

The Commission orders:

(A) Michigan Wisconsin Pipe Line Company be and is hereby directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, as hereinbefore described, and to sell and deliver up to 157 Mcf of natural gas on a maximum day and 15,365 Mcf annually to Applicant under a service agreement to be executed by Applicant with Michigan Wisconsin in accordance with the Commission's Regulations, for transportation, distribution and resale as hereinbefore described. Such service shall be rendered pursuant to Michigan Wisconsin's presently filed appropriate rate schedule.

(B) Michigan Wisconsin shall report to the Commission the date of commencement of service to Applicant within 15 days after such service begins.

(C) Applicant shall (1) obtain appropriate authorization from the Iowa Commerce Commission for facilities to render the service proposed for Middletown, Iowa environs, and (2) be prepared to receive service as directed herein within 1 year from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP64-112

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 21, 1964)

On August 3, 1964, Northern Natural Gas Company (Petitioner) filed in Docket No. CP64-112 a petition to amend the order of the Commission issuing a certificate of public convenience and necessity, issued February 10, 1964, 31 FPC 390. Said order, among other things, authorized Petitioner to increase its saleable system capacity by 20,031 Mcf per day. Included in this amount was an increase for the Municipal Utilities of Coon Rapids, Iowa (Coon Rapids), from present contract demand volume of 850 Mcf per day to 900 Mcf, for the 1964-65 heating season. In the subject petition, Petitioner seeks authority to rescind the 50 Mcf increase since Coon Rapids is no longer desirous of undertaking the increased volume.

Petitioner seeks further amendment of the order of February 10, 1964, by requesting authorization to increase the contract demand volume to the Village of Pender, Nebraska, from 925 Mcf per day as presently authorized to 1,000 Mcf, as requested by said Village of Pender.

Due notice of the subject petition to amend has been given by publication in the Federal Register on September 25, 1964 (29 F.R. 13353). No protest, petition to intervene, or notice of intervention has been filed herein.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued February 10, 1964, in Docket No. CP64-112 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued February 10, 1964, in Docket No. CP64-112 be and the same is hereby amended by authorizing Northern Natural Gas Company to rescind the 50 Mcf of contract demand increase granted to the Municipal Utilities of Coon Rapids, Iowa, thereby leaving in effect the present contract demand of 850 Mcf; and authorizing Northern to increase the contract demand volume to the Village of Pender, Nebraska, from 925 Mcf per day as presently authorized to 1,000 Mcf per day.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NATURAL GAS PIPELINE COMPANIES—BUDGET-TYPE CERTIFICATE APPLICATIONS FOR GAS-SALES TRANSPORTATION AND UNDERGROUND GAS STORAGE FACILITIES, DOCKET NO. R-254

ORDER NO. 285-A

AMENDING SECTION 157.7(D)(4) OF REGULATIONS UNDER THE NATURAL GAS ACT AND GRANTING IN PART AND DENYING IN PART MOTIONS FOR RECONSIDERATION

(Issued October 21, 1964)*

Natural Gas Pipeline Company of America (Natural) and Northern Illinois Gas Company (Northern Illinois) filed Motions for Reconsideration of Order No. 285 (29 F.R. 11749), issued August 12, 1964, 32 FPC 606, amending § 157.7 of the Regulations Under the Natural Gas Act. By that order we permitted the filing of budget-type applications for certification of gas sales facilities and for facilities for the testing and development of gas storage reservoirs.

Both Natural and Northern Illinois request deletion of the provision of § 157.7(c)(1)(i) of the Regulations prohibiting the filing of a budget-type application to serve a distributor presently served or proposed to be served by more than one natural gas company. In situations where more than one natural gas company serves a distributor there is a distinct possibility that the other natural gas companies will desire to intervene in expansion applications of their

*Published in Federal Register on October 29, 1964 (29 F.R. 14722).

competitors in order to protect a competitive position. Accordingly, we will continue to exclude this type of expansion from budget-type applications.

Natural and Northern Illinois request that budget-type applications be permitted for service to distributors in communities not having natural gas service. They observe that we denied similar requests in Order No. 285 for the reason that there existed a possibility of controversy between distributors proposing new service, but they contend that our requirement that the distributors have all requisite local and state authorization eliminates that possibility. However, we have been confronted three times in recent years with situations in which two distributors claimed to have requisite local authorization to serve the same community.[1] Furthermore competing fuel interests, by the action proposed, would be precluded from the opportunity to present their positions in such a case. Accordingly, we will not expand § 157.7(c)(1)(i) to include service to distributors in communities not being served.

Northern Illinois requests modification of § 157.7(c)(2) which limits budget-type authorization to deliveries to any one distributor or consumer to a maximum of 100,000 Mcf annually and which prohibits boiler fuel use of the gas so delivered. Northern Illinois suggests that these restrictions should carry a limitation for the first 3 years of the gas sales facilities, contending that it is unreasonable to impose such restrictions without time limit. These restrictions only apply to budget-type applications and will be retained. Whenever a natural gas company desires to avoid these restrictions it can file a separate application for the specific service not permitted under these limitations of budget-type applications.

Natural requests amendment of § 157.7(d)(4) which provides for the filing of budget-type applications requesting authorization of the construction and operation of pipeline and compression facilities for the testing and development of underground storage reservoirs for a 3 year period. That section limits budget-type applications to total expenditures of $3,000,000 over the 3 year period and $1,000,000 for any one year. Natural suggests that the 3 year period be expanded to 4 years and that the dollar limits be raised to $6,000,000 over the 4 year period and $2,000,000 for any one year. We do not agree that the time limit should be extended but, upon reconsideration, we do see the advisability of permitting, in given instances, the expenditure of somewhat greater amounts than have been specifically set forth in this section. Accordingly, § 157.7(d)(4) will be amended to permit the filing of budget-type applications proposing construction in excess of the dollar limits previously prescribed when accompanied by a request for waiver of that limitation.

Upon consideration of the Motions for Reconsideration, *the Commission further finds:*

(1) Adoption of the amendment to the Regulations Under the Natural Gas Act contained in paragraph (A) below is necessary and appropriate to the administration of the Natural Gas Act.

(2) Good cause exists for the adoption herein of the amendment to § 157.7 embodied in the new paragraph (d)(4)(ii) thereof without giving the prior notice provided for by § 4 of the Administrative Procedure Act.

The Commission, acting pursuant to the authority granted by the Natural Gas Act, as amended, particularly sections 7, 15, and 16 thereof (52 Stat. 824, 829, 830; 56 Stat. 83, 84; 15 U.S.C. 717f, 717n, 717o), *orders:*

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[1] *Northern Natural Gas Co.*, Opinion No. 324, 22 FPC 164; *American Louisiana Pipe Line Co., et al.*, 28 FPC 41; *Coastal Transmission Corp., et al.*, 28 FPC 685.

(A) Subparagraph (4) of § 157.7(d), Subchapter E, Chapter I, Title 18 of the Code of Federal Regulations, as prescribed by Order No. 285 (32 FPC 606, 29 F.R. 11749), is amended by designating the present text thereof as "(4) (i)" and adding a new subdivision (ii) to read as follows:

§ 157.7 Abbreviated applications.

* * * * * * *

(d) *Underground gas storage facilities—budget-type application.*

* * * * * * *

(4) (i) * * *

(ii) Any application proposing the construction of facilities having an estimated cost in excess of the amounts specified in subdivision (i) hereof shall be accompanied by a request for waiver of the provisions of such subdivision and will be granted only for good cause shown.

(B) The amendment adopted herein shall become effective on the date of issuance of this order.

(C) To the extent not granted above the Motions for Reconsideration are denied.

(D) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP64-18

FINDINGS AND ORDER AMENDING ORDER ISSUED JULY 24, 1964

(Issued October 21, 1964)

On August 19, 1964, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP64-18 an application to amend the Commission's order issued July 24, 1964, 32 FPC 349, in said docket by authorizing certain minor revisions to the summer contract demands of five existing resale customers of Applicant, all as more fully set forth in the application to amend.

The order of July 24, 1964, modified and adopted the decision of the presiding examiner in Docket No. CP64-18, wherein Applicant was authorized to construct and operate certain facilities and to increase natural gas sales to certain of its present customers. Applicant states that as a result of revisions in market estimates, five of Applicant's customers involved in this docket wish to revise their summer contract demands.

Applicant proposes herein to revise as follows the summer contract demands of the following customers:

Northern Indiana Fuel & Light Company

(Volumes—Mcf)

	April	May	June	July	August	September	October
Proposed originally	8,000	6,000	4,500	4,500	4,500	6,000	8,000
Proposed revision	9,000	7,000	5,000	4,300	4,600	6,700	8,200
Increase (decrease)	1,000	1,000	500	(200)	100	700	200

Ohio Valley Gas Corporation

(Volumes—Mcf)

	April	May	June	July	August	September	October
Proposed originally	4,900	4,000	3,200	1,800	2,000	4,100	5,100
Proposed revision	6,400	4,900	3,200	2,100	2,300	4,100	5,600
Increase (decrease)	1,500	900	----------	300	300	----------	500

Southeastern Michigan Gas Company

(Volumes—Mcf)

	April	May	June	July	August	September	October
Proposed originally	35,000	29,000	20,000	15,000	15,000	25,000	33,000
Proposed revision	35,000	25,000	20,000	15,000	15,000	20,000	30,000
Increase (decrease)	----------	(4,000)	----------	----------	----------	(5,000)	(3,000)

Toledo Edison Company, The

(Volumes—Mcf)

	April	May	June	July	August	September	October
Proposed originally	4,400	3,300	2,400	2,000	2,000	3,000	4,400
Proposed revision	4,700	3,700	2,300	1,600	1,800	3,100	4,100
Increase (decrease)	300	400	(100)	(400)	(200)	100	(300)

White Hall, City of

(Volumes—Mcf)

	April	May	June	July	August	September	October
Proposed originally	600	225	175	165	180	280	500
Proposed revision	1,000	700	400	200	300	600	900
Increase (decrease)	400	475	225	35	120	320	400
Net increase (decrease) of above group	3,200	(1,225)	625	(265)	320	(3,880)	(2,200)

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on September 24, 1964 (29 F.R. 13286). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued July 24, 1964, in Docket No. CP64-18 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued July 24, 1964, in Docket No. CP64-18 be and the same is hereby amended by authorizing certain minor revisions to the summer contract demands of five existing resale customers, all as hereinbefore described and as set forth in the application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED FUEL GAS COMPANY AND KENTUCKY GAS TRANSMISSION CORPORATION, DOCKET NO. CP62-238

FINDINGS AND ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 21, 1964)

On July 1, 1964, Kentucky Gas Transmission Corporation (Applicant) filed in Docket No. CP62-238 an application to amend the Commission's order issued October 10, 1962, 28 FPC 579, in said docket, by authorizing Applicant to construct and operate 0.2 mile of 8-inch pipeline in lieu of constructing and operating the 0.5 mile of 10-inch pipeline heretofore authorized by said order, all as more fully set forth in the application to amend.

The order of October 10, 1962, issued a certificate of public convenience and necessity jointly to United Fuel Gas Company and Applicant authorizing, among other things, Applicant to construct and operate 0.5 mile of 10-inch pipeline in Menifee County, Kentucky, to provide an interconnection between Applicant's 20-inch Menifee-to-Foster transmission line and a 12-inch Eastern Kentucky Line (Line KZ). Said order also authorized Applicant to acquire from Louisville Gas and Electric Company and operate Line KZ.

Applicant states that when it developed plans to terminate injection of gas into and to abandon its Menifee Storage Field, the injection Line F-8" became available for use in connecting the Menifee-to-Foster Line with Line KZ. Accordingly, construction of the 0.5 mile of 10-inch line was deferred in order to avoid unnecessary duplication of facilities. The abandonment of the Menifee Storage Field was granted by Commission order, issued June 2, 1964, in Docket No. CP64-171.

Consequently, Applicant now proposes to utilize a portion of Line F-8" to accomplish the proposed connection. In order to do so Applicant will construct and operate two segments of 8-inch jumper line, totaling approximately 0.2 mile, to connect Line F-8" with Line KZ and the Menifee-to-Foster Line. The 8-inch jumper lines will be in lieu of the 10-inch line originally authorized in this proceeding.

The estimated cost of the substitute facilities is $9,500, which cost is $13,320 less than the estimated cost of the facilities originally authorized.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on September 8, 1964 (29 F.R. 12949). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued October 10, 1962, in Docket No. CP62-238 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued October 10, 1962, in Docket No. CP62-238 be and the same is hereby amended by authorizing Applicant to construct and operate 0.2 mile of 8-inch pipeline in lieu of constructing and operating the 0.5 mile of 10-inch pipeline heretofore authorized by said order, all as hereinbefore described and as set forth in the application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

AREA RATE PROCEEDING, ET AL. (SOUTHERN LOUISIANA AREA), DOCKET NO. AR61–2, ET AL.

ORDER AFFIRMING RULING OF PRESIDING EXAMINER AND DENYING APPEAL THEREFROM

(Issued October 22, 1964)*

On August 21, 1964, Hunt Oil Company and 13 other entities representing Hunt gas and oil interests, and the Placid Oil Company (hereinafter referred to as Hunt) filed an appeal with the Commission from the Presiding Examiner's ruling on August 12, 1964, denying a motion made by Hunt on June 25, 1964. Hunt's motion requested that it be given opportunity to conduct cross-examination with respect to the responses of producer-respondents to certain Commission Questionnaires used to obtain basic statistical and other data for use in this proceeding. Alternatively, Hunt requested that all testimony and exhibits based upon such data be excluded from evidence, or that subpoenas *duces tecum* and *ad testificandum* be issued to enable Hunt to cross-examine as requested. Memoranda responding to Hunt's motion were filed by various parties and the Staff.

On September 8, 1964, the Presiding Examiner certified Hunt's appeal to us pursuant to Section 1.28(a) of our Rules of Practice and Procedure, providing for Commission decision of appeals from rulings of presiding officers where prompt decision is necessary to prevent detriment to the public interest.

We have considered with care the Examiner's detailed and well-reasoned ruling, and the arguments advanced for and against it. We conclude that, for the reasons set forth in the Examiner's ruling, his denial of Hunt's motion for cross examination or other relief should be affirmed, and Hunt's appeal from such ruling should be denied without prejudice to Hunt's right to argue as to the weight to be accorded to the evidence in the proceeding.

The Commission orders:

The ruling of the Presiding Examiner on August 12, 1964, denying Hunt's motion for cross examination or other relief filed June 25, 1964, is hereby affirmed, and Hunt's appeal from such ruling filed on August 21, 1964, is hereby denied.

Commissioner Ross *concurs* in the denial of the instant motion solely because of the lateness of its filing.

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* Reconsideration denied by order issued December 15, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

KNOXVILLE UTILITIES BOARD, ET AL., COMPLAINANT v. EAST TENNESSEE NATURAL GAS COMPANY, DEFENDANT; DOCKET NO. RP65-4

ORDER INSTITUTING INVESTIGATION, PROVIDING FOR HEARING AND DESIGNATING PROCEDURE

(Issued October 22, 1964)

On August 14, 1964, Knoxville Utilities Board, *et al.* (Knoxville), comprising 25 persons[1] engaged in purchasing gas for resale, filed a formal complaint under Section 5(a) of the Natural Gas Act naming their supplier, East Tennessee Natural Gas Company (East Tennessee) defendant. Therein Knoxville alleges, among other things, that during the year 1963 East Tennessee sold approximately 28,577,000 Mcf of gas to resale customers within the State of Tennessee, realizing therefrom revenues of $12,362,000; that these revenues are excessive to the extent of $644,848 and that therefore East Tennessee's rates are not the lowest reasonable rates.

Knoxville supports its allegations with a cost of service study prepared from East Tennessee's annual report for 1963 filed with the Commission; requests that the Commission institute an investigation into the current resale rates of East Tennessee under Section 5 of the Act, and states that the current rates and charges against which complaint is made, became effective as of April 5, 1960, by Commission order issued August 9, 1962, 28 FPC 308, approving the settlement in Docket Nos. G-12264, G-17330 and G-20072.

East Tennessee's answer, filed September 14, 1964, as authorized by a 14-day extension of time, contends that the complaint should be dismissed because it fails to present the foundation for a Section 5(a) investigation. In support of this contention, East Tennessee states, among other things, that complainants' figures are based on an abnormally cold year and therefore are not representative of future conditions; that complainants' use of a 6⅝% rate of return would allow East Tennessee only a 8.29% return on common equity; that the current rate levels of East Tennessee are not excessive; that the complaint neglects consideration of the pending certificate proceedings in Docket No. CP64-270, *et al.*, and of a contingent proposal therein for reduction of defendant's rates and in conclusion, that during the pendency of the above-identified proceedings no "intelligent determination with respect to East Tennessee's rates for the future" is possible.

The pleadings leave unresolved substantial questions of fact and law bearing upon the issues of whether the rates and charges complained against are excessive and if so, what rates and charges would constitute the lowest reasonable rates pursuant to Section 5(a) of the Act. East Tennessee contends that a public hearing herein should be denied or deferred on account of pending certificate proceedings. However, the complaint is filed under Section 5 of the Act

[1] The complainants are: Knoxville Utilities Board, United Cities Gas Company, Volunteer Natural Gas Company, Cleveland Natural Gas Company, Athens Utility Board, Citizens Gas Utility District, Cookeville Gas Department, Elk River Public Utility District, Englewood Natural Gas System, First Utility District of Maury County, Gallatin Natural Gas System, Harriman Utility Board, Jefferson-Cocke Utility District, Lenoir City Utilities Board, Lewisburg Gas Department, Livingston Gas Department, Loudon Utilities Board, Madisonville Gas Company, Marion County Natural Gas Company, Middle Tennessee Utility District, Oak Ridge Utility District, City of Rockwood Natural Gas Company, Sevier County Utility District, City of Sweetwater, Unicoi Natural Gas Utility District.

and while in some areas, the problems thus presented may have relationship with possible future developments in certificate proceedings, the allegations of the complaint on the other hand, bear upon existing facts and conditions, and upon rates presently effective. It is our view therefore, that the pendency of certificate applications relating to future operations does not constitute a valid basis for deferring a public hearing on the complaint.

It appears that a public hearing should be held in order to afford all parties opportunity to present evidence concerning the issues herein; that Knoxville bears the obligation of adducing evidentiary support of its allegations and of going forward first in the presentation of its case-in-chief; that the issues herein should be determined with the greatest possible expedition in conformity with Section 2.59 of the Commission's Rules of Practice and Procedure and to that end each party should have the opportunity to understand and evaluate the positions of the other parties. All matters which can be fully resolved without formal trial should be eliminated from hearing and settled by stipulation.

The Commission finds:

It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the issues raised by the complaint filed by Knoxville be set for public hearing and that the proceeding be expedited in accordance with the procedures set out below.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Natural Gas Act, particularly Sections 5, 15 and 16 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act (18 CFR, Chapter I), a public hearing be held concerning the matters involved and the issues presented in this proceeding.

(B) At the hearing herein, the complainant, Knoxville, shall have the obligation of going forward first with the presentation of its direct case-in-chief.

(C) Knoxville shall serve the prepared testimony and exhibits constituting its case-in-chief upon all parties, on or before November 17, 1964.

(D) The defendant, East Tennessee, shall serve the prepared testimony and exhibits comprising its direct case upon all parties on or before December 18, 1964.

(E) The Commission Staff and all other parties to this proceeding proposing to present evidence herein, shall serve their prepared testimony and exhibits on all parties on or before January 5, 1965.

(F) The Presiding Examiner shall set the date for the service of Knoxville's rebuttal case and, if determined necessary and appropriate without unduly delaying the proceeding, he may provide for filing of cross-rebuttal between the parties (including Staff) on a date prior to the date set for service of Knoxville's rebuttal.

(G) Presiding Examiner Seymour Wenner, or any other officer or officers of the Commission designated by the Chief Examiner for that purpose (see Delegation of Authority, 27 F.R. 4276, etc.) shall fix the date of hearing by notice thereof; shall preside at the prehearing conference and at the hearing in this matter, pursuant to the Commission's Rules of Practice and Procedure, and as further provided by this order.

(H) Without limitation upon the authority of the Presiding Examiner to convene conferences prior to, or subsequent to the date herein fixed, pursuant to the provisions of Section 1.18 of the Commission's Rules of Practice and Procedure, a prehearing conference before the Presiding Examiner shall commence at 10:00 A.M. (EST), on January 12, 1965, in a hearing room of the Federal

Power Commission, 441 G Street NW., Washington, D.C., 20426, for the purpose of effectuating the intent of the Commission as hereinabove set out in the body of this order.

(I) Notices and petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the Commission's Rules of Practice and Procedure, Sections 1.8 and 1.37(f) [18 CFR 1.8 and 1.37(f)] on or before November 6, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. RP63-1

ORDER REJECTING AND DENYING APPLICATIONS FOR REHEARING

(Issued October 22, 1964)

Natural Gas Pipeline Company of America on October 1, 1964, and Texas Eastern Transmission Corporation and Texas Gas Transmission Corporation on October 2, 1964, have filed applications for rehearing of our Opinion No. 428–A and Order issued September 2, 1964, 32 FPC 687, on rehearing in the above-entitled proceeding. On September 30, 1964, 32 FPC 879, in Opinion No. 428–B and Order we rejected in part and denied in part an application of United Gas Pipe Line Company, directed to Opinion No. 428–A and Order, where we confirmed with certain modifications Opinion No. 428 and Order, which determined the cost of service and rates of United.

Natural reiterates points made in its application for rehearing of Opinion No. 428 and continues its argument that it should not be charged the same rates as United's Central Zone customers. There is no provision in the statute or the rules for a second application for rehearing where we have not changed our determination. Compare *Philadelphia Electric Power Co.* v. *F.P.C.*, 156 F. 2d 648 (CA3). Therefore, we shall reject Natural's application for rehearing.

Texas Eastern argues that the procedure with respect to the payment of refunds set forth in Opinion No. 428–A and Order is beyond the authority of the Commission and contrary to previous rate settlements involving Texas Eastern and United. Opinion No. 428–A and Order does not set forth when refunds shall be paid or to whom it shall be paid, but provides that United shall retain amounts to be refunded subject to further proceedings. Therefore, Opinion No. 428–A and Order is not a final order with respect to the payment of refunds, and Texas Eastern's application for rehearing should be denied.

Texas Gas files its application for rehearing with respect to Opinion No. 428–A and Order out of an abundance of caution based on the grounds in its original application for rehearing filed June 12, 1964. To the extent Texas Gas' application applies to changes in Opinion No. 428–A and Order, it will be denied. To the extent it represents a mere reiteration of objections to determinations made in Opinion No. 428 and Order, it will be rejected.

The Commission finds:

(1) Natural's application for rehearing, and Texas Gas' application for rehearing to the extent specified below, should be rejected.

(2) The assignments of error and grounds for rehearing set forth in Texas Eastern's application for rehearing and those portions of Texas Gas' application for rehearing which are properly filed present no facts or principles of law which

were not considered by the Commission when it issued its Opinion No. 428–A or, which having now been considered, warrant any change in, modification of, or rehearing of such Opinion and Order.

The Commission orders:

(A) Natural's application for rehearing, and Texas Gas' application for rehearing, to the extent it represents a reiteration of objections to determinations made in Opinion No. 428 and Order, are hereby rejected.

(B) Texas Eastern's application for rehearing, and Texas Gas' application for rehearing to the extent it is directed toward determinations changed in Opinion No. 428–B and Order, are hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. RP65–1

ORDER DENYING MOTION TO REJECT PROPOSED RATE INCREASE FILING AND MODIFYING PRIOR PROCEDURAL ORDER

(Issued October 22, 1964)

On August 6, 1964, staff counsel filed a motion requesting the Commission to reject and refuse to make effective changed rates proposed by United Gas Pipe Line Company (United) in the filing tendered in the present docket on July 15, 1964. United's rate filing, to become effective September 1, 1964, proposed changes in rates to pipeline and distribution customers amounting to about $2,390,000 above those being collected subject to refund in Docket No. RP63–1. Answers were filed opposing the staff's motion by United, Southern Natural Gas Company, companies in the Consolidated Natural Gas System, Texas Eastern Transmission Corporation, Texas Gas Transmission Corporation, Natural Gas Pipeline Company of America, and Consolidated Edison Company of New York, and an answer was filed by the Memphis Light, Gas and Water Division in support of the motion.

By order of August 24, 1964, 32 FPC 653, we suspended the proposed rates for the 5-month period ending February 1, 1965, and provided for a procedure to expedite the proceeding. We also provided that the suspension order was without prejudice to such action as we might deem necessary and proper with respect to staff counsel's motion and the answers filed to it.

On September 1, 1964, a joint motion was filed by Laclede Gas Company, Illinois Power Company, Missouri Natural Gas Company, St. Charles Gas Corporation, Mississippi River Fuel Corporation and Mississippi River Transmission Corporation to amend or clarify our procedural order issued August 24, 1964, and to defer further action on rehearing granted in Docket No. RP63–1. Our order denying rehearing in Docket No. RP63–1 was issued on September 2, 1964, with Opinion No. 428–A, 32 FPC 687.

Staff argues that the rate-changing mechanisms of the Natural Gas Act, and the Regulations prescribed thereunder, are unavailable to any natural gas company whose rates have once been the subject of a Section 4 or 5 proceeding. Inasmuch as a United rate increase was reviewed and modified in Opinion No. 428, staff concludes that, as a matter of law, United's subsequent filing in RP65–1 must be rejected. United's only remedy for inadequate rates, contends staff, is to petition the Commission to modify Opinion No. 428 rates, which petition, if

granted, would initiate a proceeding under Section 5. Staff argues, however, that even if United's present filing were rejected, a petition for modification would be unmeritorious.

In support of its position the staff points out United would nullify the prospective effect of Opinion No. 428, for, it says, the consumer will never reap the benefit of just and reasonable rates legislatively determined by the Commission if the pipeline can neutralize them with a further rate filing. The staff cites *United States* v. *Corrick*, 298 U.S. 435, 439-440 (1936), relating to the powers of the Secretary of Agriculture under the Packers and Stockyard Act, *Arizona Grocery Co.* v. *A.T. & S.F. Ry. Co.*, 284 U.S. 370, relating to the I.C.C., and *In the Matter of Minimum Rates Applicable to Air Freight*, Order No. E-17370, August 28, 1961, decided by the Civil Aeronautics Board and the corresponding statutes.

On the Gas Act itself the staff argues that Section 4(d) does not grant an absolute privilege to change a prior rate. As *Mobile* says[1] (350 U.S. at p. 339) Section 4(d) is a prohibition rather than a grant of power. Section 4(d) refers, the staff says, to a "change * * * made by any natural-gas company in any such rate," and this means rates established by the company under Section 4(c). In contrast, Commission rates are established under the provisions of Section 5(a), however the proceeding was instituted, and this provides for fixing the rates by order.

Apart from its principal contention urging rejection of United's filing, staff contends that United must bear the burden of showing changed circumstances. Otherwise the staff indicates, citing *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 236 F. 2d 606 (CA3, 1956), the rate filing will be dismissed to the extent such changed circumstances are not shown.

Those opposing the staff motion contend that Section 4 of the Gas Act permits them to file rate changes regardless of whether the rates in effect are company-made or Commission-made rates. Citing a number of cases they rely principally on the *Mobile* case and the *Memphis* case[2] to show that the purpose of the Act, in general, is to leave the rate making power in the seller of gas subject to the review of the Commission. The seller, they say, must always have unobstructed access to Section 4(d) to comply with the duty to file just and reasonable rates and the Commission is given no power to reject such rate filings.

Consolidated Edison, Texas Gas, and Southern Natural suggest that the proper solution is to follow the procedure utilized by the Commission and approved by the court in *Panhandle Eastern Pipe Line Company* v. *F.P.C.*, cited above, where a rate increase was filed by Panhandle only 75 days after rates were prescribed by the Commission in a very full proceeding. The Commission did not reject but suspended the filing. After the submittal of Panhandle's evidence it eliminated certain issues that had been treated fully in the previous opinion since it found that no significant intervening change had occurred, and this procedure was upheld by the court.

We are convinced that staff's contention—that this Commission must as a matter of law reject all rate filings submitted subsequent to a Commission order under either Section 4 or 5 of the Natural Gas Act—is legally insupportable. Nor do we believe that the Commission is completely without discretion to impose by rule or by order a reasonable moratorium on filing of rate increases under Section 4(d) of the Act in circumstances where the orderly administration

[1] *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332.
[2] *United Gas Pipe Line Co.* v. *Memphis Light, Gas and Water Division*, 358 U.S. 103.

of the Natural Gas Act makes such conditions necessary. A thorough consideration of the relevant authorities reveals nothing which would require rejection of the proffered filing. If staff's motion were granted it would completely deny us the exercise of reasonable discretion in the disposition of such filings. Accordingly, insofar as staff's motion requests rejection of United's filings as a matter of law it will be denied.

Assuming, without deciding, we have discretion to adopt staff's procedures, despite the absence of any rule or provision in Opinion No. 428 so providing, we do not believe it would be in the public interest to do so here. Insofar as the pipelines are concerned we have elected to set their rates on the basis of the individual companies cost of service. The history of this Commission shows that its practice with respect to the pipelines has been to accept rate schedules in proper form for filing whether or not the antecedent rate was company-made or Commission-made. We do not find that this practice has restricted us in the performance of our responsibilities for regulating pipelines under the Natural Gas Act; and, as the *Panhandle* case illustrates, we are not without remedy to quickly resolve the question presented by any abuse of this normal practice.

Laclede's motion filed September 1, 1964, raises several points which warrant our immediate attention. First, we wish to make clear that we do not intend to interfere with the examiner's conduct of the hearing except as may be necessary to clarify the procedure we have directed for this proceeding. In our procedural order in this docket issued August 24, 1964, we pointed out our intention that these proceedings implement the procedures contemplated by the court in *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 236 F. 2d 606 (CA3). It is now apparent that some modifications or additions to that order are appropriate in order to achieve a more expeditious and efficient handling of United's filing. To this end we think the procedures should be carried out in three phases, unless sooner dismissed, as is suggested by staff's request for information directed to counsel for United and dated September 25, 1964. In adopting this procedure, however, we stress that we have not reviewed the substantive validity of staff's request for information. Thus we do not express any opinion at this time on the propriety of staff's request or the use to be made of the information. These matters should be subject to the control and determination of the examiner in the first instance.

In the first stage United should be required to show that circumstances have changed since the adjusted test year used in Opinion No. 428 in order to justify any further rate increase. Staff counsel has requested information on this subject in its letter of September 25, 1964. Other parties likewise should have opportunity to show that circumstances have changed in other respects. Of course, opportunity should also be afforded to show that circumstances have not changed. Upon the completion of this phase, the proceedings will be subject to a motion to dismiss on the ground that no change in circumstances has been shown by United or any of the other parties. United's whole rate proposal could be subject to such a motion, or the contentions and specific issues that have already been decided in RP63–1 could be dismissed.

Assuming that United's rate proposal is not wholly dismissed, the hearing in the second phase should be concerned with those issues that can be decided separately, expeditiously and have substantial effects on the cost of service. For example, such issues might include rate of return and corresponding taxes, but we will not specify what issues should be included in this category. This matter should also be decided by the examiner, at least, in the first instance. Upon the completion of this phase of the proceedings the examiner should provide for briefs and issue an interim decision subject to the filing of exceptions and review by the Commission. Any rate reductions or refunds will thus become

available as soon as possible for the benefit of the consuming public. All other issues should then be the subject of the third phase hearing which should be carried out in usual course.

The Commission orders:

(A) The staff motion of August 6, 1964, to reject United's filing of increased rates is hereby denied.

(B) Further proceedings shall be in conformity with the instructions set forth above, but shall otherwise be subject to the order issued August 24, 1964, the rules of the Commission and to the authority of the presiding examiner.

(C) Except to the extent granted by this order, the joint motion of Laclede and others is hereby denied.

CONTINENTAL OIL COMPANY, THE ATLANTIC REFINING COMPANY, TIDEWATER OIL COMPANY AND CITIES SERVICE OIL COMPANY, DOCKET NO. RI64–129

ORDER DETERMINING JURISDICTION ON ORDER TO SHOW CAUSE

(Issued October 23, 1964)*

Syllabus

1. Transfer of Ship Shoal leases by producer-respondents to pipeline effected a sale of natural gas in interstate commerce for resale, subject to provisions of Natural Gas Act. PP. 1168, 1172.
2. Whatever else instant lease transaction may be in addition to sale of natural gas in interstate commerce for resale, it does not, by such addition, lose its jurisdictional character. PP. 1168, 1173.
3. Circuit court's holding that transfer of leasehold interest is *per se* non-jurisdictional is not binding upon Commission where such ruling remains subject to review by Supreme Court. P. 1169.
4. Argument that Louisiana law prevents transaction from being sale of gas is without merit; jurisdiction depends on Natural Gas Act, not State law. P. 1174.
5. Argument that Interior Department has exclusive jurisdiction over transaction under Outer Continental Shelf Lands Act is unsound—there is nothing inconsistent between Secretary's duties and those of Commission respecting gas resources in area. P. 1176.
6. In proceeding pursuant to show cause order under Sections 7, 14, 15 and 16 of the Act, Commission *determines* jurisdiction and *requires* producers to make appropriate filings.

Bruce R. Merrill, Joseph C. Johnson and *Tom Burton* for Continental Oil Company

Stuart J. Scott and *Bernard A. Foster, Jr.*, for The Atlantic Refining Company.

Lloyd Armstong and *Clyde E. Willbern* for Tidewater Oil Company.

Gentry Lee, C. C. Cammack and *R. J. Leithead* for Cities Service Oil Company.

Stanley M. Morley, B. J. Williamson and *W. C. Braden, Jr.*, for Tennessee Gas Transmission Company.

Edwin F. Russell and *Harry G. Hill, Jr.*, for The Brooklyn Union Gas Company.

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*Initial decision appears on p. 1169. Amended; rehearing denied by order issued December 21, 1964, 32 FPC 1487. Affirmed, *Continental Oil Co.* v. *F.P.C.*, 370 F. 2d 57 (CA5–1966); Petition for certiorari, denied June 12, 1967.

J. Harry Mulhern, Edward S. Kirby and *James R. Lacey* for Public Service Electric & Gas Company.

Morton L. Simons for Public Service Commission of the State of New York.

Robert L. Russell and *John J. Keating, Jr.*, for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

This proceeding, which has been conducted pursuant to our show cause order issued September 19, 1963,[1] involves the question whether this Commission has jurisdiction under the Natural Gas Act over a sale by the above-captioned respondents to Tennessee Gas Transmission Company of certain leasehold interests in the Ship Shoal Field offshore southern Louisiana.

In our opinion of September 19, 1963,[2] we found, *inter alia*, that the Ship Shoal transaction between the CATC companies (respondents) and Tennessee constituted a sale in interstate commerce of natural gas for resale included within the provisions of Section 7(c) of the Act requiring certification by this Commission.[3] However, because the CATC companies were not parties to the *Tennessee* proceedings, an order was issued affording such companies an opportunity to "show cause, if any there be, why they should not be found to be or to have been engaged in the sale of natural gas for resale to Tennessee from the Ship Shoal Field subject to the jurisdiction of this Commission without having secured requisite authorization therefor * * *."[4]

On August 19, 1964, following full hearing and the submission of briefs, the presiding examiner issued his initial decision in which he found and concluded (1) that "the transaction involved in this proceeding is a sale of natural gas for ultimate public consumption within the meaning of the Natural Gas Act, but (2) that the recent decision by the Fifth Circuit Court of Appeals in *M. H. Marr, et al.* v. *F.P.C.*, No. 20560, *et al.*, decided August 3, 1964, reversing our decision in the "Rayne Field" case,[5] precludes the assertion of Commission jurisdiction in this case. The court held in *Marr* that a transfer of a leasehold interest is *per se* nonjurisdictional, being excluded by Section 1(b) of the Act which exempts "the production and gathering of natural gas" from Commission regulation.

Exceptions to the examiner's decision have been filed jointly by respondents, the Public Service Commission of the State of New York, the Pennsylvania Public Utility Commission, Brooklyn Union Gas Company, and the staff.

In our opinion, as in the examiner's, transfer of the Ship Shoal leases by respondents to Tennessee effected a sale of natural gas in interstate commerce for resale for ultimate public consumption. The facts concerning this particular transaction are described in detail in the examiner's decision. The reasons for our conclusion do not require repetition, being adequately set forth in the "*Rayne Field*" Opinion No. 378 and 378–A and in our earlier Opinion No. 403[6] relative to the subject transaction as well as in the examiner's decision in this proceeding, which we here adopt in all respects other than his ultimate conclusion regarding the effect of the circuit court's decision in the "Rayne Field" case. The evidence submitted by respondents and the arguments made in the hearing and in their

[1] *Continental Oil Co., et al.*, Order To Show Cause Why Respondents Should Not Be Required To Comply With Requirements of the Natural Gas Act, 30 FPC 758.

[2] *Tennessee Gas Transmission Co., et al.*, Opinion No. 403, 30 FPC 759.

[3] *Id.* at p. 764.

[4] 30 FPC 758, 759.

[5] *Texas Eastern Transmission Corp., et al.*, Opinion No. 378, 29 FPC 249; Opinion No. 378–A, 30 FPC 153. [Ed. note—Fifth Circuit reversed, 381 U.S. 392 (1965).]

[6] See also *Tennessee Gas Transmission Co., et al.*, Opinion No. 413, 30 FPC 1477, issued December 12, 1963; *Saturn Oil & Gas Co.* v. *F.P.C.*, 250 F. 2d 61 (CA10), cert. denied, 355 U.S. 956.

briefs are unconvincing that this sale is in fact nonjurisdictional and do not suffice to meet the burden of proof required. Whatever else the CATC-Tennessee arrangement may be in addition to a sale of natural gas in interstate commerce for resale, it does not, by such addition, lose its jurisdictional character.

We do not agree with the examiner's holding that we are now bound by the *Marr* decision. Section 19(b) of the Act provides in part that "the judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in [former] sections 239 and 240 of the Judicial Code, as amended." On August 14, 1965, the circuit court extended the stay of its mandate in *Marr* until November 11, 1964. In these circumstances, the conclusion of the circuit court is not binding[7] and we adhere to the views previously expressed and affirmed herein.

The Commission further finds:

(1) Respondents, and intervener Tennessee Gas Transmission Company, are natural-gas companies within the meaning of the Natural Gas Act and are subject to the jurisdiction of the Commission.

(2) The transaction involved in this proceeding constitutes a sale in interstate commerce of natural gas for resale, which is subject to our jurisdiction under the Natural Gas Act, and such sale, together with the construction and operation of any facilities necessary therefor, is subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Respondents have not shown cause why they should not be found to be or to have been engaged in the sale of natural gas to Tennessee from the Ship Shoal Field subject to the jurisdiction of the Commission.

(4) It is appropriate in the administration of the Natural Gas Act that further filings be required on the part of respondents.

The Commission orders:

(A) The initial decision in this proceeding is adopted as the decision of the Commission with the exception of the ultimate conclusion regarding the effect of the decision in *Marr* v. *F.P.C.*, 336 F. 2d 320 (CA5-1964); such conclusion is hereby reversed.

(B) Within 6 months of the date of issuance of this order, Continental Oil Company, The Atlantic Refining Company, Tidewater Oil Company and Cities Service Oil Company shall make such filings and take such steps as are necessary to bring them into compliance with the provisions of the Natural Gas Act, and more particularly with the provisions of subsections (c) and (e) of Section 7 of the Act, in respect to the sale of their reserves in the Ship Shoal Field to Tennessee Gas Transmission Company.

(C) The exceptions to the initial decision not granted herein are hereby denied.

INITIAL DECISION

OF THE PRESIDING EXAMINER ON ORDER TO SHOW CAUSE

(Issued August 19, 1964)

FRIBOURG, *Presiding Examiner:* On September 19, 1963, the Commission directed the four respondents (the "Catco" companies) to show cause why they should not be found to be or to have been engaged in selling natural gas to Ten-

[7] *El Paso Natural Gas Co.*, 18 FPC 838, 839; Opinion No. 308, 19 FPC 154, rehearing denied 19 FPC 299; *Placid Oil Co., Operator, et al.*, 28 FPC 768; *United Gas Pipe Line Co.* v. *Coastal States Gas Producing Co.*, Opinion No. 419, 31 FPC 406 at 409.

nessee Gas Transmission Company ("Tennessee") for resale subject to Commission jurisdiction without having secured requisite authorization to do so pursuant to Sections 7 and 4 of the Natural Gas Act and the Commission's regulations thereunder. The issue here is whether the Commission has jurisdiction over a particular transaction.

The transaction in question involves the Ship Shoal Field, on the outer Continental Shelf off the Louisiana coast. By Acts of Sale and Mortgage and Pledge dated May 10, 1961 and effective June 27, 1961, the Catco companies assigned and conveyed to two subsidiaries of Tennessee parts of two developed leases, down to the base of a stratum known as the MI sand. The Catco companies had acquired the leases from the United States in 1955 under the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 *et seq.* Seventeen wells were drilled up to May 3, 1960. Seven were completed as oil wells and one as a gas well. The latter was shut in, and no gas has been produced.

Under the Lease Sale Agreement the four Catco companies received $24⅓ million, partly in cash and partly in notes payable quarterly from 1962 until 1977. The total consideration is therefore $97⅓ million in cash and notes.

The notes are in two series designated "O" and "G," both of them the obligation of Tennessee Gas Supply Company, an affiliate of Tennessee. One series (the "O" series) is also the obligation of Tenneco Oil Company, which owns and operates all of Tennessee's domestic oil producing properties. The total amount of "O" series notes was $11,612,500 and Tenneco Oil Company, grantee of the oil portion of the transaction and obligee of the "O" notes, paid $387,500 in cash. Thus the amount of cash and notes paid by the company which received the oil portion of the transaction was $12 million, while the amount paid by the other grantee was $85⅓ million. The notes are non-interest-bearing. Their principal amount included the equivalent of an interest factor.

The buyers and sellers agreed that the total quantity of recoverable reserves of gas attributable to the net leasehold interest was 533,333,333 Mcf, and the total quantity of recoverable reserves of oil was 12,244,898 barrels, for purposes of establishing rights of the parties under the Acts of Sale and Mortgage and Pledge. If these agreed-on figures are applied to the respective total amounts of cash and notes in each series, they work out to 16 cents per Mcf for the gas and 98 cents per barrel for the oil, not taking into account the casinghead gas, natural gas liquids and condensates. A Continental Oil Company witness stated that there was a wide variation in the reserve estimates among the parties, that the actual amount of recoverable gas was not and could not have been ascertained, and that the reserve figure was merely an arbitrary one designed to serve only as a base for computing the purchase price adjustment in the event of redetermination of the price.

The agreements provide for a price redetermination, at the request of any party, during the seventh year following the signing of the agreements. In such event, the recoverable quantities of oil and gas are to be redetermined by arbitration proceedings. The total price paid is then to be adjusted by a formula. Under the formula, the amounts by which recoverable reserves are determined to exceed or fall below 533,333,333 Mcf of gas and 12,244,898 barrels of oil will result in an adjustment in the purchase price in the amount of 16 cents for each Mcf of gas and 98 cents for each barrel of oil above or below those quantities.

As part of the transaction, Tennessee was given the option to require the Catco companies to purchase all the crude oil to be produced from the properties, the price to be the average price posted from time to time in nine South Louisiana fields. The oil purchase provision was insisted upon by Tennessee during the course of the negotiations because of its desire to have an assured market for the oil, since it was not in the oil business.

The Respondents' Position

The Cateo companies' position is that this transaction is not within this Commission's jurisdiction because it is not a sale in interstate commerce of natural gas for resale. In support of this they argue that (1) the transaction is a lease assignment, not a sale of gas, and both the Commission and the courts have held that there is no Commission jurisdiction over this type of transaction, (2) the jurisdiction of the Department of the Interior is exclusive, pursuant to the Outer Continental Shelf Lands Acts, (3) Louisiana law and the contracts among the parties prevent this transaction from being properly defined as a sale of gas, (4) it is in any event not a sale in interstate commerce.

The Staff's Evidence

By motion dated January 29, 1964, the Commission staff moved that the Presiding Examiner require that the respondents make available to it certain information and documents relating to other transactions in which they had participated. The staff's motion was granted in every particular, and the hearing was recessed for approximately 2 months to permit staff to examine and evaluate the documents.

The conclusions drawn by staff counsel are based on a sampling of 1,400 documents examined out of an unknown number made available by the respondents. Out of these 1,400, staff came up with 45 exhibits consisting of documents from the companies' files. Of these 45, no less than 13 were withdrawn after having been offered for identification, because they were incomplete on their face, or for other reasons. The witness who sponsored the exhibits had been in charge of the examination of respondents' files, and was presented as a fact witness, not as an expert. He gave no careful reading or consideration to the contents of the documents he examined, and he made no analysis of their terms. He described 26 of the 45 as "standard" lease transactions but was unable under cross-examination to describe or enumerate the terms differentiating a "standard" lease transaction from any other. Apparently a "standard" lease transaction was considered to be one on a preprinted form. He was similarly vague as to the terms of other types of transaction.

The principal conclusion drawn by staff counsel from the evidence thus presented was that "the Ship Shoal transaction is a rarity among a rare type of transaction." Staff, however, had requested to be shown only documents relating to transactions with entities *other than* "a person owning, operating or affiliated with a natural gas pipeline." The elimination, at staff's request, of information on deals with pipelines makes it impossible to say whether the present transaction is or is not a rarity (except, of course, for the fact that is obviously unusually large). In any event, the Examiner is at a loss to know what conclusion he is expected to draw from its rarity, assuming such rarity to be the fact.[1] Staff concludes that "the exercise of jurisdiction by the Commission with respect to this type of a transaction will have little or no effect upon the general leasing activities of independent producers." The evidence is insufficient to warrant a conclusion as to what the "general leasing activities of independent producers" are, and in any event such activities are immaterial to the only issue here presented, namely, whether the Commission has jurisdiction of this particular transaction.

[1] Staff remarks upon "* * * the extremely limited number of transactions of this type within the two year time span prescribed by the Presiding Examiner for purposes of this investigation * * *." The Examiner prescribed no such limitation.

Legal Analysis

Whether the transaction is a sale of gas is a question that must be decided with reference to the meaning of the Natural Gas Act. The purpose of the Act is to regulate the sale of natural gas "* * * for ultimate public consumption for domestic, commercial, industrial or any other use * * *," Natural Gas Act § 1(b). The business of selling natural gas for ultimate distribution to the public is declared by Congress to be "affected by a public interest, and Federal regulation is therefore necessary." *Id.*, 1 (a).

The form of the transaction is of no consequence here. The functions of this Commission are concerned with the practical aspects, which are not to be disguised by legal technicalities. In a conventional sale of natural gas by a producer to a pipeline, the pipeline agrees to take gas in exchange for money over a period of time, and the producer, by "dedicating" a defined body of natural gas to the particular sale, gives up his right to dispose of it elsewhere. In the present transaction the pipeline pays out money for the leaseholds from which it proposes to extract natural gas by means of the expenditure of more money over a period of time. In either case, the pipeline pays money and ends up with gas. In either case, the producers receive money and give up their right to dispose of a defined body of natural gas to anyone but the named buyer. The leasehold, which in a conventional contract would be dedicated for use in the interstate market, is here transferred to the company which would use it to supply that market. The production costs here are shifted to the pipeline buyer, but when the gas is sold in interstate commerce the pipeline recoups not only its production costs, *i.e.*, the cost of bringing the gas out of the earth, but also the amounts paid for the acquisition of the gas in place. As the Commission correctly observed in *Texas Eastern Transmission Corp.*, 29 FPC 249, 256:

> * * * in the large a pipeline must be allowed to pass on its purchased gas costs to the ultimate consumer or it cannot continue to discharge its public service responsibilities.

The respondents themselves have contracted in such a manner that the conclusion can hardly be avoided that this is in substance, purpose and effect a sale of natural gas. They argue that the sale is that of a leasehold, which in form is true, but the contract on which they rely provides that the price of the leasehold shall vary in accordance with the amount of natural gas the leasehold is estimated to contain.

The testimony of their witness, John R. Scott, a banker familiar with oil and natural gas financing, is that the value of such leases depends directly upon the amount of recoverable reserves. These can be determined with a fair degree of accuracy in developed producing fields, but in new fields there can be wide variations among the estimates of good engineers. Consequently, this witness stated, it is not uncommon for contracts such as this one to provide for redetermination of reserves after the transaction is consummated, "in attempting to fix more reliably the value of the property assigned." He denied that this indicated that the buyer was seeking in effect to buy the mineral reserves, and said that the acquisitions he referred to "are historically the acquisitions of leases, related producing equipment, and all of the rights and privileges under such leases—not the mineral reserves as such." But if, as he states, the value and the sales price are largely dependent upon the estimates of recoverable reserves, it is clear that this is the main subject of the bargain and the other considerations are merely incidental. The redetermination provisions are, of course, an attempt to minimize possible errors in the parties' estimates of the reserves, and the attempt is along lines very usual in this type of transaction.

The testimony regarding the course of the negotiations also indicates that the form of the transaction was chosen merely as the most satisfactory way of achieving the result sought. Three pipe lines, of which Tennessee was one, made offers to buy portions of the leases, while three, of which Tennessee was also one, made offers to buy gas under conventional sales contracts. Tennessee's gas purchase offer was at 21.5 cents per Mcf at 15.025 psia, with 2-cent escalations every 5 years during a 20-year term. The respondents compared the net cash flow realizable under this proposal, discounted to present-day value, with the discounted net cash flow that could be obtained from the sale of the leasehold interests. It was found that the discounted net cash flow from a leasehold sale was greater. Under either proposition, it is evident that the respondents would end up with cash instead of reserves, and the testimony is clear to the effect that the amount of the discounted net cash flow was the guiding consideration in deciding which offer to take.

That the price per Mcf cannot be definitely ascertained until the leaseholds are exhausted does not prevent this from being a sale of natural gas. The buyer is spending a still unascertained amount of money to obtain a still unascertained amount of gas. It is true that Tennessee cannot tell how much gas it is getting, or how much it will have to pay for it, but the sale of a pig in a poke is still the sale of a pig.

Similiarly, it is immaterial that the transaction transfers not only rights to the gas, but to wells, to production equipment and to oil. If the sale with respect to gas is jurisdictional, it does not escape the Act by being associated with other matters concededly outside the Act's scope.

Nor can there be any doubt that the sale is for ultimate public consumption. In examining this question it may be noted first that whether the producer knows, at the time of a sale, that the gas will be resold for public consumption is of no consequence. The Act applies to sales "for resale for ultimate public consumption," not to sales which the producer knows to be for that purpose. If this were a conventional type of sale, the producers would not be exempted from regulation by their claim that they had no idea what Tennessee would do with the gas. It would make no difference if they had never before heard of the buyer. The Act is applicable to certain sets of facts regardless of who knows them.

The facts are that Tennessee is a vast pipeline engaged in the interstate transportation and sale of natural gas for ultimate public consumption. It requested authority, which the Commission refused, to spend $8½ million to connect the Ship Shoal reserves to its line. *F.P.C. Op. 403*, September 19, 1963, 30 FPC 759, at 762. In that opinion the Commission noted that throughout the proceeding Tennessee relied heavily on these reserves to support the proposed expansion of its jurisdictional pipeline facilities and that it stated, in its reply to exceptions:

> The sole purpose for acquiring the leasehold interests in the Ship Shoal field was to provide additional reserves and deliverability to meet the natural gas requirements of Tennessee's jurisdictional customers.

As the Commission ruled in an earlier case involving one of these respondents:

> A sale of natural gas to a natural gas company which has been found to be operating its facilities subject to the jurisdiction of the Commission is presumptively a sale subject to the jurisdiction of the Commission. The burden is upon one asserting nonjurisdiction to adduce evidence upon which such conclusion could be reasonably be based.

And the Court of Appeals for the Fifth Circuit there upheld the Commission, saying "We * * * are of the clear opinion that the Commission was right for

the reasons it gave," and pointed out that the seller had failed to offer any evidence to show that its gas is not destined for ultimate public consumption. *Continental Oil Company* v. *F.P.C.*, 247 F. 2d 904, 907.

The phrase "sale for resale" in Section 1(b) of the Act, referring to sales in interstate commerce, is intended

> * * * to give the Commission jurisdiction over the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during or after transmission by an interstate pipeline company. *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, 682.

While it is true that the type of transaction here involved was not in issue in the *Phillips* case, the reasoning there is applicable. The Supreme Court pointed out (*Id.*, p. 682, f.n. 10) that the Act was designed to apply to all intercompany sales of natural gas at wholesale, even though the sale be from one company to another company which will resell to another corporation before the gas is finally sold to the public.

The argument that Louisiana law prevents this transaction from being a sale of gas is without merit. Jurisdiction depends on the Natural Gas Act and not on state law. Were it otherwise the powers of the Commission would vary from state to state, a thesis expressly rejected in *Phillips*, *Id.* at p. 681, on the basis of reasoning advanced in *Interstate Natural Gas Co.* v. *F.P.C.*, 331 U.S. 682, 691–2, and *F.P.C.* v. *Hope Natural Gas Co.*, 320 U.S. 591, 607–615. When Congress enacts a statute it does not ordinarily intend that the application of it shall depend on state law, and such an assumption will not be made except on a very clear showing that it is necessary. *Northern Natural Gas Co.*, v. *State Corporation Comm.*, 372 U.S. 84, 98; *Jerome* v. *United States* 318 U.S. 101, 104. It is not necessary here.

For the foregoing reasons it is held that the transaction here under review is a sale of natural gas for ultimate public consumption, within the meaning of the Natural Gas Act. We turn now to the question whether it is a sale in interstate commerce.

Respondents base their argument on the premise that the *sine qua non* of interstate commerce is movement, and that this, being a real estate transaction, involves no movement and hence is not in interstate commerce.

The Supreme Court has long recognized that the authority of Congress over interstate commerce is not limited to transactions which are part of any "flow" of commerce. Activities intrastate in character when separately considered come within the Congressional power if they are so closely and substantially related to interstate commerce that their control is essential or appropriate to protect that commerce. *N.L.R.B.* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 36–7. The Court was there dealing with the Constitutional limitations of Congressional power. The case leaves little doubt of Congress' power to regulate a subject so essentially a part of the interstate natural gas business as the natural gas reserves on which the business is based. The question remains whether that power has been exercised here.

Interstate commerce is not a technical legal concept, but a practical one, drawn from the course of business. *Swift & Co.* v. *United States*, 196 U.S. 375, 398. "We must accordingly mark the beginning and end of a particular kind of interstate commerce by its own practical considerations." *United States* v. *Yellow Cab Co.*, 332 U.S. 218, 231.

This record shows the transfer of a vast reserve of natural gas, located outside the boundaries of any State, into the hands of a pipeline company whose business

is the transportation and sale of natural gas within the United States. Interstate commerce, for purposes of the Natural Gas Act, is defined in Section 2 of the Act to include commerce "between any point in a State and any point outside thereof * * *". It is beyond question, and the Commission has already found, that the transfer was for the sole purpose of serving Tennessee's jurisdictional customers.[2] As previously noted, the Fifth Circuit said in *Continental Oil Company* v. *F.P.C.*, *supra*, that a sale of natural gas to a jurisdictional company is presumed to be a jurisdictional sale, and there are strong practical reasons why this should be so.

Jurisdictional pipeline companies are entitled to a fair rate of return on their prudent investments in property used and useful in the public service. If these reserves are so classified, consumers throughout Tennessee's whole service area become legally bound to pay compensatory rates on this huge investment, amounting in the first instance to over $97 million. It is this type of situation that Congressman Kenny was describing when, speaking in support of the proposed Natural Gas Act, he urged its passage for the reason, among others, that:

> As the situation stands now, the pipeline companies owning the oil fields can purchase any amount of land they wish and charge the value of all of that land as a reserve in fixing the rate at which the gas is sold at the city line when it is delivered over for resale in any State or community.—81 Cong. Rec. Part VI, p. 6726.

The burden on the ratepayer is not eliminated but merely modified if the properties, because not connected to the line, are held to be neither used or useful to the public, and thus not a proper part of the rate base. In that event the risk of loss falls upon the pipeline's investors, with consequent risk of impairment of its capital, and of its ability to render public service, and with the threat of increased cost of capital in the future—a risk which again falls on the ratepayer, who must pay the cost of capital as part of the company's cost of service.

Therefore, whether the properties are treated as part of the rate base or not, the impact on the consumer is undeniable. If they are not so treated, he is subjected to the risk of impairment of the company's capital, a risk that can result in no profit to him. If they are treated as part of the rate base, he pays for them, and does so at whatever price the pipeline chooses to pay. The price will tend to become a floor for future contracts of like nature, and, unless controllable by the Commission at this stage, will most probably result in a resumption of the upward trend in the wellhead price of natural gas—a trend which the Commission's activities have virtually halted during the past 2 years or more. In *Atlantic Refining Co.* v. *P.S.C. of New York*, 360 U.S. 378 (the "Catco" case), at page 388, the Supreme Court said:

> * * * The Act was so framed as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges. The heart of the Act is found in those provisions requiring initially that any "proposed service, sale, operation, construction, extension, or acquisition * * * will be required by the present or future public convenience and necessity." § 7(e), 15 U.S.C. § 717f(e) * * *

From this "bond of protection" the Catco companies now propose to slip. Such an escape would violate the whole intent of the Act. A crucial factor in the cost of natural gas to the ultimate consumer would have been fixed before Federal regulation could take hold.

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[2] Tennessee Gas Transmission Co., Op. 403, 30 FPC 759, at 765.

The Committee reports on the bill which became the Natural Gas Act specifically stated that "sales for resale, or so-called sales in interstate commerce (for example, sales by producing companies to distributing companies) * * * have been considered to be not local in character, and even in the absence of Congressional action not subject to State regulation." H.R. Rep. No. 709, 75th Cong., 1st Sess., 1–2; S. Rep. No. 1162, 75th Cong., 1st Sess., 1–2. The words "sales by producing companies to distributing companies"—refer to the "Attleboro gap," *i.e.*, the area in which it had been held that state regulation is invalid even in the absence of Federal regulation. The use of the words "for example" in this context, indicate that this was not the only area of interstate commerce which the Act would cover. Sales by producing companies to pipelines are also covered, as *Phillips* showed. The whole scheme of the Act contemplates such coverage.

Only recently the Supreme Court, in *F.P.C.* v. *Texaco Inc.*, 377 U.S. 33, 43, quoted with approval H.R. Rep. No. 1290, 77th Cong., 1st Sess., 2–3, as follows:

> * * * The bill when enacted will have the effect of giving the Commission an opportunity to scrutinize the financial set-up, the adequacy of the gas reserves, the feasibility and adequacy of the proposed services, and the characteristics of the rate structure in connection with the proposed construction or extension *at a time when such vital matters can readily be modified as the public interest may demand.* [Italics added.] And see S. Rep. No. 948, 77th Cong., 2d Sess., pp. 1–2.

The transaction proposed here would give the Commission no opportunity to scrutinize the financial set-up at any meaningful time: the buyer could acquire reserves freely at any price it might choose to pay. It would give the Commission no opportunity to comment on whether the proposed acquisition, whatever its impact, is required by the public convenience and necessity: the buyer could obtain excessive reserves if it chose to do so for speculation, or to deprive a competitor. The Commission would have an opportunity, eventually, to scrutinize whatever rate structure might be built on such a purchase of leaseholds, but if the leasehold price were higher than that for which an equivalent amount of gas might be acquired through a conventional gas purchase contract, it is difficult to describe such an opportunity as an adequate one. The Commission would be faced with a *fait accompli* in the form of a rate structure having an excessive built-in-cost factor. That rate structure is applicable solely in interstate commerce and it is the Commission's duty under the Act to review it. If this sale is not in interstate commerce, the Commission's review power is crippled and the intent of the Act, as authoritatively construed in *F.P.C.* v. *Texaco*, *supra*, would go for nothing.

The argument that the Department of the Interior has exclusive jurisdiction of the transaction is, in this Examiner's opinion, not sound. The Outer Continental Shelf Lands Act, 43 U.S.C. § 1331 *et seq.*, does not show any intent to strip this Commission of any jurisdiction it would otherwise have. On the contrary, by its provisions the laws of the United States are extended to the Outer Continental Shelf "* * * for the purpose of exploring for, developing, removing, and transporting resources therefrom * * *," 43 U.S.C. § 1333(a)(1), except that mineral leases are administered by the Secretary of the Interior for the conservation purposes, 43 U.S.C. § 1334. The laws thus extended include the Natural Gas Act. There is nothing inconsistent between the Secretary's duties and those of the Commission with respect to natural gas resources in the area covered.

The "Rayne Field" Case

Despite all of the foregoing considerations, this Examiner is faced with a court decision which constrains him to hold that the Commission is without jurisdiction. On August 3, 1964, the Court of Appeals for the Fifth Circuit handed down its opinion in *Marr* v. *F.P.C.* (CA5 (1964), 336 F. 2d 320) *[Ed. note—Fifth Circuit reversed, 381 U.S. 392 (1965)] (the "Rayne Field" case), in which it held a transfer of leases to be nonjurisdictional, being excluded by Section 1(b) of the Act which exempts "the production or gathering of natural gas" from Commission regulation. The Court relied primarily on the Supreme Court's decision in *F.P.C.* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, which so held. *Panhandle* was concerned with a transfer of leases by a jurisdictional pipeline to an intrastate use. The natural gas from the properties in that case was to be consumed wholly by a single purchaser within the State of Kansas. *Marr* could have been distinguished on that ground. It was not.

Marr could also have been decided with some reference to *F.P.C.* v. *Southern California Edison*, 376 U.S. 205, decided March 2, 1964 (the City of Colton case), in which the Supreme Court, drawing a parallel between the Federal Power Act and the Natural Gas Act, held that Section 1(b) of the Natural Gas Act "* * * cut sharply and clearly between sales for resale and direct sales for consumptive uses. No exceptions were made in either category for particular uses, quantities or otherwise." quoting from an earlier *Panhandle* case, *Panhandle Eastern Pipe Line Co.* v. *Public Utility Commission*, 332 U.S. 507. If, as the Colton and other cases indicate, Congress intended the Act to apply to those areas of Federal jurisdiction which the states cannot reach, it seems clear that *Marr* stands for the proposition that sales of leases are part of production and gathering within the meaning of Section 1(b) and consequently are not in interstate commerce. If this is true, it becomes irrelevant here that no state has jurisdiction over the Gulf of Mexico for purposes of the Natural Gas Act and that no state body is charged with determining the fairness of the price at which an interstate pipeline acquires its natural gas supplies.

But for the apparently continuing vitality of *Panhandle*, as construed in *Marr*, the Examiner would have held that the word "production" in Section 1(b) means the act of bringing forth gas from the earth, that the word "gathering" means the act of collecting gas after it has been brought forth and that, therefore, the "production and gathering" exemption does not apply to sales of leases. This is how Mr. Justice Black interpreted those words in the *Panhandle* dissent, 337 U.S. at p. 518, and it is relevant that the "production and gathering" exemption language does not mention the *facilities* used in production and gathering. Under familiar rules of construction, "* * * *an exception* to a statute will be construed so as to avoid nullifying or restricting its apparent principal purpose and the positive provisions made to carry them out." *Interstate Natural Gas Co.* v. *F.P.C.*, 156 F. 2d 949, 951. Such a construction would harmonize with the purpose of the Act and would be a reasonable one to adopt. *Cf. United States* v. *America Trucking Ass'ns.*, 310 U.S. 534, 543.

It is, however, the function of the courts to apply the proper legal principles to the actions of administrative agencies, and once they have done so the agencies and consequently the Examiners, are bound to their decisions.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the record and the briefs filed in this proceeding, it is found and concluded, in addition to the findings and conclusions hereinbefore stated, that:

(1) Respondents, and Intervener Tennessee Gas Transmission Co., are "natural-gas companies" within the meaning of the Natural Gas Act and are subject to the jurisdiction of the Commission.

(2) The transaction involved in this proceeding is a sale of natural gas for ultimate public consumption within the meaning of the Natural Gas Act.

(3) Upon the authority of *Marr* v. *F.P.C.*, 336 F. 2d 320 (CA5–1964), it is concluded that said transaction is not a sale in interstate commerce, being exempt from the provisions of the Natural Gas Act by virtue of Section 1(b) of that Act, 15 U.S.C. § 717(b).

(4) Respondents have been shown cause why they should not be found to be or to have been engaged in the sale of natural gas to Tennessee from the Ship Shoal field subject to the jurisdiction of the Commission.

ORDER

WHEREFORE, *It is Ordered* that this proceeding be, and it hereby is, terminated.

ARTHUR H. FRIBOURG,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

HUNT PETROLEUM CORPORATION, DOCKET NO. G–15590; SUN OIL COMPANY (OPERATOR), ET AL., DOCKET NO. G–15632; SOUTHWEST GAS PRODUCING COMPANY, INC., ET AL., DOCKET NO. G–15663; FOREST OIL COMPANY (OPERATOR), ET AL., DOCKET NO. G–15766; TED WEINER, ET AL., DOCKET NO. G–15872; GULF OIL CORPORATION, DOCKET NO. G–15831; GENERAL CRUDE OIL COMPANY, DOCKET NO. G–15933

ORDER DENYING MOTION TO AMEND ORDERS REQUIRING PAYMENT OF REFUNDS

(Issued October 23, 1964)

On September 3, 1964, Tennessee Gas Transmission Company (Tennessee) filed a motion requesting the Commission to amend its orders requiring payment of refunds to Tennessee issued February 19 and April 14, 1964, in Texaco Inc., *et al.*, Docket No. G–15546, *et al.*, 31 FPC 438 and 924, respectively, so as to require payment of refunds in the above-designated proceedings[1] with respect to

[1] With regard to Docket No. G–15590, Tennessee listed the designation as "Petrol Production Company." With regard to G–15663, Tennessee listed the designation as "Douglas Whitaker." With regard to Docket No. G–15872, Tennessee listed the designation as "Texas Crude Oil (Rebstock & Reeves)." In its motion Tennessee also requested refunds from Dixon Management Corporation without indicating a rate suspension proceeding to which such producer was related. The Commission's records show no suspension proceeding relating to the properties formerly dedicated under Lloyd Smith's FPC Gas Rate Schedule No. 12 and subsequently transferred to Dixon Management Corporation.

tax reimbursement amounts collected from Tennessee relating to the additional one cent per Mcf Louisiana gas gathering tax declared unconstitutional by the Louisiana Supreme Court. The February 19 and April 14 orders provided for producer refunds to Tennessee in certain specified proceedings based on the court decision in *Tennessee Gas Transmission Company* v. *F.P.C.*, 322 F. 2d 1006, where the Court overruled the Commission's previous determination in an order issued March 5, 1962, in Texaco Inc., *et al.*, Docket No. G–15546, *et al.*, 27 FPC 441, that refunds were not required to be made by the producers to Tennessee.

In its petition for court review of the Commission's March 5, 1962, order, Tennessee did not seek review of that order insofar as it related to any of the above-designated proceedings.[2] Since Tennessee did not protect its rights with respect to such proceedings, the court decision issued in *Tennessee Gas Transmission Company* v. *F.P.C.*, 322 F. 2d 1006, is not applicable to the proceedings for the same reasons set forth in our February 19 order with respect to a similar request by Southern Natural Gas Company for relief. Tennessee, by failing to petition for review in the above dockets, has relinquished whatever rights it might otherwise have had to refunds.

The Commission finds:

It is necessary and proper in carrying out the provisions of the Natural Gas Act and the Regulations thereunder that Tennessee's motion filed September 3, 1964, in the above-designated proceedings be denied.

The Commission orders:

Tennessee Gas Transmission Company's September 3, 1964, motion filed in the above-designated proceeding is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

WARREN PETROLEUM CORPORATION (OPERATOR), DOCKET NOS. G–4165, CI64–1466, AND RI64–602

ORDER REOPENING PROCEEDINGS AND PROVIDING FOR FURTHER HEARING

(Issued October 23, 1964)

City of Perryton, Texas (Perryton), on September 24, 1964, filed an application for rehearing of the Commission's order issued August 28, 1964 [Unreported], in the above-entitled proceedings. By that order Warren was permitted to abandon the sale of gas under its Rate Schedule No. 29 to High Plains Natural Gas Company (High Plains) from the McLean (Sitter) Gasoline Plant, Wheeler County, Texas, in Docket No. CI64–1466 (G–4165) on the basis that all of the gas was sold in Texas and that transportation or sale in interstate commerce was not involved. Based on the abandonment authorization, the rate proceeding in Docket No. RI64–602 involving a proposed unilateral rate increase from 10 cents to 17 cents per Mcf under Warren's Rate Schedule No. 29, which had not been made effective subject to refund, was terminated, as moot.

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[2] In its petition for review Tennessee petitioned for relief in Southwest Producing Company, Inc., *et al.*, Docket No. G–15663; however, in its brief filed with the court, it withdrew its petition with regard to such proceeding.

High Plains supplies gas to the City of Perryton for use in its distribution system. High Plains purchased a substantial portion of its gas supply from Warren prior to the abandonment authorization. By order issued April 10, 1963, 29 FPC 721, in Docket No. CP63–226 High Plains was granted certificate authorization to acquire and operate all the facilities of Public Service Corporation of Texas and to perform all acts and services previously made by Public Service to the extent that such facilities, acts, services, and sales are subject to the Commission's jurisdiction. High Plains owns and operates a 212-mile natural gas transmission system extending from Oklahoma into Texas. Through these facilities and some 57 miles of distribution facilities, High Plains sells gas at retail in seven communities in Texas and three communities in Oklahoma. High Plains also sells gas for resale in Perryton and Spearman, Texas, and Supply, Oklahoma. High Plains purchases gas both in Oklahoma and Texas.

Perryton filed a timely notice of intervention in Docket No. RI64–602 on February 14, 1964. However, Perryton did not file a notice of intervention in Docket Nos. CI64–1466 and G–4165 until September 24, 1964, almost a month after the abandonment authorization was granted. Perryton claims that it received no actual notice of Warren's abandonment application until it was served with a copy of the August 28 order despite assurances by High Plains that it would be notified. The abandonment application was noticed in the Federal Register on June 23, 1964, 29 F.R. 7956 and notices and petitions to intervene were due on or before July 13, 1964.

Perryton claims, among other things, in its application for rehearing that the Commission was not aware of all of the material and relevant facts involved in this case when it authorized the instant abandonment. Perryton avers, *inter alia*, that (1) High Plains proposes to raise Perryton's rate from 30¢ to 34¢ per Mcf based on the abandonment authorization, the effect of which was to make Warren's sale to High Plains a non-jurisdictional one and to free Warren of the filing and refund provisions of Sections 4(d) and 4(e) of the Act.[1] (2) High Plains is purchasing higher cost gas from Transwestern and/or from other parties at, or in excess of, 17¢ to replace reserves previously available and dedicated to High Plains from Warren at the Sitter Plant; (3) Warren is now selling gas to Transwestern at 17¢ without refund obligation from the Sitter Plant; (4) the net effect of (2) and (3) above is that there has been an exchange of gas in or affecting interstate commerce which will increase the weighted average field price to High Plains in Texas to 16.5¢ per Mcf in 1965 from 13.2¢ in 1963 and 12.8¢ in 1962; (5) High Plains has inadequate gas reserves with the cancellation of the dedication of Warren reserves; (6) High Plains' gas purchases from Warren will drop from 1021.3 Mmcf in 1962 and 524.6 Mmcf in 1963 to 385.9 Mmcf in 1965 under a new contract entered into between Warren and High Plains on April 28, 1964; and (7) abandonment authorization for High Plains' jurisdictional operations is a prerequisite to action on Warren's abandonment application.

In its answer filed on September 29, 1964, Warren states that (1) the needs of High Plains' Oklahoma customers are fulfilled from Oklahoma produced gas; (2) all of the gas consumed in Texas by High Plains' customers is produced in Texas; (3) no gas moving in any part of High Plains' system crosses any state line; (4) Warren under its intrastate contract has in effect agreed to supply

[1] The underlying rate under Warren's Rate Schedule No. 29 was 10¢. The unilateral proposed increased rate of 17¢ per Mcf under that rate schedule filed after the contract term had expired was suspended in Docket No. RI64–602 and when made effective would have been subject to refund.

High Plains the maximum amount taken by High Plains in any year under the previous contract, and therefore High Plains will continue to have an adequate supply of gas; (5) no gas consumed by High Plains' customers in Texas and Oklahoma will be purchased from any pipeline company; and (6) Perryton has not shown extraordinary circumstances for permitting intervention in these proceedings at this late date as required by Section 1.8(d) of the Commission's Rules of Practice and Procedure. The factual assertions above are based on a general affidavit of a High Plains' official included in the abandonment application but no details as to High Plains operations are adduced.

In the absence of protest by any interested party we granted the abandonment application on the basis of the general allegations in the application, including an allegation that its grant would result in better service to High Plains' customers, despite the failure of High Plains contemporaneously to seek abandonment of its existing authorizations to conduct interstate operations. In view of the allegations made in the instant application we believe it clear that a hearing in which the essential jurisdictional facts can be fully canvassed on an evidentiary record is appropriate. Extraordinary circumstances have been shown by Perryton which justify in our opinion its late filing of notices of intervention in Docket Nos. CI64–1466 and G–4165. It also appears that the participation of Perryton may be in the public interest. Since the jurisdictional operations of High Plains are related to Warren's application for abandonment, we also think it appropriate to make High Plains a party to these proceedings, as hereinafter ordered.

The Commission orders:

(A) For the reasons set forth above, the above-entitled proceedings are hereby reopened on our own motion for rehearing of the order issued August 28, 1964, herein for the purpose of setting these matters for formal hearing so as to determine whether the present or future public convenience or necessity permit the abandonment requested by Warren in Docket No. CI64–1466 in accordance with the provisions of Section 7(b) of the Natural Gas Act.

(B) Perryton is hereby permitted to intervene in Docket Nos. CI64–1466 and G–4165 subject to the Rules and Regulations of the Commission: *Provided, however,* That the participation of Perryton shall be limited to matters affecting asserted rights and interests specifically set forth in its notice of intervention; and *Provided, further,* That the admission of Perryton shall not be construed as recognition by the Commission that it might be aggrieved by any order or orders entered in these proceedings.

(C) High Plains is hereby made a party to the above-entitled proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

AREA RATE PROCEEDING ET AL (PERMIAN BASIN), DOCKET NO. AR61–1, ET AL.

ORDER DENYING MOTIONS FOR CLARIFICATION OF DECISION OF PRESIDING EXAMINER

(Issued October 26, 1964)*

The presiding examiner's initial decision and proposed order in the above-entitled matter was issued September 17, 1964. By its order of September 25, 1964 [Unreported], the Commission extended to November 23, 1964, the time

*Order issued November 20, 1964 denying rehearing, 32 FPC 1342.

for filing exceptions to the initial decision; extended to December 24, 1964, the time for filing replies to the exceptions; and fixed January 12, 1965, for the commencement of oral argument.

On October 5, 1964, 8 of the 14 proponents of the present motion moved that additional extensions of time be granted, and that oral argument be postponed until March 2, 1965. By order issued October 20, 1964, *supra*, p. 1143, the Commission granted that motion to the extent of extending the time for filing briefs opposing exceptions to January 15, 1965, and delaying oral argument until February 8, 1964.

The eight proponents of the motion of October 5, 1964, were joined by six others in filing the present motion on October 13, 1964. In short, the present motion requests that the Commission direct the presiding examiner to clarify certain aspects of the initial decision issued September 17, 1964. One of the movants, Pan American Petroleum Corporation, filed a supplemental motion October 14, 1964, specifying additional questions for clarification. On October 19, 20, and 21, 1964, Hunt Oil Company, The Atlantic Refining Company, The British-American Oil Producing Company, Southland Royalty Company, Westates Petroleum Company, and Perry R. Bass, Operator, *et al.*, joined in the motion of October 13, 1964.

We do not think that the motion is well taken. There is no provision in our rules for reconsideration of examiners' decisions for the good reason that such an additional procedural hurdle would unnecessarily delay the decision-making process. Any error, ambiguity, or omission in the initial decision and proposed order by the presiding examiner can be dealt with by the Commission in the course of its consideration of exceptions to that decision and order. No substantive rights of the parties will be prejudiced by adhering to the customary procedure. The motion and supplementary motion will be denied.

The Commission finds:

Good cause has not been shown for remanding the proceeding to the presiding examiner for clarification of the initial decision issued herein September 17, 1964.

The Commission orders:

(A) The motion that the Commission direct the presiding examiner to clarify his initial decision in this proceeding issued September 17, 1964, which motion was filed October 13, 1964, by Humble Oil & Refining Company, Amerada Petroleum Corporation, Cities Service Oil Company, Continental Oil Company, Gulf Oil Corporation, Marathon Oil Company, Pan American Petroleum Corporation, Phillips Petroleum Company, The Pure Oil Company, Shell Oil Company, Sinclair Oil & Gas Company, Socony Mobil Oil Company, Inc., The Superior Oil Company, and Texaco Inc., which motion was adopted by Hunt Oil Company October 19, 1964, by Perry R. Bass, Operator, *et al.*, and joined in by The Atlantic Refining Company, The British-American Oil Producing Company, Southland Royalty Company, and Westates Petroleum Company on October 20, 1964, be and the same hereby is denied.

(B) The supplemental motion that the Commission direct the presiding examiner to clarify certain portions of his initial decision issued September 17, 1964, which supplemental motion was filed October 14, 1964, by Pan American Petroleum Corporation, and adopted by Perry R. Bass, Operator, *et al.*, October 21, 1964, be and the same hereby is denied.

OPINION NO. 445

SUN OIL COMPANY, G–8592; L. C. MCRAE, G–13803; SKELLY OIL COMPANY, G–14712; UNION PRODUCING COMPANY, G–15077; GENERAL AMERICAN OIL COMPANY OF TEXAS, G–18054; CENTRAL OIL COMPANY (OPERATOR), ET AL., G–18477; RIDGWAY MANAGEMENT, INC., G–18864; SUN OIL COMPANY, G–19015; HUMBLE OIL & REFINING COMPANY, G–19200; M. H. DEES, G–19207; THE CALIFORNIA COMPANY, A DIVISION OF CALIFORNIA OIL COMPANY, G–19345; JOSEPH E. SEAGRAM & SONS, INC. (SUCCESSOR TO TEXAS PACIFIC COAL AND OIL COMPANY), G–19512; PAN AMERICAN PETROLEUM CORPORATION, CI60–128; DISCOVERY OIL AND GAS COMPANY (OPERATOR), ET AL., CI60–834; STANTON A. HALL, CI61–520; TIDEWATER OIL COMPANY, CI61–1689; PAN AMERICAN PETROLEUM CORPORATION, CI62–46; HUMBLE OIL & REFINING COMPANY, CI62–129; HUMBLE OIL & REFINING COMPANY, CI62–130; SUN OIL COMPANY, CI62–156; MONSANTO CHEMICAL COMPANY (NOW MONSANTO COMPANY), CI63–249; SUN OIL COMPANY, CI63–283; THE CALIFORNIA COMPANY, A DIVISION OF CALIFORNIA OIL COMPANY, CI63–563; PAN AMERICAN PETROLEUM CORPORATION, CI63–1020; TEXACO INC., CI63–1409

OPINION AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, DETERMINING IN-LINE PRICE AND PROVIDING FOR REFUNDS

(Issued October 26, 1964)*

Syllabus

1. Exclusion of cost and economic evidence is proper in Section 7 producer certificate proceeding. P. 1185.
2. In determining in-line prices, Commission places greater emphasis on contracts contemporaneous with those involved here. P. 1185.
3. Dexter and Cranfield sales [the highest prices] accorded less weight than usually accorded permanent certificates in in-line proceedings because of history of prices in adjacent South Louisiana area and Commission's traditional refusal to establish price level at highest price charged in area. P. 1186.
4. Commission sets in-line price of 20.6 cents per Mcf for Mississippi area, including tax reimbursement. P. 1188.
5. Moratorium prescribed on filing of increased prices above 24 cents until January 1, 1968. P. 1188.
6. Refunds required where producer temporary certificates were so conditioned. P. 1189.
7. Where temporary certificate had no refund provisions, producers are afforded opportunity to file briefs, respecting whether and to what extent, refunds should be ordered. P. 1189.
8. Commission *issues* certificates of public convenience and necessity; *determines* in-line price and *provides* for refunds.

Justin R. Wolf, Charles A. Case, Jr., and *Woollen H. Walshe* for The California Company.

Albert C. McClain and *Jessee H. Foster, Jr.*, for Humble Oil & Refining Company.

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*Initial decision appears on p. 1193. Opinion No. 445–A, issued December 22, 1964 denying rehearing, 32 FPC 1498.

J. P. Hammond, Harold H. Young, Jr., and *Carroll L. Gilliam* for Pan American Petroleum Corporation.

Thomas M. Knebel and *Bryce Rea, Jr.*, for Ridgway Management, Inc.

Sherman S. Poland, Richard J. Dent and *Hawley C. Kerr* for Skelly Oil Company.

John A. Ward III, Philip D. Endon, Charles F. Heidrick and *J. Colbert Peurifoy* for Sun Oil Company.

Carl J. Babin and *Saunders Gregg* for Union Producing Company.

Robert H. McFarland for State Oil and Gas Board of Mississippi.

Edwin F. Russell and *Harry G. Hill, Jr.*, for The Brooklyn Union Gas Company.

James O'Malley, Jr., Halcyon G. Skinner, Ronald D. Jones and *Eugene B. Thomas, Jr.*, for Consolidated Edison Company of New York, Inc.

James R. Lacey, J. Harry Mulhern and *Edward S. Kirby* for Public Service Electric & Gas Company.

S. G. Miller, H. P. Sullivan and *D. Blanken* for Philadelphia Electric Company.

William T. Coleman, Jr., and *Robert Maris* for Philadelphia Gas Works.

Barbara M. Suchow, Kent H. Brown and *Charles J. Cox* for Public Service Commission of the State of New York.

Herbert E. Squires and *Alan R. Squires* for Pennsylvania Public Service Utility Commission.

L. G. Folsom and *Alan Post* for Atlanta Gas Light Company.

Harry S. Littman and *Harold L. Talisman* for Alabama Gas Corporation.

John M. Kuykendall, Jr., for Mississippi Valley Gas Company.

Thomas M. Knebel and *Bryce Rea, Jr.*, for Willmut Gas & Oil Company.

Hugh J. Morgan, Jr., for Southern Natural Gas Company.

Wilbert O. Crain, David Klotz and *Vernon W. Woods* for United Gas Pipe Line Company.

William I. Harkaway and *David B. Ward* for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

O'CONNOR, *Commissioner:*

This is a producer certificate proceeding under Section 7(c) of the Natural Gas Act where the only important issues are price and refund. There are involved 25 separate sales from fields in the State of Mississippi to Southern Natural Gas Company (17 sales), United Gas Pipe Line Company (7 sales) and Texas Eastern Transmission Corporation (one sale). The sales are made under contract, or amendments of earlier contracts, dated from 1957 to 1963 with prices ranging from 19.8 cents per Mcf to 21.5 cents per Mcf at 15.025 psia excluding any tax reimbursement. Upon application the Commission has granted a temporary certificate in each case. Details of the several applications, contracts and temporary certificates are shown in Appendix A hereto.

Procedurally the applications here were consolidated and, after a prehearing conference, were the subject of a hearing before the examiner on November 12, 1963. After the filing of briefs the examiner issued his decision on June 3, 1964. The examiner rejected cost and economic evidence and found an in-line base price of 20.0 cents for the period 1957–1962. To this he added an allowance for tax reimbursement of .618 cents representing about half the tax rate, pointing out that few contracts provided for the full rate. He required refunds of any revenues in excess of the total in-line price of 20.618 cents whether or not the temporary certificates contained refund conditions.

Eight producing parties have filed briefs on exceptions,[1] as has the Commission's staff and the Public Service Commission of the State of New York (adopting the staff's brief). In opposition variously to the exceptions are briefs of Humble Oil & Refining Company, Pan American Petroleum Corporation, and, jointly, of Philadelphia Electric Company, the Philadelphia Gas Works, Division of The United Gas Improvement Company and Public Service Electric & Gas Company (Intervenors).

Several of the producer applicants served jointly sponsored evidence purporting to show 1965–1970 projected annual demands for natural gas and required production, nationwide costs to producers and their financial requirements, trends as to supply-demand and market price-cost relationships, and the necessary area price required to compensate for costs and attract capital. The examiner sustained the objection of the staff to these items on the ground that the initial price is to be determined by the in-line price.

In view of the position taken by the Commission in *Skelly*, 28 FPC 401, and *Texaco Seaboard*, 29 FPC 593; its reiteration in *Union Texas Petroleum*, 32 FPC 254, Opinion No. 436, Docket No. G–13221, *et al.*; and its affirmance by the courts in *P.S.C. of N.Y.* v. *F.P.C.*, 329 F. 2d 242 (CADC–1964.), certiorari denied *Skelly Oil Co.* v. *F.P.C.*, 377 U.S. 963 (June 8, 1964), *California Oil Co.* v. *F.P.C.*, 315 F. 2d 652, 660 (CA10) and *The Atlantic Refining Co.* v. *F.P.C.*, 316 F. 2d 677, 680 (CADC), we think the examiner was correct in excluding this kind of evidence in a Section 7 certificate proceeding.

We are, of course, aware of the opposite result reached in *Callery Properties, Inc.* v. *F.P.C.*, 335 F. 2d 1004 (CA5–1964). The mandate of the Court of Appeals has been stayed in that proceeding to give the Commission time to file an application for certiorari. In these circumstances we see no reason to depart from the opinions cited above.

The record in these proceedings contains evidence on the gas contracts in the Mississippi area covering a number of years. The question arises as to what contracts should be used in determining the in-line price. The staff placed in evidence all contracts under permanent certificates dated June 7, 1954, through August 31, 1963, arguing that to avoid distortions caused by comparing too few sales all contracts for this period should be considered. The examiner agreed that a shorter period would be unduly restrictive, for appraisal of any price level requires a proper regard for historical facts. On the other hand the producers argue that the 1957–1962 period should be used and their witness introduced evidence on this basis.

This question is really one of emphasis, and the greater emphasis should be placed on the prices contemporaneous with those in question. The earliest date of a contract, or amendment, in the applications consolidated herein is October 28, 1957, and the latest is March 8, 1963. In *Skelly* (28 FPC at p. 408) the staff evidence extended from 1955, but the Commission tabulated and gave most thought to the comparative contracts for the years 1958–1960 that were roughly contemporaneous with the contracts involved in the proceeding, and this approach to the period was approved on review. *P.S.C. of N.Y.* v. *F.P.C.*, 329 F. 2d 242 (CADC). In *Texaco Seaboard*, 29 FPC 593, 597, the Commission used the same years to determine the in-line price for the contract executed on July 1, 1960. Here the period for special attention should start with 1957 and go to February 11, 1963, the date the last contracts shown by the staff study were executed.

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[1] General American Oil Company of Texas, Pan American Petroleum Corporation, Union Producing Company, Sun Oil Company, California Company (a division of California Oil Company), Skelly Oil Company, Humble Oil & Refining Company, and Texaco Inc. (adopting Humble's brief).

The contracts executed during the 1957–1963 period for sales under permanent certificates in the Mississippi area are as follows:

Price (¢/Mcf)	1961 volumes (Mcf)	Cumulative volumes (Mcf)	Number of contracts	Cumulative contracts
11.0	176,000	176,000	2	2
14.0	558,562	734,562	1	3
15.0	972,000	1,706,562	2	5
17.0	346,553	2,053,115	3	8
17.5	89,015	2,142,130	1	9
18.0	1,482,846	3,624,976	5	14
18.5	2,341,778	5,966,754	2	16
20.0	5,169,484	11,136,238	28	44
20.25	6,813,676	17,949,914	4	48
21.5	29,796,157	47,746,071	3	51
Total	47,746,071		51	

All of the 20-cent contracts except two were for sales from the Maxie-Pistol Ridge Field to United. The four sales at 20.25 cents were from the Dexter Field and the three sales at 21.5 cents were from the Cranfield Field.

In the prior period June 7, 1954, through 1956 there were two contracts at 15 cents, 4 contracts at 19 cents, 1 contract at 18 cents and 54 contracts at 20 cents. All of these 20-cent contracts likewise represent sales from the Maxie-Pistol Ridge Field to United.

An issue arises with respect to the treatment of the seven sales at the highest prices from Dexter and Cranfield Fields. These sales were all to Southern Natural. They amounted to 6,813,676 Mcf from Dexter and 29,796,157 Mcf from Cranfield, or 8.5 percent and 37.16 percent, respectively, of the total 1961 volumes of 80,200,000 Mcf produced under the 1954–1963 contracts. They constituted about 77 percent of volumes delivered under contracts executed in the shorter 1957–1963 period.

Despite the large volumes of gas, the examiner eliminated these contracts. He concluded that the prices were essentially isolated and had no direct relation either to prices then generally current in the area or area price trends. The staff generally approved the examiner's position, adding that any weight accorded to these sales must be balanced against the background of a questionable history. Staff concluded that no sales should be permitted above 20.0 cents. The producers, on the other hand, object strenuously to exclusion of the Dexter and Cranfield sales saying that they are sales within the relevant area under contracts executed within the relevant period and are not suspect because of any litigation.

We conclude that the Dexter and Cranfield sales should not be completely excluded from consideration, but because of the history of prices in the adjacent South Louisiana area should be accorded far less weight than permanent certificates are usually accorded in in-line proceedings. In *South Georgia Natural Gas Co.*, 22 FPC 211, the Commission approved the price for the Cranfield sales and sales at the same price in the South Louisiana area. However, in *Placid*, 30 FPC 283[2] and *United Gas Pipe Line Co.*, 30 FPC 329,[3] the Commission found the price line in Southern Louisiana was 20.0 cents including reimbursements and, in effect, overruled the *South Georgia* case to the extent it applied to South Louisiana. Both the *Placid* and *United* cases depended on the suspect

[2] Remanded in *Callery Properties, supra.*

[3] Appeal dismissed as *Gulf Oil Corp.* v. *F.P.C.*, 330 F. 2d 824 (CA5).

prices doctrine. Prices above 20.0 cents had been subject to the *CATCO* litigation,[4] *United Gas Improvement Co.* v. *F.P.C.*, 283 F. 817 (CA9, 1960) and *Transcontinental Gas Pipe Line Corp.*, 20 FPC 264, remanded in *P.S.C. of N.Y.* v. *F.P.C.*, 361 U.S. 195 (1959). Here we are concerned with an area that we have considered sufficiently distinct so that we have separated it from the South Louisiana area. The prices for the Cranfield and Dexter sales are not subject to litigation; they are not equal to any other Mississippi prices subject to litigation other than in these proceedings; and they do represent a large proportion of the gas sold in the area in question. However, we cannot ignore that, were the *South Georgia* case before us initially today, that decision might well be different.

We agree with the examiner that the quality provisions of the contracts involved are sufficiently similar to those for the permanently certificated sales to permit a direct comparison of prices. Looking at the sales from 1954–1963, all of the sales involved here are made at the wellhead or in the field, as are most of the permanently certificated sales. In such matters as sulphur content, dehydration, and heating value the two groups of contracts are comparable. Most of the contracts for the subject sales provide for an escalation of 2 cents in 4 years, as do the Dexter and Cranfield sales, yet almost all of the 20-cent certificated Maxie-Pistol Ridge sales provide for an escalation only once in 5 years, representing less advantageous terms to the producer. The volumes in each group of contracts vary greatly. The sale with by far the largest volume is one of the Cranfield sales, a fact that should tend to reduce its comparability. Delivery pressures for the sales included here are 1000, 1100 or 1200 psig. Most of the permanently certificated sales are made at only 1000 psig, while the Dexter sales are at 1100 psig and the Cranfield sales are at 1200 psig. However, four sales from the Muldon field in 1955 are made at 1400 psig at the base price of only 19 cents, and two sales from the Beans Ferry field in 1960 are made at 1200 psig for only 17 cents.

We thus come to the principal question of the proper Mississippi price line. We will, as did the examiner, first determine an appropriate base price, and then determine an additional tax reimbursement allowance.

The tabulation, set out above, reveals that the preponderance of 1957–1963 certificates were issued at 20 cents. Thus, of the 51 relevant certificates, 28 were issued at 20 cents, and 16 more were issued at prices below 20 cents. For the full period of June 7, 1954, through August 31, 1963, 84 out of 116 certificates are at 20 cents, and 109 are at 20 cents or below.

For the contracts executed in the 1957–1963 period the weighted average price for gas moving under the relevant certificates, if full weight is given the Cranfield and Dexter sales, is about 20.6 cents. Two factors militate against giving these sales full weight: first, their previously discussed background; and second, the Commission's traditional refusal to establish a price line at the highest price charged in the area, particularly where, as here, there has been a decline in the area's weighted average base price. The record indicates that the weighted average base price rose from 19.1 cents in 1954 to 21.4 cents in 1958, but then declined to 19.2 cents in 1961 and 18.6 cents in 1962. On the other hand, by completely excluding these sales from consideration, a treatment we similarly find unjustified, the area's weighted average base price for contracts executed in the 1957–1963 period declined to about 18.4 cents. After careful consideration

[4] *Atlantic Refining Co.* v. *P.S.C.*, 360 U.S. 378.

of the most prevalent price at which permanent certificates were issued, and the weighted average base price moving thereunder—attributing appropriate probative value to the Cranfield and Dexter sales—we conclude, as did the examiner, that a base price of 20 cents is consonant with the public convenience and necessity.

To the base "in-line" price the examiner would add an allowance for the severance tax in effect throughout the period 1957–1963. The applicants would use the full 6 percent rate when included in the price, while the staff would have determined the price line (at 20.0 cents) on the basis of total price including tax reimbursements. During the period April 1, 1955 through June 30, 1958, the tax carried an added 0.84 cents which the examiner, applicants and the staff excluded from consideration. The examiner noted that the tax reimbursement provisions vary among the contracts. Generally the Maxie-Pistol Ridge contracts as originally filed do not provide for presently effective tax reimbursement but do provide for a 75 percent reimbursement of any future tax. Some of the Maxie-Pistol initial prices as shown in the staff exhibit reflect reimbursement of part of the temporary additional tax referred to above, and there is one instance where a Maxie-Pistol 20-cent initial base price has added to it a 1 cent tax reimbursement. The tax reimbursement added to the price for other fields, including Cranfield and Dexter, approximates 6.4 percent of the price because of the tax on a tax method of computation used in Mississippi. In view of the predominance of the 20-cent prices (without tax reimbursement for the tax now in effect except for one contract) we are of the opinion that the use of the lowest level reimbursement in the amount of 3.09 percent as exemplified by the sale from Shell Oil Company to Texas Eastern Transmission Company in the Skoam Field represents an allowance for the tax reimbursement which would be in line, and we specifically adopt the examiner's decision on this point. Using this approach we arrive at a total initial in-line price including tax reimbursement for the Mississippi area at the level of 20.618 cents per Mcf at 15.025 psia, which we shall round out to 20.6 cents per Mcf. This price will apply to all of the sales here involved.

In proceedings relating to the Southern Louisiana area, *Placid, United Gas Pipe Line Company* and *Union Texas, supra*, we prescribed a moratorium on rate increase filings above a certain level in addition to determining the price line. Although we realize that the *Callery* case discussed *supra* was decided subsequently and held it improper to place a moratorium on rate increase filings, as previously indicated, we do not consider ourselves bound by that decision. In order to protect the public a moratorium should be established, and we think that the appropriate level is 24 cents per Mcf with a time limit of January 1, 1968. The level at which prices will be triggered or redetermined is approximately at this level, which reflects other prices now in effect in the area (although subject to refund) and represents the highest increased price which we have previously permitted to be filed without setting for immediate hearing. In relation to the 20.6 cents per Mcf found here to be the price line it represents a reasonable limit on rate increase filings for the period of approximately 3 years in order to prevent new plateaus of prices from being established in the area but it also provides flexibility in making filings for the producers. Of course, in any case the filings will be subject to suspension and refund. Therefore we shall prescribe a moratorium on the filing of prices above 24 cents until January 1, 1968. If any of the producers involved here have a factual basis for taking a contrary view of the establishment of a moratorium at this level, they have opportunity to so state in applications for rehearing.

The examiner required each certificate applicant here to refund to his respec-

tive pipeline purchasers with interest a sum reflecting the difference between the price collected and the total price of 20.618 cents from the date of first delivery until the refund has been made. The temporary authorizations in these proceedings contained, as shown in Appendix A, provisions either for refunding with no floor, refunding with a floor of 20.0 cents, or refunding with a floor of 20.0 cents plus applicable tax reimbursements, or they contained no provisions for refunding.

The producers variously contend that the examiner has worked a basic inequity upon them where there was no refund condition in their temporary certificates or where their floor was higher than the examiner's "in-line" rate of 20.618 cents. They say they accepted temporary certificates permitting them to charge a certain rate, and have a right to rely on them. The Commission, they add, is obligated to act upon producer applications with such certainty as to allow them a choice. They also argue that the rates under temporary certificates filed with the Commission are the legally effective rates and the Commission is not empowered to determine the lawfulness of past rates or grant reparations. They say that the record here is insufficient to show whether it would be equitable to order refunds and the Commission must afford them an opportunity to show that a refund requirement would be inequitable.

Where there are refund provisions in the producer temporary certificates, we will herein condition the issuance of permanent certificates upon compliance with these provisions. See *Union Texas Petroleum*, 32 FPC 254, Opinion No. 436, Docket No. G–13221, *et al.*, issued July 23, 1964, at p. 265.

In the case of the producers having no refund provisions in their temporary certificates, a question of equity arises as to whether and to what extent a refund should be ordered. *P.S.C.* v. *F.P.C.*, 329 F. 2d 242 (CADC, 1964). In this situation we shall follow the procedure employed in the *Union Texas* case where we provided opportunity to file briefs and to present evidence on the issue.

In accordance with the recommendations of the examiner and our past practice we shall condition the certificates issued in these proceedings (except in Docket No. G–18447 with no such clause) to provide that take-or-pay clauses are subject to the Commission's ultimate disposition with respect to such provisions in the rule-making provision in Docket No. R–199, subject to the limitation that producers will not be required to file amended take-or-pay provisions for less than 80 percent of the annual contract quantities. The producers contend there is no evidence in support of this condition, but in our opinion no evidence is necessary to show that consumers involved should receive the protection of the final result of the proceedings in R–199, subject to a limitation to make producer certificates more definite.

The Commission further finds:

(1) Applicants herein listed in the caption of this opinion are engaged in the sale of natural gas in interstate commerce for ultimate public consumption and each is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sales of natural gas hereinbefore described, as more fully described in the applications, are made in interstate commerce, subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Subject to the requirements of our order herein and the conditions attached to the certificate herein issued, the applicants are able and willing properly to do the acts and to perform the services proposed, and to conform to the provi-

sions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sales of natural gas by the independent producers referred to in the above paragraph (1), together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are and have been required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) Except as herein granted, the exceptions to the examiner's decision should be denied.

The Commission orders:

(A) Certificates of public convenience and necessity, and amendments to orders issuing certificates of public convenience and necessity, are hereby issued to the several applicants named in the caption of this decision for the sale of gas in interstate commerce for resale as proposed in several applications, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, upon the terms and conditions set forth below.

(B) Each certificate issued, and amendment granted, as provided in paragraph (A) above, is hereby conditioned to prohibit a total initial price, including all reimbursements and charges, greater than 20.6 cents per Mcf at 15.025 psia, from the date of issuance of this order until such prices may be lawfully changed in the manner provided by the Natural Gas Act.

(C) Each certificate issued in paragraph (A), is further conditioned to provide for a moratorium on the filing of all price increases in excess of 24 cents per Mcf, inclusive of tax reimbursement until January 1, 1968.

(D) Within 30 days from the date of issuance of this order each of the applicants receiving certificates or grants in paragraph (A) hereof, whose proposed total initial price exceeds the 20.6 cents aforesaid, shall file a supplement to its presently filed rate schedule, related to its respective application, reflecting the conditioned price as the total initial price in lieu of the higher initial price provided in the contract or amendment; provided that with respect to the reduction in rates hereby ordered, applicants need not comply with the notice provisions of Section 154.94(b) and the detailed submittal provisions of Section 154.94(f) of the Regulations under the Natural Gas Act.

(E) Within 60 days from the date of issuance of this order the applicants listed in this paragraph shall make refunds to their respective pipeline purchasers with interest at a rate of 6 percent per annum for all gas paid for prior to March 1, 1960, and 7 percent per annum thereafter until full refund has been made. For Skelly, G–14712; Central Oil, G–18477; Tidewater, CI61–1689; Pan Am, CI62–46; Humble, CI62–129 (first letter) and CI62–130; Sun, CI62–156 and G–8592; and Union, G–15077, the refund shall be equal to the difference between the price charged to and collected from the purchaser and 20.6 cents per Mcf applied to all volumes paid for by such purchaser under the respective contract or amendment which comprises a subject matter of this proceeding from the date of the first delivery of natural gas thereunder until the effective date of this order.

For Humble, G–19200 (original application); Calco, G–19345; and Pan Am, CI60–128, the refund shall reflect the difference between the price charged to and collected from the purchaser and 21.27632 cents per Mcf representing 20 cents plus the applicable tax, and shall be computed in the same way as for the other docket numbers above.

(F) With respect to the applications of Sun, G–19015 and CI63–283; Humble, G–19200 (amendment) and CI62–129 (remaining part); Monsanto, CI63–249; Calco, CI63–563; Texaco, CI63–1409, General American, G–18054, and Texas Pacific, G–19512, the decision whether refunds should be ordered as a condition to the permanent certificates is deferred for subsequent determination. Within 30 days from the date of issuance of this order the parties to this proceeding, to the extent desired, may file briefs directed to the issue whether refunds should be ordered in any or all of the dockets and the extent of such refunds, if any. Replies may be filed within 10 days of service of the briefs. Any party who wishes to introduce into the record evidence as to additional facts which might bear upon the ultimate determination of this matter shall file with its brief, within 30 days from the date of issuance of this order, a statement of such additional facts and of the evidence by which it is proposed to establish such facts.

(G) Within 10 days of the date of the refunds provided for in paragraph (D) hereof, each of the applicants shall file with the Commission its statement showing the amount of refund, its manner of computation, and the interest payments related thereto, and a statement from the purchaser acknowledging receipt thereof.

(H) The certificates herein issued, and the amendments herein granted, except in Docket No. G–18477, are upon the express condition that the allowance of the take-or-pay provisions in the applicant's contract or amendment is subject to the Commission's ultimate disposition with respect to such provisions in the rule-making proceeding in Docket No. R–199. Upon the establishment, by regulation or policy statement, of a general policy governing such provisions in producer contracts, each applicant shall, within 30 days, file its amended rate schedule in conformity therewith, acceptable to the Commission, provided that the applicant shall not be required to file a take-or-pay provision for less than 80 percent of the annual contract quantity and, provided further, that any rate schedule changes or modifications to be made in accordance with this paragraph shall be prospective only.

(I) The certificates issued by paragraph (A) hereof are not transferable and shall be effective only so long as each respective applicant continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(J) The grant of the certificates and amendments herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Regulations thereunder except as specifically provided in paragraph (C) hereof. Such grant is without prejudice to any findings or order which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants or any one of them. Further, the action in this proceeding shall not foreclose nor prejudice any further proceedings or objections by the Commission relating to the operation of any price or related provision in the gas purchase contracts or amendments here involved.

(K) The certificate herein issued to Sun Oil Company in Docket No. G–19015 is conditioned upon its being accepted in writing by the applicant within 30 days of the issuance of this order.

(L) The examiner's decision is adopted as the decision of the Commission except where inconsistent herewith as in the treatment of the Cranfield and Dexter Field contracts and the computation of refunds.

(M) Exceptions not granted are hereby denied.

APPENDIX A

Certificate docket No.	Seller	Buyer	Date of contract	Term (years or date)	Location (county)	Rates initial		1961 volumes from FPC Form 2 (Mcf@ 15.025 psia)
						Base (¢/Mcf@ 15.025 psia)	Total [3] including tax and other reimbursements (¢/Mcf@15.025 psia)	
G–14712	Skelly Oil Company	Southern Natural Gas Co	[1] 12–30–57	20	Marion EA	20.2500	[4] 21.5527	Not stated
G–18054	General American Oil Co. of Texas	Southern Natural Gas Co	02–13–59	20	Walthall	20.2500	[7] 21.5528	377,047
G–19015	Sun Oil Company	Southern Natural Gas Co	06–25–59	20	Walthall	20.2500	[7] 21.5000	
G–19512	Texas Pacific Coal & Oil Company	Southern Natural Gas Co	[2] 09–04–59	20	Marion	20.2500	[7] 21.5527	36,604
CI62–46	Pan American Petroleum Corporation	Southern Natural Gas Co	05–08–61	20	Lawrence	21.5000	[4] 21.5000	
CI61–1689	Tidewater Oil Company	Southern Natural Gas Co	05–08–61	20	Lawrence	21.5000	[4] 21.5000	
G–19200	Humble Oil & Refining Company	Southern Natural Gas Co	07–16–59	20	Marion	21.5000	[7] 21.5000	5,775,245
						21.5000	[8] 22.8700	
G–19345	The California Company	Southern Natural Gas Co	08–10–59	20	Marion	21.5000	[6] 22.8711	1,886,255
CI60–128	Pan American Petroleum Corporation	Southern Natural Gas Co	11–19–59	20	Marion	21.5000	[8] 22.8030	82,176
CI62–129	Humble Oil & Refining Company	Southern Natural Gas Co	07–14–61	20	Marion	21.5000	[4 7] 21.5000	70,265
CI63–283	Sun Oil Company	Southern Natural Gas Co	08–16–62	20	Walthall	21.5000	[7] 21.5000	
CI63–563	The California Company	Southern Natural Gas Co	10–12–62	20	Marion	21.5000	[7] 21.5000	
CI62–130	Humble Oil & Refining Company	Southern Natural Gas Co	07–14–61	20	Walthall	21.5000	[4] 21.5000	
CI62–156	Sun Oil Company	Southern Natural Gas Co	07–17–61	20	Walthall	21.5000	[4] 21.5000	
CI63–249	Monsanto Chemical Company (now Monsanto Company).	Southern Natural Gas Co	05–23–62	20	Walthall	21.5000	[7] 21.5000	
G–18477	Central Oil Company	United Gas P/L Co	04–06–59	20	Simpson	21.000	[4] 21.0000	318,329
G–19207	W. H. Dees	United Gas P/L Co	07–29–59	20	Forrest EA	20.000	20.0000	2,144
CI60–834	Discovery Oil & Gas Company	United Gas P/L Co	03–20–60	20	Forrest EA	20.000	20.0000	No deliveries since Nov. 1960
G–13803	L. C. McRea	United Gas P/L Co	10–28–57	20	Forrest EA	20.000	20.0000	4,290
G–18864	Ridgway Management, Inc	United Gas P/L Co	04–20–59	20	Forrest EA	20.000	20.0000	24,391
CI61–520	Stanton A. Hall	United Gas P/L Co	07–18–60	20	Forrest EA	20.000	21.0000	4,274
CI63–1020	Pan American Petroleum Corporation	Texas Eastern Trans. Corp	11–20–62	20	Monroe	19.8000	19.8000	
G–15077	Union Producing Company	Southern Natural Gas Co	[5] 04–23–58	20	Walthall	20.2500	[5] 21.5000	
G–8592	Sun Oil Company	United Gas P/L Co	[9] 03–04–55	20	Forrest	21.5000	[5 10] 21.5000	
CI63–1409	Texaco Inc	Southern Natural Gas Co	08–10–62	20	Walthall	21.5000	[7] 21.5000	

[1] As supplemented 2–22–61.
[2] 19 years, 2 months, and 27 days.
[3] Many of these prices are conditioned from higher prices, usually around 22.87¢.
[4] Refund provision in temporary certificate with no floor for whole or part of acreage.
[5] Refund provision in temporary certificate with floor of 20.0¢.
[6] Refund provision in temporary certificate with floor of 20.0¢ plus applicable tax reimbursements.
[7] No refund provision in temporary certificate for whole or part of acreage.
[8] As supplemented 2–14–61.
[9] As supplemented 3–8–63.
[10] Conditioned from 24.0¢ proposed.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON CERTIFICATE PROCEEDINGS UNDER SECTION 7 OF THE NATURAL GAS ACT INVOLVING INITIAL PRICES OF PRODUCERS

(Issued June 3, 1964)

SIMPSON, *Presiding Examiner:* The proceeding concerns applications filed by 17 independent producers pursuant to Section 7(c) of the Natural Gas Act (Act) for certificates of public convenience and necessity to authorize 25 separate sales of natural gas from fields located in the State of Mississippi,[1] in all to three pipeline companies, *viz*, Southern Natural Gas Company (Southern, 17 sales), United Gas Pipe Line Company (United, 7 sales), and Texas Eastern Transmission Corporation (Texas Eastern, one sale).

The filings, including a resubmittal, were effected at various times from November 25, 1957, to and including May 16, 1963. Two represent separate ratifications of an earlier contract,[2] three an amendment placing additional reserves under an earlier certificated contract or sale,[3] and two were supplemented by amendments adding reserves.[4]

Thereafter, on requests based principally upon various allegations of economic hardship and emergency, including flaring of casinghead gas and waste, payment of shut-in royalties, maintenance of leaseholds, drainage, and development requirements, the Commission issued a temporary certificate in each docket without prejudice, however, to such final disposition of the application as the record relating thereto may require, imposing in sixteen instances a price condition, and providing in eleven for a refund variously with or without a floor.[5]

Subsequently by order issued August 6, 1963, the Commission consolidated the foregoing matters for hearing and decision and, pursuant to the provisions of

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[1] Applicants, dockets, and fields are: The California Company, a Division of California Oil Co. (Calco), G–19345, Hub, and CI63–563, Knoxo; Central Oil Co., Operator, *et al.* (Central), G–18477, Martinville; Dees, M. H., G–19207, Pistol Ridge; Discovery Oil & Gas Co., Inc., Operator (Discovery), CI60–834, Maxie-Pistol Ridge; General American Oil Co. of Texas (General), G–18054, Dexter; Hall, Stanton A. (Hall), CI61–520 Maxie-Pistol Ridge; Humble Oil & Refining Co. (Humble), G–19200, Hub, CI62–129, Knoxo, and CI62–130, Kokomo; McRae, L. C. (McRae), G–13803, Pistol Ridge; Monsanto Chemical Co. (Monsanto), CI63–249, Kokomo; Pan American Petroleum Corporation (Pan Am), CI60–128, Hub, CI62–46, Grange, and CI63–1020, East Muldon; Ridgway Management, Inc. (Ridgeway), G–18864, Maxie-Pistol Ridge; Joseph E. Seagram & Sons, Inc., successor in interest to Texas Pacific Coal and Oil Co. (Seagram), G–19512, Dexter; Skelly Oil Co. (Skelly), G–14712, Dexter; Sun Oil Co. (Sun), G–8592, Maxie-Pistol Ridge, G–19015, Dexter, CI62–156, Kokomo, and CI63–280, Knoxo; Texaco Inc. (Texaco), CI63–1409, Kokomo; Tidewater Oil Company (Tidewater), CI61–1689, Grange; and Union Producing Co. (Union), G–15077, Dexter. The foregoing fields are located variously in some nine counties including Forrest, Jefferson Davis, Lamar, Lawrence, Marion, Monroe, Pearl River, Simpson, and Walthall counties.

[2] Monsanto's application at CI63–249, and Texaco's at CI63–1409, each ratifying Sun's contract at CI62–156.

[3] Sun's application at G–8592; Skelly's at G–14712; and Union's at G–15077.

[4] Humble's applications at G–19200 and CI62–129, respectively.

[5] Conditioning the price at 21.5¢, plus tax, with a floor of 20¢: Humble, G–19200 (part); Calco, G–19345; Pan Am, CI60–128, each issued August 4, 1960. Conditioning the price at 21.5¢ including tax, with a floor of 20¢: Sun, G–8592; and Union, G–15077; and conditioning the price at 21.5¢, including tax, without a floor: Skelly, G–14712; Tidewater, CI61–1689; Pan Am, CI62–146; Humble, CI62–130; and Sun, CI62–156; dates of issue 1961 and 1963. With no price condition, but with a general refund requirement: Central, G–18477, issued June 3, 1959. The remaining temporaries issued at a price of 20¢ plus tax (Dockets G–19512, G–18054, G–18864, and CI60–834) in 1959, or at a price which did not exceed 20¢ (Dockets G–13803, G–19207, CI61–520, and CI63–1020) and were not conditioned. In seven instances the temporary was conditioning at a price of 21.5¢ including tax, with no specific reference to a refund: Sun, G–19015; Humble, G–19200 (part) and CI62–129; Monsanto, CI63–249; Sun, CI63–283; Calco, CI63–563; and Texaco, CI63–1409.

Section 1.18 of its Rules of Practice and Procedure, directed the holding of a prehearing conference on September 17, 1963,[6] for the purpose of effectuating expeditious disposition of the proceedings and determining a date for hearing. Notice having been duly issued and published, the prehearing conference was held by the Presiding Examiner as directed by the terms of the Order, aforesaid,[7] and, in further accordance with the latter and the Presiding Examiner's Order Specifying Results of Prehearing Conference and Fixing Date of Hearing, issued September 23, 1963, the consolidated proceeding came on for hearing and was heard on November 12, 1963. Seven of the applicants,[8] 11 of the interveners,[9] and Staff, were represented by counsel appearing at the prehearing conference, and the same and 3 additional interveners participated in the hearing.[10] The testimony of three witnesses was offered and received in evidence in whole or in part,[11] but the prepared testimony of four prospective witnesses jointly sponsored by certain Applicants was, on offer and objection thereto, excluded in whole or in part, the sponsors making their offers of proof.[12] In addition, the several applications and related rate schedules were offered and received as Items by Reference.

Initial briefs were duly filed by counsel for Calco, Humble, and Texaco (joint), Pan Am, Ridgway, Skelly, Sun, and Union, Tidewater adopting that of Humble and Texaco as its own. Reply briefs were duly filed by Mississippi Valley, the New York Commission, and Staff, and rebuttal briefs likewise by Calco, Pan Am, Skelly, Sun, and Union, Humble and Texaco, respectively, adopting that filed on behalf of Pan Am.

THE ISSUES

Section 7(e) of the Act provides, in part, that a certificate shall issue where it is found that the duly qualified applicant is able and willing properly to do the acts and to perform the service and to conform to the provisions of the Act and the requirements, rules and regulations of the Commission thereunder. However, issues which might have arisen in this connection are disposed of by an agreement proposed and accepted at the prehearing conference held in these

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[6] Postponed, by Notice of the Secretary issued August 28, 1963, to September 18, 1963.

[7] As modified by the postponement. The conference proceeded with consideration of each of the matters included in the statement of purpose contained in paragraph (C) of the order issued August 6, 1963, *supra*. The participants stipulated as to arm's-length bargaining between buyers and sellers, as to sellers being "able and willing" in terms of the requirement stated in Section 7(e) of the Act, as well as to the method of introducing certain evidence. The Presiding Examiner's order provided dates for service of the prepared evidence, motions to strike or exclude directed thereto, and answers to the latter, and provided for joint sponsorship or adoption of evidence in lieu of individual presentation thereof. It also fixed the date of hearing as November 12, 1963, at the place and time therein stated.

[8] Calco, Humble, Pan Am, Ridgway, Skelly, Sun and Union.

[9] Consolidated Edison Company of New York, Inc. (Con Ed), Public Service Electric & Gas Company (Public Service), Philadelphia Electric Company (Philadelphia Electric), Philadelphia Gas Works Division of United Gas Improvement Company (UGI), Atlanta Gas Light Company (Atlanta Gas), Alabama Gas Corporation (Alabama Gas), Southern Natural Gas Company (Southern Natural), United Gas Pipe Line Company (United Gas), Mississippi Valley Gas Company (Mississippi Valley), Willmut Gas & Oil Company (Willmut), and Public Service Commission of the State of New York (New York Commission).

[10] The Brooklyn Union Gas Company (Brooklyn Union), Pennsylvania Public Utility Commission, and the State Oil and Gas Board of Mississippi (State Board).

[11] In whole that of Applicants' witness Gody (with a minor exception) and Staff's witness Miller; and in part that of Chairman McFarland of the Mississippi State Board.

[12] The exclusion related to the whole of the prepared testimony of Radford L. Schantz, Robert H. Park, and Sherman H. Clark, respectively, and a part of that of the witness McFarland.

proceedings September 18, 1963, by and on behalf of all 20 participants present wherein each applicant is stipulated to be "able and willing" within the meaning of the foregoing provisions of the Act.

As Section 7(e) also provides that the issuance of the certificate shall rest upon a finding that the proposed service, sale and operation, to the extent authorized, is or will be required by the present or future public convenience and necessity, and authorizes the Commission to attach thereto such reasonable terms and conditions as the public convenience and necessity may require,[13] the matter at issue with respect to each of the several applications in this proceeding is, briefly, whether the proposed sale or service, at the price proposed, is or will be required by the present or future public convenience and necessity, without or with conditions attached.

THE CONTENTIONS

Applicants address various contentions, hereafter considered, specifically to the applicability of the so-called CATCO doctrine and the method of determining the "in-line" price with principal reference both to the volume factor and the period of time to be used in determining a contemporaneous price standard.[14] Calco, Humble, Pan Am, Sun, and Tidewater also contend to the effect that applications proposing an initial price of 22.8¢ to 22.87203¢, including tax,[15] or less,[16] are "in-line" for the area (Mississippi), and should be permanently certificated. In other dockets Skelly (G–14712), Sun (G–8592) and Union Producing (G–15077) also contend that a certificate should issue on the ground that the price there proposed concerns acreage added under an existing contract already certificated at the same price, while Ridgway Management, adopting Staff's presentation, contends that its proposed price (20¢) is less than the "in-line" price for the area.

Applicants further contend that under Section 7 of the Act initial price is but one factor to be evaluated in determining whether a sale should be certificated; that evidence as to market conditions and as to cost, and economic matters of a type considered by the Commission in formulating guide line rates in the Statement of General Policy No. 61–1, issued September 28, 1960, 24 FPC 818, should also be considered as relevant and material to the issue of public convenience and necessity in this proceeding; and that the Presiding Examiner's rejection of a proffer of evidence of such nature was erroneous and denied Applicants their right to a full hearing on the issue as provided by Section 7 of the Act and guaranteed by the Constitution.[17]

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[13] In the so-called "CATCO case," *Atlantic Refining Co.* v. *Public Service Commission*, 360 U.S. 378 (1959), the Court said, with reference to the issuance of a certificate under Section 7 (p. 391): "Where the proposed price is not in keeping with the public interest because it is out of line or because its approval might result in a triggering of general price rises or an increase in the applicant's existing rates by reason of "favored-nations" clauses or otherwise, the Commission in the exercise of its discretion might attach such conditions as it believes necessary."

[14] Applicants seek to have the "in-line" price determined with reference to other contracts dated within a 6-year period (1957–1962) as against the 9-year data (1954–1963) proposed by Staff.

[15] Calco: G–19345 and CI63–563, 22.8711¢; Humble: G–19200, CI62–129, CI62–130, and CI63–1409, 22.87¢; Pan Am: CI63–46, 22.87203¢, and CI60–128, 22.8¢; Sun: CI62–156 and CI63–283, 22.8677¢; and Tidewater: CI61–1689, 22.863¢.

[16] Pan Am: CI63–1020, 19.01¢; and Sun: G–19015, 21.55¢.

[17] So, Sun at Docket G–8592, where it proposes a price of 24.0¢, including tax. A related contention is to the effect that in determining the issue of initial price the Commission is faced with the same issue it decided in determining the area guide-line price level and that giving any effect to the latter in this proceeding would be to predetermine the issue of public convenience and necessity without recognition of the right of hearing.

The State Board contends that an area "in-line price" less than 21.5¢, inclusive of tax, would be prejudicial, arbitrary, and capricious.[18]

Staff contends that data available for a period of nine years (1954–1963) must be used in determining an "in-line" price, that such a price is represented by the result of 20.0¢ without allowance for tax reimbursement, and that with respect to contracts or amendments containing a higher initial price the certificate should be conditioned to require a reduction to 20.0¢, and where, and as, the existing temporary authorization so provides, a refund with interest.[19]

The New York Commission, adopting Staff's contentions, would, however, have refunds provided whether or not the temporary authorization so provides, and Mississippi Valley, relying upon Staff's evidence in the premises, contends for an "in-line" price of 20¢ per Mcf.

THE EVIDENCE AND FINDINGS

Jurisdiction

Participants do not challenge the jurisdiction of the Commission to issue the certificate for which Applicants severally apply, and it affirmatively appears from either the verified application,[20] sales contract,[21] relation to a previous certificate,[22] or other data,[23] that each Applicant is engaged under a temporary certificate, or will be engaged if certificated herein, in the sale in interstate commerce of natural gas for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and that, accordingly, each is, or will be, a "natural-gas company" within the meaning of the Act, and such sales, together with the construction and operation, of facilities necessary therefor, are, or will be, subject to the requirements of Sections 7(c) and (e) of the Act.

The Exclusion of Evidence

Pursuant to the direction of the Presiding Examiner included in the order issued September 23, 1963, specifying results of the prehearing conference held herein on September 18, 1963, several Applicants and the State Board served certain various jointly sponsored evidence, consisting of the prepared testimony and exhibits of four proposed witnesses (Clark, Park, Schantz, and McFarland), which together purported to show, in brief: 1965–1970 projected annual demands for natural gas and the production estimated to be required in connection there-

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[18] Beyond interest in revenues obtained from a tax of 6 percent on production, the State is owner of lands prospectively capable of production and is trustee for its educable children of approximately 600,000 acres. However it is not claimed that any of the acreage is directly involved in these proceedings.

[19] Staff considers an amendment to authorize the addition of acreage under an existing contract and certificate a "new" sale and so subject to the authority to condition provided by Section 7(e) of the Act. Staff further recommends that where the contracts contain take-or-pay provisions certificates be issued subject to the Commission's final order in the pending rule-making proceeding concerning this subject at Docket No. R–199, publicly noticed May 26, 1961, stating that this recommendation would apply in the instance of all but one of the certificates.

[20] Calco: G–19345, and CI63–563; General American: G–18054; Humble: G–19200, CI62–129, and CI62–130; Seagrams: G–19512; Texaco: CI63–1409; and Tidewater: CI61–1689.

[21] Central: G–18477; Discovery: CI60–834; McRae: G–13803; Monsanto: CI63–249; Pan Am: CI60–128, CI62–46, and CI63–1020; Ridgway: G–18864; and Sun: G–19015, CI62–156, and CI63–283.

[22] Skelly: G–14712; Sun: G–8592; and Union: G–15077.

[23] Dees (G–19207) and Hall (CI61–520): location of the field, name of the purchaser, and purchaser's system map as included in its FPC Form 2 report for the year ended December 31, 1962, of which last notice is taken.

with (Clark); nationwide costs to producers with respect to finding and developing gas supplies, and their estimated financial requirements (Park); trends as to supply-demand and market price-cost relationships (Schantz); and the area price asserted to be required to compensate for costs and attract capital (McFarland).[24]

Staff's objection to the foregoing[25] was upon the ground, substantially, that Commission decisions require that initial prices in producer certificate proceedings be determined by the area "in-line" price as of the time the contract in issue has been executed, rather than by cost data and financial requirements.

However, the Joint Answer to Staff's objection, filed by six of the joint sponsors,[26] contended, in brief, that the proffered evidence was of the same nature as the data and trends considered by the Commission in determining the area price levels in its General Policy Statement No. 61–1; that all factors bearing on the public interest must be evaluated and not just the "in-line" price,[27] and that the issue of present or future public convenience and necessity entails a consideration of future industry requirements.

Applicant sponsors now reargue the matter in their respective briefs, and two specifically urge the Presiding Examiner to reconsider the exclusionary ruling and reopen the proceedings to receive the matters in evidence.

As stated by the Presiding Examiner in the ruling which sustained the objection, the excluded items are substantially the same as those matters which have been held by the Commission not to be relevant in producer certificate cases, on the ground that ordinarily the initial price is to be determined by the "in-line" price in the area at the time the producer contract in question was executed and not on the basis of cash outlays or replacement costs. This holding, applied by the Commission in the *Skelly case*,[28] and sustained on appeal in *Continental Oil Company, et al.* v. *F.P.C.* (CADC), 329 F. 2d 242 (1964), is controlling, and, accordingly, Applicants' motion to reopen and receive is herewith denied.

The Period

The 25 contracts involved in this proceeding were executed variously in the years 1957, and 1959–1963, inclusive.[29] Due to the fact that, with the exception of 1955 and 1957, relatively few area contracts have been written in any one

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[24] The sponsorships were: of Clark: General American, Humble, Pan Am, Skelly, Sun, Texaco, Tidewater, and Union; of Schantz: the same; of Park: Humble, Pan Am, and Texaco; of McFarland: the State Board, Calco, Humble, Pan Am, Skelly, and Union.

[25] Adopted by the intervener, UGI.

[26] Humble, Pan Am, Skelly, Texaco, Tidewater and Union; subsequently adopted by Sun and the State Board. While the joint answer related specifically to the proffered testimony of Clark and Schantz, three of the Applicants (Humble, Pan Am, and Texaco) adopted it in support of the proffered testimony of Park. The State Board also filed its separate answer which was also adopted by Pan Am.

[27] Citing *Atlantic Refining Company* v. *Public Service Commission*, 360 U.S. 378 (1959).

[28] Opinion No. 362.

[29] As follows: 1957, one; 1959, eight; 1960, two; 1961, eight, including amendments of contracts dated December 30, 1947 (G–14712), and April 23, 1958 (G–15077), respectively; 1962, four; and 1963, one, consisting of an amendment of a contract dated March 4, 1955 (G–8592). One contract (Dees, G–19207) which both joint Applicants and Staff consider as if dated contemporaneously with the affidavit affixed to the form filed with the Commission, to wit, July 29, 1959, was apparently dated, in fact, on March 30, 1955, but because of the general scope of the data in evidence this probable discrepancy is deemed of no significance. In the instance of each of three amendments, committing additional acreage, the date of the amendment is considered rather than that of the earlier contract.

year,[20] participants are in agreement that in these proceedings the "in-line" price must be determined on the basis of a span of years. They also agree that the "in-line" price must relate to the period of execution of the subject contracts.

Applicants propose that the "in-line" price determination be confirmed to a consideration of data which relates to the 6-year period 1957–1962, on the grounds of contemporaneousness and the alleged fact that the number of permanently certificated sales executed therein (52) and annual volumes related thereto (71,600,000 Mcf) meet all necessary standards including that of relevancy.[21] Staff would include in such considerations data related to all permanently certificated sales, commencing with the date of the *Phillips* decision (June 1954) and regardless of whether the transaction's date predated the basic period.[22]

Due to the fact that in the instance of each field in the area, purchases have been made by a single pipeline at a price which generally holds from the initial purchase through all subsequent transactions, Applicants' proposal that the data to be considered be limited to that of the shorter period is unduly restrictive for, in the circumstances of this case, substantial reliance cannot be placed upon any price level available without proper regard to historical effects and the implications involved in so doing.

General Price Developments Under Permanently Certificated Sales (1954–1962)[23]

Applicants' price witness testified to the effect that prices for gas of comparable quality have remained fairly stable over the past few years, as increases in Mississippi since 1954 have been smaller than those occurring elsewhere in the Southwestern area. However, price averages indicate that as to sales from the larger fields substantial increases have occurred in the area.

During the basic 1957–1962 period the weighted average tax inclusive initial price for fields with the larger 1961 deliveries ranged from 18.5¢ to 22.8587¢, as indicated:[24]

Field	Purchaser and number of contracts		1961 volumes (Mcf)	Weighted average price (¢/Mcf)
Cranfield	Southern	4	29,885,172	22.8587
Dexter	Southern	4	6,813,676	21.5493
Marie-Pistol Ridge	United	26	3,891,577	20.04
Ansley	United	2	2,341,778	18.5
Skoom	Texas Eastern	1	1,548,019	20.618
Total			44,480,222	22.09

[20] Fewer than 10 contracts were executed in any one of the 5 years 1958–1962, and the total volumes related to all contracts executed in the 3 years 1960–1962, represent but a portion of totals under contracts entered into in either 1958 (40%) or 1959 (60%). It may be noted that during the earlier period 1948–1953 there were relatively few long-term sales (16), and though associated volumes were sometimes large the prevailing initial prices (6.75¢ and 10.0¢) have no current relevancy.

[21] With respect to the latter allegation, Applicants include volumes (26,340,100 Mcf) related to 1957 and 1959 contracts (12) which superseded earlier short-term agreements and stated prices which were suspended by the Commission to various dates in each of the 4 years included in the period 1958–1961.

[22] Staff ultimately eliminates all but 82 sales priced uniformly at 20.0¢ and dated as follows: 1954, 8; 1955, 34; 1956, 14; 1957, 18; 1958, 5; 1959, 1; 1960, 1; and 1962, 1.

[23] No permanently certificated contract used herein is stated at a term less than 20 years (Exhibit No. 9) except for one of 16 years (1960), which represents a sale by Calco to Transcontinental Gas Pipe Line Corporation in the Sharon field which provided 1961 deliveries of 53,947 Mcf. None are suspect because subject to reconsideration or review.

[24] The minor 0.84 percent temporary tax paid during the period April 1, 1955, to June 30, 1958, is here included. Its retention has no material effect upon the results given.

The total of 44,480,222 Mcf from these five fields represents some 95% of the total of 46,940,509 Mcf for all fields,[35] while deliveries from two fields to one purchaser account for 36,698,848 Mcf or 78% of the latter total.

On the other hand, the permanently certificated sales of the preceding 3 years (1954–1956), resulting in 1961 deliveries of 31,734,211 Mcf, represented, substantially, those of the Maxie-Pistol Ridge field,[36] as indicated in the following:

Field	Purchaser and number of contracts		1961 volumes (Mcf)	Weighted average price (¢/Mcf)
Maxie-Pistol Ridge	United	57	28,912,748	19.98
Muldon	Texas Eastern[1]	4	2,700,000	19.0
Sharon	Transco	1	121,463	19.08
Total			31,734,211	419.89

[1] An apparent single "package" type transaction consisting of 4 well-head sales.

Of these, deliveries from the indicated larger field constitute 91% of the total, and from the two remaining fields 9% thereof. The weighted average price of 19.89¢ applicable to the total of 31,734,211 Mcf compares with the 21.80¢ determined for the total of 1961 deliveries of 46,940,509 Mcf from all fields in the basic period.[37]

The fact that this rise in average price was accompanied solely by the development of two larger type fields is further indicated by a consideration of corresponding volumes and prices set forth for an overlapping 4-year period (1955–

[35] Adding:

Field	Purchaser and number of contracts		1961 volumes (Mcf)	Weighted average price (¢/Mcf)
Little Creek	United	1	998,724	18.0
Magee	United	3	430,175	18.0
Baxterville	United	1	360,000	11.9689
Beans Ferry	Texas Eastern	2	318,553	17.00
Rodney	Tennas	1	176,000	11.0
Merit	Southern	1	94,888	20.0
Sharon	Transco	1	53,947	19.1584
Trebloc	Texas Eastern	1	28,000	17.00
Total			2,460,287	16.5784

[36] Sometimes stated as 2 fields.

[37] For the combined (1954–1962) periods, 47% of a combined total of 78,674,719 Mcf went to Southern, 45% to United, and 5% to Texas Eastern, thus:

Field	Purchaser and number of contracts		1961 Volumes (Mcf)	Weighted Average Price (¢/Mcf)
Maxie-Pistol Ridge	United	83	32,804,325	19.9882
Cranfield	Southern	4	29,885,172	22.8587
Dexter	Southern	4	6,813,676	21.5493
Muldon	Texas Eastern	4	2,700,000	19.000
Ansley	United	2	2,341,778	18.500
Skoam	Texas Eastern	1	1,548,019	20.618
Other		12	2,581,750	16.606
Total			78,674,720	21.04

1958) wherein Southern first acquired sources in the Dexter and Cranfield fields, as follows:

Field	Purchaser and number of contracts		1961 volumes (Mcf)	Weighted average price (¢/Mcf)
Maxie-Pistol Ridge	United	65	15,821,685	20.0573
Cranfield	Southern	1	23,066,734	22.8711
Dexter	Southern	4	6,813,676	21.5493
Muldon	Texas Eastern	4	2,700,000	19.000
Ansley	United	1	1,719,668	18.500
Sharon	Transco	1	121,462	19.0800
Rodney	Tenneco	1	176,000	11.000
Trebloc	Texas Eastern	1	28,000	17.000
Total			[1] 50,447,225	21.4001

[1] Of this total, deliveries to Southern constitute 59%, to United 35%, to Texas Eastern 5%, and to others something less than 1%.

While the weighted average price for the larger sources increased, during the course of these periods, from 19.89¢ to 22.09¢, due principally to deliveries from the Dexter field initiated in 1957 at a price of 21.5493¢ and from the Cranfield field in 1958 at 22.8711¢, the price for deliveries from the Maxie-Pistol Ridge field at the same time remained stable, and a later (1960) fairly substantial purchase in the Skoam field was made at a total initial price of 20.618¢.[38]

However, the evidence does not afford a basis for correlating volume and price.

Comparison of Proposed Prices

The testimony of Applicants' price witness was to the effect, in part, that the subject sales of this proceeding are generally in accord price-wise with other sales. However, a comparison of weighted average prices for sales permanently certificated with those for 20 sales at issue shows an increase in the 1957–1962 average from 21.8¢, for the former, to approximately 22.6¢ per Mcf, for the latter. Estimated annual volumes and weighted averages applicable to the foregoing conditionally certificated temporaries are as follows:[39]

	Purchaser and no. of contracts used		Annual volumes (Mcf)	Weighted average price (¢/Mcf)
Larger fields:				
Hub	Southern	3	7,571,900	22.8835
Dexter	Southern	3	464,000	21.5528
Maxie-Pistol Ridge	United	5	409,335	20.0542
Knoxo	Southern	3	1,413,600	22.8702
Total			9,858,835	22.7015
Remaining fields:				
Grange	Southern	2	610,800	22.872
Kokomo	Southern	2	381,600	22.869
Martinville	United	1	315,700	21.000
Muldon-East	Texas Eastern	1	228,000	19.8
Total			1,536,100	22.0305
Combined			11,394,935	22.6110

[38] Relative prices in the larger fields are reflected in the following:

Field	1954-56 (¢/Mcf)	1955-58 (¢/Mcf)	1957-62 (¢/Mcf)
Maxie-Pistol Ridge	19.98	20.0573	20.04
Cranfield		22.8711	22.8587
Dexter		21.5493	21.5493
Muldon	19.00	19.00	
Ansley		18.50	18.50
Skoam			20.618
Weighted average	19.8973	21.4445	22.09

[39] Except for two small sales from the Maxie-Pistol Ridge field, estimated annual deliveries are those presented in Applicants' Exhibit No. 7.

Of the foregoing, some 9,977,900 Mcf (88%) was purchased at a price equal to or in excess of 22.869¢, while 10,441,900 Mcf (92%) was purchased at a price equal to or in excess of 21.5528¢ for a weighted average of 22.8213¢ per Mcf.

Price Developments in the Basic Period (1957–1962)

In terms of 1961 deliveries five area fields, including Dexter and Cranfield, supplied 73,392,970 Mcf,[40] or 93%, of the total of 78,674,719 Mcf delivered from all fields under permanently certificated 1954–1962 contracts, while the two fields specified together delivered of 36,698,848 Mcf, or 47% of the latter total.

The evidence of record as to prices paid by others does not support those paid by Southern in its 1957 initial purchases of gas in the Dexter field and its 1958 initial purchase in the Cranfield field. The Dexter field increase of 1.4203¢ over the highest price previously paid in the Maxie-Pistol Ridge field by United, as the area's principal purchaser, and the like increase of 2.7387¢ in the Cranfield sale, were neither foreshadowed in prices paid by the other three pipelines in the area [41] nor reflected in later permanently certificated prices in other fields.[42] It appears therefore, that, despite the possible influence of volumes involved, Dexter and Cranfield prices are to be taken as essentially isolated, and as having no direct relation either to prices than generally current in the area or area price trends.[43]

Nor is the Commission's decision in *South Georgia Natural Gas Company, et al.* (22 FPC 211 (1959)), to the contrary, although cited by Applicants as establishing an area "in-line" price of 22.872¢ per Mcf. Reference discloses, however, that the Commission's decision in that case is not based simply upon price comparisons but more substantially upon consideration of elements of value provided by provisions of the contracts involved. The Commission there found that, while the proposed price (22.87 or 22.872¢) was higher than the highest total price then paid for gas in Mississippi, the contracts possessed important characteristics of value to the purchaser (Southern), including provision for minimum and maximum takes particularly favorable to the purchaser and for a flexibility of withdrawals peculiarly adapted to meet the purchaser's fluctuating demands.

[40] This total is composed of the following field deliveries:

Field	Purchaser	1961 volumes (Mcf)	Weighted average price (¢/Mcf)
Maxie-Pistol Ridge	United	32,804,325	19.99
Cranfield	Southern	29,885,172	22.8587
Dexter	do	6,813,676	21.5494
Ansley	United	2,341,778	18.50
Skoam	Texas Eastern	1,548,019	20.618
Total		73,392,970	21.2826

[41] United in the Maxie-Pistol Ridge field (20.0¢–20.1324¢); Texas Eastern in the Muldon field (19.0¢ and Trebloc field (17.0¢); and Transco in the Sharon field (19.08¢). The latter price, though for a relatively small quantity, was consistent with purchases of corresponding quantities being made by United in the Maxie-Pistol Ridge field. Further, of a total of 82 contracts executed in the 3½-year period from June 21, 1954, to December 1, 1957, just prior to the first Dexter field purchase, 57 contracts providing 1961 volumes of 27,460,828 Mcf carried prices of 20.0¢ or less, and 25 contracts providing volumes of 7,351,869 Mcf, and reflecting the effect of a temporary tax of 0.84 percent, carried prices of 20.12¢–20.1324¢.

[42] Except for a 1960 purchase by United in the Maxie-Pistol Ridge field at 21.0¢, subsequent prices did not exceed the 20.618¢ paid in 1960 by Texas Eastern in the Skoam field. A 1961 purchase, by United in the Maxie-Pistol Ridge field of magnitude relatively equal to that of its 1960 purchase in the same field was made at a price of 20.0¢ per Mcf.

[43] As previously stated herein, the evidence affords no basis for determining objectively what effect, if any, volume has upon price.

The Commission also gave weight to other factors such as accessibility, a high minimum delivery pressure (1200 psia), and the association of the Cranfield sale under a single contract with one from a field in east central Louisiana, in a manner considered to confer unusual benefits upon the purchaser.

The decision further relied, in part, upon an intrastate sale of a reserve located in Louisiana at a total price higher than that proposed for the Mississippi sale, as well as upon the fact that the overall effective increase in the purchaser's weighted average cost of purchased gas (0.05¢) was of little significance in comparison with the benefits received.

It also appears in *South Georgia* that the Commission related its consideration to a "general area" which included, at least, parts of east central and southeastern Louisiana as well as Mississippi.

Accordingly, it is concluded that in the *South Georgia* case, contrary to the contentions of Applicants, the Commission made no finding of an "in-line" price applicable to the Mississippi area.[44]

Type and Quality Provisions

Quality provisions are, in general, sufficiently similar to permit a direct comparison of prices as between permanently certificated sales and the subject contracts.

The more important type provisions contained in some 110 area contracts executed in the period 1954–1962, summarized by Staff (Exhibit 9) and in part by Applicants (Exhibit 8), generally provide a take-or-pay requirement, more often associated with a 1 year make-up period;[45] a field point delivery;[46] a maximum delivery pressure of 1000 or 1100 psia;[47] a minimum heating value of 950 or 1000 Btu per cubic foot,[48] generally without specific provision for price adjustment; a price escalation at either a 4 year or 5 year interval in steps of 2¢ and 1¢, respectively;[49] a price redetermination set generally for 1964 or 1966;[50] and a tax reimbursement currently averaging some 1.02¢ per Mcf plus 81% of additional levies.[51] In addition, the contracts generally limit the total sulphur content to 20 gr. and hydrogen sulphide to 1 gr. per hundred cubic feet, as well as water to 7 lbs. per MMcf.[52]

Similarly, provisions of some 48 contracts executed in the basic period (1957–1962, Staff Exhibit No. 9) indicate that the 1 year make-up associated with take-or-pay has been extended to 2 years;[53] the delivery point modified to include plant delivery;[54] the maximum delivery pressure substantially increased to 1200 psia;[55] price escalations have become dominantly a 2¢ step at a 4 year interval;[56] price redeterminations now fall principally in 1966;[57] and tax reimburse-

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[44] In these proceedings the Commission refused to authorize prices of 22.87 or 22.872¢ in five of the temporary certificates on the ground that to do so would tend to establish a new predominant price plateau in the area: Tidewater, CI61–1689, issued August 14, 1961; Pan Am, CI62–46, issued September 14, 1961; Humble, CI62–130, issued October 17, 1961; Sun, CI62–156, issued October 17, 1961; and Humble, CI62–129, issued October 26, 1961.

[45] Contracts (88) representing 56% of 1961 total deliveries (78,674,720 Mcf).

[46] Contracts (93) representing 56% of 1961 deliveries.

[47] Contracts (88) representing 56% of 1961 deliveries.

[48] Contracts (92) representing 99% of 1961 deliveries.

[49] Contracts (94) representing 90% of 1961 deliveries.

[50] Contracts (86) representing 80% of 1961 deliveries.

[51] Basis of total 1961 deliveries.

[52] Respectively, 98%, 98%, and 87% of 1961 deliveries.

[53] Four Cranfield and 3 Dexter contracts representing 68% of 1961 deliveries (46,940,509 Mcf).

[54] Three Cranfield contracts representing 63% of total 1961 deliveries.

[55] Contracts (principally four Cranfield) representing 64% of total 1961 deliveries.

[56] Four Cranfield and 4 Dexter contracts representing 78% of total deliveries.

[57] Three Cranfield contracts representing 63% of total 1961 deliveries.

ment averages 1.167¢ per Mcf and 85% of additional levies;[58] while heating value and sulphur and water content specifications are substantially unaffected.[59]

With exclusion, for reasons previously given, of the Cranfield and Dexter field contracts insofar as these introduce a departure from 1954–1962 characteristics, the dominant take-or-pay make-up period reduces to the 1 year which predominated during the longer 1954–1962 period;[60] the delivery point again becomes dominantly a general field point;[61] the maximum delivery pressure reduces to the first stated 100–1100 psia;[62] price escalations revert to a 1¢ step at a 5 year interval;[63] redeterminations again fall principally in 1964;[64] tax reimbursement reduces to an average of 0.48¢ per Mcf with a dominant 75% provision against additional levies;[65] while heating value and sulphur and water content specifications generally remain the same.[66]

From the foregoing, it appears that but for variations introduced by Cranfield and Dexter field purchases, the predominant similarity of provisions of contracts executed within each of the two periods, 1954–1962 and 1957–1962, obviates necessity for a detailed examination of the relation of price to contract type provision in order to determine an area "in-line" price.

The dominant type provisions of the 25 subject contracts[67] are generally consistent with those which characterize the 110 contracts of the 1954–1962 period and as well as the 48 contracts of the basic and more recent 1957–1962 period, in that the former provide for take-or-pay, which, however, is now associated with a longer period of make-up;[68] a general field point of delivery; a maximum delivery pressure of 1,000 psia;[69] minimum heating values of 950 and 1,000 Btu per cubic foot,[70] generally without specific provision for price adjustment; a price escalation, here more generally of a 2¢ step at a 4 year interval;[71] a price redetermination as early as 1964;[72] and a tax reimbursement which, however, here averages some 1.257¢ per Mcf plus an 86.7% of additional levies.[73] Moreover, no significant departures are evident with respect to sulphur, sulphide, and water content specifications.

It is pertinent to note that earlier pipeline purchases in the Cranfield and Dexter fields (1957 and 1958) appear to directly set the pattern for dominant

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[58] Basis of total 1961 deliveries (46,940,509 Mcf).

[59] Contracts representing 98–99% (water 85%) of total 1961 deliveries.

[60] Thirty-one contracts representing 85% of 1961 deliveries of 15,120,669 Mcf.

[61] Forty-one contracts representing 89% of 1961 deliveries of 17,144,352 Mcf.

[62] Thirty-six contracts representing 87% of 1961 deliveries of 17,055,337 Mcf.

[63] Thirty-two contracts representing 55% of 1961 deliveries of 10,241,661 Mcf.

[64] Twenty-seven contracts representing 40% of 1961 deliveries of 10,330,676 Mcf.

[65] Basis of 1961 deliveries of 10,241,661 Mcf.

[66] *I.e.*, 950–1000 Btu; 20 gr. of sulphur and 1 gr. of sulphide per hundred cubic feet; and 7 lbs. of water per MMcf, in contracts representing, respectively, 97%, 97%, 94%, and 58% of 1961 deliveries of 17,055,337 Mcf.

[67] With respect to which the evidence provides usable annual volumes for 20 contracts in a total of 11,394,935 Mcf, as follows: from Applicants' Exhibit No. 7 for 18 contracts, 11,368,400 Mcf; and from Staff's Exhibit No. 9 for two contracts (Dees and Ridgway), 26,535 Mcf. In the instance of five contracts usable annual volumes are not available (Skelly (G–14712), Monsanto (CI63–249), Union Producing (G–15077), Sun (G–8592), and Texaco (CI63–1409)), partly in view of the participants' election not to project certain estimated first month's volumes.

[68] Six contracts representing 71% of annual volumes available (11,394,935 Mcf)—2 years; seven contracts representing 21% of volumes—5 years.

[69] Eight contracts representing 73% of annual volumes available; *cf.*, eight contracts representing 23% of volumes providing for a maximum delivery pressure of 1,200 psia.

[70] Fifteen contracts representing 32% of annual volumes available—950 Btu; four contracts and 68% of volumes—1,000 Btu.

[71] Thirteen contracts representing 92% of annual volumes available—2¢ at 4 years; three contracts and 2% of volumes—1¢ at 5 years.

[72] Seven contracts representing 70% of volumes.

[73] Basis of estimated annual volumes of 11,394,935 Mcf.

type provisions and prices with respect to purchases in the relatively new Grange, Hub, Knoxo, and Kokomo fields which, in some 10 contracts, account for some 9,977,900 Mcf (87%) of the total annual volumes of 11,394,935 Mcf available.

The "In-Line" Price

The 1957–1962 period provides 47 contracts which carry a range of initial base prices and associated volumes as follows: [74]

Price (¢/Mcf)	1961 volumes (Mcf)	Cumulative volumes (Mcf)	Number of contracts	Cumulative contracts
11.0	176,000	176,000	1	
17.0	346,553	522,553	3	4
17.5	89,015	611,568	1	5
18.0	1,482,846	2,094,414	5	10
18.5	2,341,778	4,436,192	2	12
20.0	5,534,484	9,970,676	28	40
20.25	6,813,676	16,784,352	4	44
21.5	29,796,157	46,580,509	3	47
Total	46,580,509		47	

The weighted average price of 20.8¢ per Mcf includes the contracts for deliveries from the Cranfield and Dexter fields. With the elimination of the latter [75] the weighted average price becomes 19.06¢, but, while the number of contracts is reduced thereby by only some 15%, 1961 volumes are materially reduced to 9,970,676 Mcf or 21.4% of the total.

Weighting prices by estimated first month volumes (total 3,997,394 Mcf) instead of 1961 deliveries, reduces the average of 20.8¢ to 20.58¢, and eliminating the specified contracts reduces the adjusted average from 19.06¢ to 18.94¢. However, first month volumes, which are in fact only seller's preliminary estimates, are frequently inconsistent with respect to subsequent actual and reported deliveries.[76]

By comparison, the 20 subject contracts, with estimated annual volumes totaling 11,394,935 Mcf, produce a weighted average initial base price of 21.35¢ per Mcf which is not only 2.29¢ higher than the adjusted 19.06¢ weighted average above stated, but 1.35¢ higher than any preceding initial base price (20.0¢), other than those of the Cranfield (21.5¢) and Dexter (20.25¢) field contracts.

Weighting the base prices of Applicant's corresponding 38 contracts by annual volumes stated in Applicants' Exhibit No. 7 results in the same average price of 20.8¢ developed with respect to the 47 contracts contained in Staff's Exhibit No. 9,[77] and an adjusted weighted average of 19.15¢ which is substantially comparable with that applicable to Staff's 40 contracts, above.

However, averages of less than 20.0¢ can be expected only by omitting consideration of pertinent and material circumstances which relate to the history of the 20¢ price as developed in the Maxie-Pistol Ridge field, the most productive in the area. During the first half of the whole period of productive development

[74] Not including a 1961 contract with estimated annual deliveries of 360,000 Mcf, having an initial price of 11.2502¢ which, by terms of the contract, increased to 21.5¢ at the end of 4 months.

[75] Cranfield: 29,796,157 Mcf, at 21.5¢; Dexter: 6,813,676 Mcf at 20.25¢.

[76] As in FPC Form 2.

[77] While Staff, in general, uses reported 1961 deliveries, the joint Applicants, in general, use FPC Form 2 delivered volumes, as follows: for 1953–1954 contracts, 1956 deliveries; for 1955–1957 contracts, 1959 deliveries; for 1958, 1959, and 1960 contracts, 1960, 1961, and 1962 deliveries, respectively; and for 1961 and 1962 contracts, seller's estimated first month volumes projected on an annual basis.

in Mississippi (1954–1958), United's purchases in the Maxie-Pistol Ridge field were completely dominant over all like activity in the area, and the 20.0¢ price, appearing in 79 contracts providing 1961 volumes [78] exceeding even those of the more recently active Cranfield field,[79] became immediately and successively the area's fixed and dominant price in terms of number of contracts, volumes delivered, and period of duration. In addition lower initial base prices in 1955–1958 contracts of 11.0¢, 17.0¢, 18.0¢, and 19.0¢ were associated with relatively insignificant volumes [80] and the next higher price was in the level of the isolated Dexter field contracts. Nor do the 4 years which follow the years of maximum activity in the Maxie-Pistol Ridge field, produce prices and volumes which change the predominant standing of the 20.0¢ price, for while new Maxie-Pistol Ridge 20.0¢ contracts lose relative importance in terms of number and volumes,[81] the Dexter and Cranfield purchases of 1957, 1958, and 1959, with combined 1961 deliveries of 36,609,833 Mcf, comprise volumes and carry initial base prices which at least confirm a 20.0¢ price, as does a contemporaneous sale (1960) of a 1961 volume of 1,548,019 Mcf in the Skoam field. As in the preceding period, and against the foregoing considerations, sales in lesser fields at lesser prices of 11.25¢, 17.0¢, and 18.0¢ are entitled to little if any weight in determining the "in-line" price.[82]

Therefore, and because the evidence supports no other determination, 20.0¢ is found to be the dominant and "in-line" initial base price for the period 1957–1962, even though it relates substantially to transactions which involve one purchaser in one field and occurs as early as 1954.

Applicants' would add to an "in-line" base price the amount of the 6% severance tax in effect throughout the basic period (1957–1962).[83]

To make no provision for taxes would fail to allow for the fact that the absence of a provision for initial tax reimbursement, characteristic of 20.0¢ contracts, derives from a practice which originates in the transactions of a single purchaser (United), in a single field (Maxie-Pistol Ridge), at an earlier period (1954), and would accord no weight to the added fact that during 1957–1962 a significant number of contracts so provided,[84] in relation to a substantial volume.[85]

However, it appears from the evidence that in some instances, at least, the effective tax rate is absorbed in part by the seller. Thus, while the effective rate applicable to Cranfield, Dexter, Sharon and Baxterville field contracts runs

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[78] *I.e.*, 32,303,147 Mcf.

[79] *I.e.*, 29,796,157 Mcf.

[80] Totally 4,745,132 Mcf, as follows: Rodney field (1958): 176,000 Mcf, 11.0¢ Trebloc field (1957): 28,000 Mcf, 17.0¢; Sharon field (1956): 121,463 Mcf, 18.0¢; Ansley field (1957): 1,719,669 Mcf, 18.5¢; and Muldon field (1955): 2,700,000 Mcf, 19.0¢.

[81] By 1958 purchases in the Maxie-Pistol Ridge field, represented by but five contracts, had already declined in terms of 1961 deliveries to a total of 2,059,581 Mcf.

[82] These prices, found in contracts dated 1959–1962, with related volumes, are—Baxterville field: 360,000 Mcf (estimated), 11.25¢; Beans Ferry field: 318,553 Mcf, 17.0¢; Little Creek field: 998,724 Mcf, 18.0¢; and Magee field: 430,175, 18.0¢. Additional sales at previously established prices of 18.0¢ and 18.5¢ in the Sharon and Ansley fields, respectively, did not exceed a combined total of 677,000 Mcf. Three 15.0¢ contracts executed in 1962 and 1963 appear to carry options that negative their usefulness for any purpose relevant to these proceedings, and, moreover, do not assist in establishing a decline in area prices (T. 176, 183).

[83] During the interval April 1, 1955, through June 30, 1958, the tax carried an added 0.84¢ which both Applicants and Staff would eliminate.

[84] *I.e.*, 13 contracts (1957–1961), inclusive of the Cranfield and Dexter field contracts, one in the Maxie-Pistol Ridge field, and the short-term Bolton field sale, or 27% of a total of 49 contracts.

[85] The 13 contracts provide 39,246,576 Mcf of 1961 deliveries, or 83% of a total of 47,499,071 Mcf.

approximately 6.4% of the price, that applicable to the Skoam field contract is but some 3.09% thereof. Accordingly, and to account for the fact that historically 20.0¢ contracts generally fail to provide a tax reimbursement, that few contracts provide for the 6% rate, and that the ultimate bargained effective rate varies even where applied, the rate to be applied herein to the "in-line" price should not exceed 3.09%, the minimum obtaining in the premises.[66]

Thus, the "in-line" price for the 1957–1962 period becomes 20.618¢ per Mcf, inclusive of all reimbursements.

Prices set forth in four contracts dated in the period 1954–1958 between United and its affiliate Union Producing Company, and eight dated in the period 1954–1956 involving farm-out acreage, have not been permanently certificated. Of the four sales of the former group the largest in terms of 1961 volumes, dated 1955, carried a total base price of 19.00¢ and the highest price totals 20.00¢. Of the eight sales in the latter group, five contracts carry a total initial rate of 20.0¢, one of 21.00¢, one represents a settlement rate of 20.1260¢, and another the guide-line price of 21.500¢. However, the only conclusion required with respect to these two groups is that, however considered, the prices represented are not of sufficient weight to cause modification of the conclusion herein previously stated as to the "in-line" price.

Guide-Line Price Effects (*General Policy Statement*). There is no indication in the evidence that the Commission's Statement of General Policy, issued September 28, 1960, 24 FPC 818, and amended October 25, 1960, 24 FPC 902, to provide a guide-line rate of 21.5¢ for the Mississippi area, is involved in any of the issues or has operated so as to affect the determination of the "in-line" price in these proceedings. Except for the initial base prices of the permanently certificated Dexter contracts of late 1957 and early 1958 and Cranfield contracts of late 1958 and early 1959 no price permanently certificated before or after the date of issuance of the Statement approaches the guide line price. With respect to the prices proposed by Applicants, the 21.5¢ base initial rate occurs in nine new instances after 1960, but it also appears in four new instances prior thereto, and with respect to each of two amendments offered to earlier contracts. While the 22.87¢ price as proposed in three instances dating prior to 1960, and in none after that date, in each of these the price relates to annual deliveries from the Hub field which are much in excess of those provided by later contracts. Further, in this connection, Applicants have not sought to make a showing with respect to the effect of the guide-line rate.

Refunds

Staff counsel proposes that refunds be ordered to the extent that Applicants have been put on notice of refund obligations by conditions stated in the temporary authorizations issued in these proceedings. The temporary authorizations were issued subject, variously, either to refunding with no floor,[67] or with a floor of 20.0¢,[68] or with a floor of 20.0¢ plus an applicable tax reimbursement,[69] or else

[66] The 13 contracts providing an initial tax reimbursement include the 7 Cranfield and Dexter field contracts and 1 exceptional Maxie-Pistol Ridge contract. Confining consideration to the five remaining contracts it is noted that the average effective rate for a Cranfield area contract (1960: 89,015 Mcf), and the Sharon (1960; 53,947 Mcf), and Skoam (1960; 1,548,019 Mcf) contracts is 3.34%; the average effective rate for these three plus the Baxterville contract (1961; 360,000 Mcf—estimated) is 3.67%; the same average for five contracts including the four foregoing plus the short-term 5-year Bolton field contract (1959; 558,562 Mcf), is 3.19; and that the lowest rate apparent in any single long-term period contract (Skoam) is 3.09%.

[67] Refund with no floor: Skelly, G–14712; Central Oil, G–18477; Tidewater, CI61–1689; Pan Am, CI62–46; Humble, CI62–129 (first letter) and CI62–130; and Sun, CI62–156.

[68] Refund with a floor of 20.0¢: Sun, G–8592; Union, G–15077.

[69] Refund with a floor of 20.0¢ plus applicable tax reimbursement: Humble, G–19200 (as to original application); Calco, G–19345; and, Pan Am, CI60–128.

no refund was set.[20] However, even in the absence of a specific refund provision a general reservation appears to the effect that the authorization issues without prejudice to final action of the Commission in the matter.

The question of whether a refund can be ordered when the temporary is not conditioned was considered in *Public Service Commission* v. *F.P.C.* (CADC) 329 F. 2d 242 (1964), where it was held, in effect, that in the granting of a permanent certificate power resides in the Commission to require a refund of excessive prices charged and received under the temporary, and that the inclusion in the temporary of a general reservation of "without prejudice," as to final disposition of the application, of itself would support conditioning the permanent certificate by a refund requirement. While the Court concludes that the exercise of the power in such circumstances would turn on equitable considerations and remanded the case for analysis and consideration of equitable factors pro and con, it is clear in these proceedings that where the authorization carries the general reservation Applicants have been on notice of the necessity of moving herein for further proceedings for consideration of matters of the nature specified, if such exist and reliance thereupon is intended.

In such circumstances, and the presence of either an adequate refund condition or the general reservation, the refund requirements of the order, hereinafter included as a part of this decision, are considered adequately supported, and the determination herein of an appropriate allowable tax reimbursement is deemed sufficient to meet the provision of the three temporary authorizations which provide a floor of 20.0¢ "plus applicable tax reimbursement."

Take-or-Pay Conditions

Staff Counsel seeks to have certificates issued in these proceedings (except in Docket No. G–18447) conditioned upon the outcome of the Commission's rule-making proceeding in Docket No. R–199, subject to the limitation that producers will not be required to file amended take-or-pay provisions for less than 80% of annual contract quantities. It is the general practice in the Commission's recent decisions to so condition producer certificates and the order hereinafter included as a part of this decision will so provide.

Further Findings and Conclusions

The sale of natural gas as proposed by each of the Applicants, together with the construction and operation of facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity; and the terms and conditions of the order included as part of this decision are required by the public convenience and necessity.

ORDER

Upon consideration of the record herein, the contentions set forth in the briefs and proposed findings of respective counsel, and for the reasons and upon the findings and conclusions set forth in the foregoing portions of this decision, of which this order is a part,

IT IS BY THESE PRESENTS ORDERED, subject to review by the Commission on appeal or on its own motion, as provided by its Rules of Practice and Procedure, that:

[20] No refund set: Sun, G–19015; Humble, G–19200 (as to amendment of application) and CI62–129 (part); Monsanto, CI63–249; Sun, CI63–283; Calco, CI63–563; Texaco, CI63–1409; General American, G–18054; Texas Pacific (Seagrams), G–19512; and other applications, where, however, the proposed initial total price does not exceed 20.0¢ (McRae, G–13803; Ridgway, G–18864; Dees, G–19207; Discovery Oil, CI60–834; Hall, CI61–520 (Staff's Exhibit No. 9 gives a price of 21.0¢ as compared with Applicants' Exhibit No. 7 of 20.0¢), and Pan Am, CI63–1020).

(A) Certificates of public convenience and necessity, and amendments to orders issuing certificates of public convenience and necessity, are hereby issued to the several Applicants named in the caption of this decision for the sale of gas in interstate commerce for resale as proposed in the several applications, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, upon the terms and conditions hereof, *to-wit;*

(B) Each certificate issued, and amendment granted, as provided in paragraph (A) above, is hereby conditioned to prohibit a total initial price, including all reimbursements and charges, greater than 20.618¢ per Mcf at 15.025 psia, from the date of issuance of this order until such prices may be lawfully changed in the manner provided by the Natural Gas Act;

(C) Within 30 days from the date of issuance of this order, each of the Applicants receiving certificates or grants in paragraph (A) hereof, whose proposed total initial price exceeds the 20.618¢ aforesaid, shall file a supplement to its presently filed rate schedule, related to its respective application, reflecting the conditioned price as the total initial price in lieu of the higher initial price provided in the contract or amendment; provided that with respect to the reduction in rates hereby ordered, Applicants need not comply with the notice provisions of Section 154.94(b) and the detailed submittal provisions of Section 154.94(f) of the Regulations under the Natural Gas Act;

(D) Within 60 days from the date of issuance of this order each of the Applicants to whom the provisions of paragraph (C) apply shall refund to the respective pipeline purchaser, with interest, a sum equal to the difference between the price charged to and collected from such purchaser and the total price set forth in paragraph (B), above, applied to all volumes paid for by such purchaser under the respective contract or amendment which comprises a subject matter of this proceeding, from the date of the first delivery of natural gas thereunder until the effective date of this order, the interest charge to be calculated at a rate of 6% per annum for all gas paid for prior to March 1, 1960, and at 7% per annum thereafter, until full refund has been made;

(E) Within 10 days of the date of the refunds provided for in paragraph (D) hereof, each of the Applicants shall file with the Commission its officially certified statement showing the amount of refund, its manner of computation, and the interest payments related thereto, and a statement from the purchaser acknowledging receipt thereof;

(F) The certificates herein issued, and the amendments herein granted, except in Docket G–18477, which is not involved, are upon the express condition that the allowance of the take-or-pay provisions in the Applicant's contract or amendment is subject to the Commission's ultimate disposition with respect to such provisions in the rule-making proceeding in Docket R–199. Upon the establishment, by regulation or policy statement, of a general policy governing such provisions in producer contracts, each Applicant shall, within 30 days, file its amended rate schedule in conformity therewith, acceptable to the Commission, provided that the Applicant shall not be required to file a take-or-pay provision for less than 80% of the annual contract quantity, and, provided further, that any rate schedule changes or modifications to be made in accordance with this paragraph shall be prospective only;

(G) The certificates issued by paragraph (A) hereof are not transferable and shall be effective only so long as each respective Applicant continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission;

(H) The grant of the certificates and amendments herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Regulations thereunder except as specifically provided in paragraph (C) hereof. Such grant is without prejudice to any findings or order which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the Applicants or any one of them. Further, the action in this proceeding shall not foreclose nor prejudice any further proceedings or objections by the Commission relating to the operation of any price or related provision in the gas purchase contracts or amendments here involved; and,

(I) The certificate herein issued to Sun Oil Company in Docket No. G–19015 is conditioned upon its being accepted in writing by the Applicant within 30 days of the issuance of this order.

EWING G. SIMPSON,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION AND SOUTH TEXAS NATURAL GAS GATHERING COMPANY, DOCKET NO. CP64–283

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 26, 1964)

On August 17, 1964, Transcontinental Gas Pipe Line Corporation (Transco) and South Texas Natural Gas Gathering Company (South Texas), hereinafter referred to as Applicants, filed in Docket No. CP64–283, a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of delivery points and the exchange and delivery of a maximum of 50,000 Mcf of natural gas daily on an interruptible basis, all as more fully set forth in the joint application.

South Texas proposes to deliver into Transco's existing 24-inch main line facilities at a proposed delivery point in Falfurrias, Jim Wells County, Texas, and at an existing delivery point in LaSalle County, Texas, up to a maximum of 50,000 Mcf of natural gas per day.

In exchange Transco proposes to deliver equivalent volumes of natural gas to South Texas at a proposed delivery point near the tailgate of the North Markham Plant of Marathon Oil Company in Matagorda County, Texas, which is located approximately 170 miles northeast of the two delivery points to Transco.

Transco and South Texas state that executed copies of the exchange agreement will be filed by each company upon issuance of the requested certificate authorization.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on October 23, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of May 29, 1948, in Docket No. G–704 (7 FPC 24).

(2) Applicant, South Texas Natural Gas Gathering Company, a Delaware corporation [1] having its principal place of business in Corpus Christi, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 1, 1959, in Docket No. G–17050 (22 FPC 979, 993).

(3) The proposed exchange and delivery of natural gas between Transco and South Texas, the construction and operation of facilities, and the transportation of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid proposed exchange and delivery of natural gas, construction and operation of facilities and transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Transco and South Texas are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Transco's and South Texas's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Transco and South Texas, jointly, in this proceeding authorizing the exchange and delivery of natural gas, the construction and operation of facilities, and the transportation of natural gas in interstate commerce, as hereinbefore described, all as more fully described in the application and exhibits filed in this proceeding upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder is hereby conditioned upon Transco's and South Texas's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized by paragraph (A) above shall be completed and placed in actual operation within 6 months from the date of issuance of this order.

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[1] State of incorporation changed from Texas to Delaware under Commission order issued May 1, 1963, in Docket No. G–17050 (29 FPC 873).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65-37

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 27, 1964)

On August 7, 1964, El Paso Natural Gas Company (Applicant) filed in Docket No. CP65-37 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of five measuring and regulating stations and the sale and delivery of additional natural gas by means of said proposed stations to Washington Natural Gas Company (Washington Natural), Northwest Natural Gas Company (Northwest Natural) and Tucson Gas and Electric Company (Tucson Gas) for resale and distribution by said companies, all as more fully set forth in the application.

Washington Natural proposes to distribute natural gas in Yelm and Rainier, Washington; Northwest Natural proposes to distribute natural gas in North Bonneville, Washington, and Brownsville and Halsey, Oregon; and Tucson Gas proposes to distribute natural gas to customers in the immediate vicinity of Tucson, Arizona.

Applicant proposes herein to construct and operate two measuring and regulating stations in the County of Thurston, Washington, and one measuring and regulating station each in Skamania County, Washington, Lynn County, Oregon, and Pima County, Arizona.

The estimated cost of the proposed facilities is $38,500, which cost will be financed out of current working funds.

The third-year annual and peak day natural gas requirements of Washington Natural, Northwest Natural and Tucson Gas are as follows:

Name of resale customer	Annual (Mcf)	Peak day (Mcf)
Washington Natural:		
Yelm	21,302	198
Rainier	5,858	55
Northwest Natural:		
North Bonneville	9,400	105
Brownsville and Halsey, Oregon Tap	194,200	860
Tucson Gas: San Xavier, Pima County, Tap	94,500	920
Total	325,260	2,168

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on October 23, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued January 11, 1944, in Docket No. G-288 (4 FPC 486).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and sales of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sales of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b) (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sales and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman: L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65-68

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 27, 1964)

On September 11, 1964, El Paso Natural Gas Company (Applicant) filed in Docket No. CP65-68 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1965 and the operation of routine field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the facilities covered by this application will not exceed a maximum of $5,000,000, with no single project to exceed a cost of $500,000, which costs are proposed to be financed from current working funds.

Due notice of the subject application was published in the Federal Register on October 3, 1964 (29 F.R. 13619). No petition to intervene, notice of intervention or protest to the granting of the application has been received.

At a hearing held on October 23, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G-288 (4 FPC 486).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $5,000,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct during the calendar year 1965, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1965, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $5,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP65-47

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 27, 1964)

On August 14, 1964, Florida Gas Transmission Company (Applicant) filed in Docket No. CP65-47 an application for a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act authorizing the construction and operation of certain facilities necessary to sell and deliver natural gas on a direct preferred interruptible basis to Edgar Brick Company (Edgar) for use in a new brick plant now under construction near Edgar, Florida, all as more fully set forth in the application.

Applicant proposes to construct and operate a line tap and approximately 100 feet of 4½-inch O.D. lateral pipeline extending in a general northerly direction from a point of connection on its existing 2½-inch Edgar Plastic Kaolin Company-United Clay Mines Company lateral in Putnam County, Florida, to a terminus at a point of connection with facilities for the receipt of gas to be constructed by Edgar, where a meter and regulator station will be constructed and operated by Applicant. By means of these facilities, Applicant proposes to sell and deliver to Edgar up to 2,300 M[1]Btu of natural gas per day and up to 300,000 M[1]Btu of natural gas annually.[1]

The subject natural gas will be used by Edgar as process fuel for the production of various types of brick to be marketed locally. The estimated cost of the proposed facilities is approximately $21,500, which will be financed out of funds on hand.

Due notice of the subject application has been given by publication in the Federal Register on October 1, 1964 (29 F.R. 13549). No petition to intervene, notice of intervention or protest to the granting of the application has been received.

At a hearing held on October 23, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including

[1] One M[1]Btu equals one Mcf of natural gas with a Btu content of 1,000 Btu per cubic foot.

the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Florida Gas Transmission Company (formerly Houston Texas Gas and Oil Corporation), a Delaware corporation having its principal place of business in Winter Park, Florida, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1956, accompanying Opinion No. 301 in Docket Nos. G–9262 and G–9960 (16 FPC 118).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued to Applicant and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of said Regulations.

(6) The certificate issued hereinafter should be granted on the express condition that the interruptible service authorized thereby shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Florida Gas Transmission Company for firm service to its customers.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Florida Gas Transmission Company authorizing the construction and operation of facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of said Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within 6 months from the date on which this order issues.

(D) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Florida Gas Transmission Company for firm service to its customers.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE MONTANA POWER COMPANY, PROJECT NOS. 1869 AND 2252

ORDER PERMITTING WITHDRAWAL OF APPLICATION FOR LICENSE AND VACATING ORDER FIXING HEARING

(Issued October 27, 1964)

The Montana Power Company (Applicant) in March of 1929 acquired hydroelectric generating facilities at the Thompson Falls site on the Clark Fork River in Montana, the first unit of which had been placed in service in July of 1915. By order of March 15, 1949, 8 FPC 751, in Project No. 1869, the Commission authorized the issuance of a license to the Applicant for the development at this site, effective from January 1, 1938, and to terminate December 31, 1975. The license included provisions in Article 11 which obligated the licensee to make economical enlargements of the project in the public interest when directed by the Commission.[1]

On October 27, 1958, the Applicant filed an application, Project No. 2252, for a new 50-year license for the Thompson Falls site, based on a plan for redevelopment consisting of raising the reservoir 2 feet and installing about 35,000 kw of additional capacity. In view of the provisions in Article 11 contemplating such redevelopment under the existing license, the application, seeking a new 50-year license, raised a serious legal question on its face because granting the application would mean that the United States' right to recapture the project would be delayed some 35 years. It was apparent that if the Company had an urgent need for additional power it would have proceeded under its existing license so as to avoid the legal problem raised by its request for a new 50-year license.

The Commission by its order of September 11, 1964, consolidated the proceedings in Project No. 1869 and 2252 and fixed a hearing for December 8, 1964. Subsequently, on September 21, 1964, the Applicant filed a petition to withdraw its application in Project No. 2252, and on the same date also filed a petition for cancellation of the hearing fixed by the Commission's order of September 11, 1964. Applicant in its petition states that:

1. Plans for construction of a steam electric generating plant have progressed to a point where design and engineering plans have been made and contracts have been entered into for the purchase of equipment;

2. Since the filing of the application The Montana Power Company has contracted for a substantial quantity of power from the Hanford Atomic Reactor plant of the Washington Public Power Supply System;

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[1] Article 11 of the license in Project No. 1869 provides:

Article 11. In order that the Thompson Falls Project may conform to a comprehensive plan for improving and developing the Clark Fork of the Columbia River, for the use or benefit of interstate commerce, for the improvement and utilization of water-power development and for other beneficial public uses including recreational purposes, the licensee as directed by the Commission, after notice and opportunity for hearing, shall enlarge the Thompson Falls Project to the extent that it is economically sound and in the public interest to do so in accordance with plans which the Commission shall find best adapted to such comprehensive plan; or in lieu thereof, the licensee shall surrender the license for Project No. 1869 and remove its structures from the river.

3. In addition to the Hanford power, substantial quantities of additional power will become available through Bonneville Power Administration by virtue of the recently implemented treaty with Canada relating to the storage of water in Canada and the coordinated operation of generating facilities on the Columbia River; and

4. There appears to be a probability that construction of the High Mountain Sheep Project will commence within the foreseeable future which will be a further source of power available to Applicant.

Montana attributes its withdrawal to the delay in processing its application in Project No. 2252 and claims that in the intervening time these above-mentioned alternative sources of power have been obtained and it now has a surplus of power available. Montana, however, fails to point out that it also had a power surplus in 1958 when the instant application was filed which continued during the intervening years. In 1956 during the hearing on the Low Mountain Sheep-Pleasant Valley development (Project No. 2173) of which The Montana Power Company was one of the four companies sponsoring the Applicant for license, the President of the Company testified that the Company would not be in a position to use its full share of the output of that development initially and that its share would probably be divided between two of the other sponsoring companies. At that time the contemplated construction schedule for the Mountain Sheep-Pleasant Valley Project No. 2173 was 42 months, with anticipated completion around August of 1959, if a license were issued.

In May of 1958, the Montana Power Company added the newly constructed Cochrane development with its rated generator capacity of 24,000 kw to its system. The license for the Cochrane development was issued by order of April 23, 1956 in Project No. 2188 (15 FPC 1330). It was thus apparent that at the time the application in Project No. 2252 for redevelopment of the Thompson Falls site was filed, the Company was not in need of additional power and that the principal purpose of that application was to obtain a new 50-year license for an existing project already held under license.

In light of these circumstances, the processing of the application for Project No. 2252 was held in abeyance pending disposition of another application raising the same question of the propriety of issuing a new license where in form an old license is surrendered but in substance the existing license would extend beyond 50 years. This was the application of the Pennsylvania Power & Light Company filed July 31, 1959, for Holtwood Project No. 2268, which was under license to that Company as Project No. 1881. It is significant that Applicant at no time pressed for a disposition of its application.

After oral argument in the proceedings on Holtwood Project No. 2268, the Commission on March 13, 1963, denied the application for a new 50-year license by its Opinion No. 380 (29 FPC 468). Rehearing was subsequently denied by the Commission's order of June 25, 1963 (29 FPC 1294). The application in Project No. 2252 was then processed and set for hearing.

It is clear in light of our opinion in the *Holtwood* case that the application for a new 50-year license for the Thompson Falls project should not be granted and in these circumstances we shall permit Applicant to withdraw its application for Project No. 2252. The Commission, however, reserves its right to require Montana Power Company after hearing to redevelop the Thompson Falls site under Article 11 of its license for Project No. 1869.

The Commission finds:

It will not be inconsistent with the public interest to permit withdrawal of the application for license in Project No. 2252, and to vacate the order of September 11, 1964, fixing hearing in Project Nos. 1869 and 2252, as hereinafter provided.

The Commission orders:

(A) The order of September 11, 1964, consolidating proceedings and fixing hearing in Project Nos. 1869 and 2252, is vacated.

(B) The petition filed by The Montana Power Company to withdraw its application in Project No. 2252 for license authorizing redevelopment of the Thompson Falls site on the Clark Fork River, is granted and the proceeding in Project No. 2252 is terminated.

(C) The right to further consider the obligations of The Montana Power Company under Article 11 of its license for Project No. 1869 is hereby reserved.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SHELL OIL COMPANY (OPERATOR), ET AL., DOCKET NO. CI65-87

ORDER GRANTING MOTION FOR RECONSIDERATION AND AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 27, 1964)

On September 29, 1964, Shell Oil Company (Operator), *et al.* (Applicant) filed in Docket No. CI65-87 an "Application for Rehearing and Motion for Reconsideration" of the order of the Commission issued September 16, 1964 [not reported], in said docket. By said order Applicant received a certificate of public convenience and necessity authorizing the sale of natural gas in interstate commerce to Texas Eastern Transmission Corporation (Texas Eastern) for resale from the Sheridan Field, Colorado County, Texas, pursuant to a contract designated as Applicant's FPC Gas Rate Schedule No. 307.

In its certificate application filed in the subject docket on August 3, 1964, Applicant requested a certificate limited to a term of 8 years and stated that "This proposed sale for a term of eight (8) years has been tailored to take into account the needs of the purchaser, the surplus gas in the Sheridan Field, the ultimate construction of a new Sheridan Field processing plant, and the existing gas sales contracts with Texas Eastern and Iroquois." Applicant presented no detailed explanation of these facts to justify the limitation of the term of the certificate.

The order issued September 16, 1964, did not limit the term of Applicant's Certificate and stated, in part, in ordering paragraph (C) the following:

> Nor shall the grant of the certificates aforesaid for service to the particular customers involved imply approval of all of the terms of the respective contracts, particularly as to the cessation of service upon termination of said contracts, as provided by Section 7(b) of the Natural Gas Act.

In its motion for reconsideration Applicant sets forth in detail its reasons for requesting a limitation of the term of the certificate. All of the reserves in the particular area of the Sheridan Field are not dedicated to Texas Eastern. Rather, the contract provides that Applicant shall deliver a daily contract

quantity of 75,000 Mcf, a quantity computed to take into consideration the existing situation in the Sheridan Field. Two previous contracts have been executed for the sale of gas from the same reserves to Texas Eastern [1] providing for a daily contract quantity of 60,800 Mcf and to Iroquois Gas Corporation [2] providing for a daily contract quantity of 50,000 Mcf. Additionally, Applicant provides 50,000 Mcf per day to the Houston, Texas, industrial market. Applicant estimates that it will be able to deliver the daily contract quantity under the subject certificate for only the 8-year period set out in the contract. Deliveries beyond that time will result in a conflict between the subject contract and the prior contracts.

By letter dated October 1, 1964, Texas Eastern supports the motion of Applicant and states that it desires to purchase Applicant's excess gas to augment and conserve its existing gas supplies. However, inasmuch as Texas Eastern requires an assurance that excess gas will be available when needed, and inasmuch as Applicant is not in a position to dedicate specific reserves to the performance of its contract obligations, the contract is limited specifically to a term of 8 years. Texas Eastern states further that the guarantee of availability necessarily carries with it the obligation, without limitation, to drill wells, install compressors, build gathering systems, or do whatever may be necessary to maintain such availability, and that because of the limited reserves in the area it is not within the range of economic feasibility for Applicant to continue this guarantee beyond 8 years.

Texas Eastern states further that inasmuch as the subject sale is not confined to a specific reserve dedication, and inasmuch as Applicant may deliver gas from sources other than the Sheridan Field, Texas Eastern must be assured that it may discontinue purchases at the expiration of the contract term in order that it may plan future gas supplies in a manner which will permit minimum exposure to take-or-pay problems. This situation is stated to be especially acute in view of the relatively large volume of gas involved.

In view of the representations made by Shell and Texas Eastern, we conclude that, by reason of the physical and financial factors shown, this is a proper case warranting the issuance of a certificate for a limited period of time.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the motion for reconsideration filed by Shell Oil Company (Operator), *et al.*, on September 29, 1964, in Docket No. CI65–87 should be granted.

(2) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order issuing a certificate of public convenience and necessity to Shell Oil Company (Operator), *et al.*, on September 16, 1964, in Docket No. CI65–87 should be amended by limiting the certificate to the term of the contract.

The Commission orders:

The order issuing a certificate of public convenience and necessity to Shell Oil Company (Operator), *et al.*, on September 16, 1964, in Docket No. CI65–87 be and the same is hereby amended by limiting the certificate to the term of the contract.

[1] Authorized in Docket No. G–5004.
[2] Authorized in Docket No. G–4325.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRUNKLINE GAS COMPANY, DOCKET NO. CP62-41; TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP62-120

FINDINGS AND ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 27, 1964)

On June 22, 1964, Trunkline Gas Company (Trunkline) filed an application to amend further the Commission's order issued January 25, 1962, 27 FPC 178, in Docket Nos. CP62-41 and CP62-120, as amended, to renew the authorization and to permit the continuation of the sale of natural gas and operation of the facilities therein authorized, until July 1, 1965, all as more fully set forth in the application to amend.

The order of January 25, 1962, authorized Trunkline in Docket No. CP62-41 to construct and operate certain facilities and to sell and deliver, on an interruptible basis, a maximum of 30,000 Mcf of natural gas per day to Texas Eastern Transmission Corporation (Texas Eastern) until July 1, 1962. Said order also authorized Texas Eastern in Docket No. CP62-120 to construct certain facilities and to operate same to receive gas from Trunkline until July 1, 1962. By subsequent order the authorization was extended to July 1, 1964, and the maximum daily volume limitation was increased to 36,750.

The application indicates that both Texas Eastern and Trunkline have derived benefits from the subject sale and both expect to continue to do so. Trunkline states that Texas Eastern continues to need gas when available from Trunkline and that Trunkline has found that the sales to Texas Eastern from time to time have improved Trunkline's gas supply position and have provided flexibility in operations. Texas Eastern is not obligated to buy and Trunkline is not obligated to sell, but there are occasions in the operation of both systems when a purchase and sale meets the system needs of each company. Therefore, Trunkline requests authority to continue said sale and operations until July 1, 1965.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on September 26, 1964 (29 F.R. 13412). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued January 25, 1962, in Docket Nos. CP62-41 and CP62-120, as amended, be further amended as hereinafter ordered.

The Commission orders:

(A) In order to renew the authorization and to permit the continuation of the sales of natural gas and operation of the facilities therein provided; ordering paragraphs (A) and (B) of the Commission's order issued January 25, 1962, in Docket Nos. CP62-41 and CP62-120, as amended, be and the same are hereby further amended to read as follows:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Trunkline Gas Company, to construct and operate the proposed facilities and to sell and deliver a maximum of 36,750 Mcf of natural gas per day at 14.65 psia to Texas Eastern Transmission

Corporation until July 1, 1965, as hereinbefore described all as more fully described in the application, as supplemented, in Docket No. CP62-41, upon the terms and conditions of this order.

(B) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Texas Eastern Transmission Corporation, to construct and operate the proposed facilities in order to receive natural gas from Trunkline until July 1, 1965, as hereinbefore described, all as more fully described in the application, as supplemented, in Docket No. CP62-120, upon the terms and conditions of this order.

(B) In all other respects said order, as amended, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED FUEL GAS COMPANY, DOCKET NO. G-10658

FINDINGS AND ORDER AMENDING ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 27, 1964)

On July 30, 1964, United Fuel Gas Company (Applicant) filed in Docket No. G-10658 an application to amend the Commission's order issued September 18, 1956, 16 FPC 978, in said docket by authorizing Applicant to transport and deliver a maximum of 60,000 Mcf of natural gas per day, on an interruptible basis, to the E. I. du Pont de Nemours & Co. (du Pont) in lieu of the maximum deliveries of 35,000 Mcf per day heretofore authorized in this proceeding, all as more fully set forth in the application to amend.

The order of September 18, 1956, authorized Applicant to construct and operate certain facilities in order to deliver up to 35,000 Mcf per day, on an interruptible basis, to du Pont at its Belle Plant in Kanawha County, West Virginia. Du Pont utilizes natural gas in the manufacture of ammonia, ethylene glycol and other related chemical products. Du Pont has advised Applicant that it plans to improve and expand its facilities and, therefore, it desires to purchase additional quantities of natural gas.

No additional facilities will be necessary to provide the increased service to du Pont.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on September 18, 1964 (29 F.R. 13090). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued September 18, 1956, in Docket No. G-10658 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued September 18, 1956, in Docket No. G-10658 be and the same is hereby amended by authorizing Applicant to transport and deliver a maximum of 60,000 Mcf of natural gas per day, on an interruptible basis, to the E. I. du Pont de Nemours & Co. in lieu of the maximum deliveries

of 35,000 Mcf per day heretofore authorized in this proceeding, all as hereinbefore described and as set forth in the application to amend.

(B) The certificate, as amended hereby, is granted on the express condition that the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, DOCKET NO. CP65-7

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued October 28, 1964)

On July 6, 1964, Central Illinois Public Service Company (Applicant) filed in Docket No. CP65-7 and application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Texas Eastern Transmission Corporation (Texas Eastern) to establish physical connection of its natural gas transmission system with facilities proposed to be constructed by Applicant, and to sell and deliver natural gas to Applicant for resale and distribution in the Village of Goreville, Johnson County, Illinois, and its environs, all as more fully set forth in the application.

Applicant asks that Texas Eastern be directed to construct and operate a line tap and metering and regulating station at or on its transmission line at a point approximately one-half mile north of Goreville.

Applicant proposes to construct, operate and maintain a town border station at or near the corporate limits of Goreville and from such station will construct gas distribution mains for the purpose of operating and maintaining a gas distribution system to serve the Village of Goreville and its environs. The connection between the city gate and Texas Eastern's proposed tap and metering station would consist of a 2-inch gas transmission pipeline approximately one-half mile in length.

The estimated cost of Applicant's proposed construction is $81,602 and will be financed by funds derived from internal sources.

The natural gas requirements for Goreville are estimated as follows:

	1st Year	2d Year	3d Year
Annual (Mcf)	9,431	14,063	18,588
Peak day (Mcf)	97	148	190

Applicant was granted a certificate of public convenience and necessity on June 2, 1964, by the Illinois Commerce Commission authorizing the proposed project. Applicant has also been granted a franchise by the Village of Goreville.

On August 6, 1964, Texas Eastern answered the application, stating that it will abide by whatever decision the Commission may make on the merits of the application.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on October 1, 1964 (29

F.R. 13549). No protest, petition to intervene, or notice of intervention in opposition to the granting of the application has been filed.

The Commission finds:

(1) Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1949, in Docket No. G–1089 (8 FPC 228).

(2) Applicant, Central Illinois Public Service Company, is a public utility duly organized and existing under the laws of the State of Illinois, having its principal place of business in Quincy, Illinois, and is authorized by the Illinois Commerce Commission and by the Village of Goreville, Illinois, to construct, operate and maintain a natural gas distribution pipeline system and to engage in the business of distributing and selling natural gas in said community.

(3) It is necessary and desirable in the public interest that Texas Eastern be directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 190 Mcf of natural gas per day to Applicant, as set forth in the application in this proceeding and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Texas Eastern within 1 year from the date of issuance of this order.

(5) The requirement that Texas Eastern serve Applicant, as proposed, will not place any undue burden upon Texas Eastern nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Texas Eastern Transmission Corporation be and is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant, Central Illinois Public Service Company, and to sell and deliver up to 190 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully set forth in the application in this proceeding.

(B) Applicant shall be prepared to receive natural gas from Texas Eastern within 1 year from the date of issuance of this order.

(C) Texas Eastern shall report to the Commission in writing the date of commencement of service to Applicant within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP65–21

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 28, 1964)

On July 20, 1964, Cities Service Gas Company (Applicant) filed in Docket No. CP65–21 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the installation and operation of meter and regulator facilities and the transportation of natural gas to Rounds & Stewart Natural Gasoline Company, Inc., of Wichita, Kansas, all as more fully set forth in the application.

Applicant proposes to serve Rounds & Stewart, a direct industrial customer, natural gas on an interruptible basis up to 1,000 Mcf daily for a 6-month period

for a recycling operation to determine whether the ultimate recovery of hydrocarbons from the Lost Springs Field in Marion County, Kansas, can be increased by recycling operations. Rounds & Stewart will pay an average price of 24.396¢ per Mcf for such natural gas during the 6 months period.

The estimated cost of the installation of the proposed facilities (tap, meter and regulator equipment) is $2,570, which will be defrayed from Applicant's treasury cash.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on October 23, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) The proposed construction and operation of facilities and transportation of natural gas by Applicant as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities and transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Cities Service Gas Company, authorizing the construction and operation of facilities and the transportation of natural gas for 6 months from the date of this order, as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 6 months of the date on which this order issues.

(D) The facilities authorized by the certificate issued hereby shall be utilized to transport to Rounds & Stewart volumes of natural gas not to exceed 1,000 Mcf daily on an interruptible basis for a period of 6 months commencing with the date of issuance hereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP65-34

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT

(Issued October 28, 1964)

On August 6, 1964, Cities Service Gas Company (Applicant) filed in Docket No. CP65-34 an application pursuant to Section 7(b) of the Natural Gas Act for permission to abandon certain segments of transmission pipelines located in Cowley and Crawford Counties in Kansas, Logan County, Oklahoma, and Carroll County, Missouri, all as more fully set forth in the application.

Applicant proposes (1) to abandon and salvage (a) approximately 12,478 feet of 8-inch and 16,069 feet of 6-inch pipeline of its Rainbow Bend line in Cowley County, Kansas, previously used to serve the requirements of Sunray Oil Company for lease operations (but now abandoned by Sunray), (b) approximately 36,600 feet of its West Lawrie 6-inch pipeline connecting its system with various producers in the West Lawrie field in Logan County, Oklahoma, no longer required due to field depletion, (2) to abandon in place (a) approximately 0.26 mile of its Carrollton 4-inch pipeline in Carroll County, Missouri, no longer required for service to Carrollton due to construction of a nearby 8-inch line by The Gas Service Company, (b) approximately 0.5 mile of its Girard 6-inch pipeline in Crawford County, Kansas, no longer required to serve Girard, Kansas, due to the construction of other facilities authorized in Docket No. CP63-66, and (3) to abandon by sale to The Gas Service Company approximately 0.59 mile of its Pittsburg 12-inch pipeline located in Township 30 South in Crawford County, Kansas, now located in a highly developed urban area, for use by Gas Service as a part of its Pittsburg distribution system.

Applicant states that the facilities which will be abandoned in place are not worth reclaiming. The facilities to be sold to The Gas Service Company will be sold for $7,435. The estimated cost connected with the facilities to be reclaimed is $26,000 with a salvage credit of $46,060.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on October 23, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorizations sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G-298 (4 FPC 471).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the

Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application in this proceeding, are hereby granted to Applicant.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within 10 days of such abandonment.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP64-234

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 28, 1964)

Colorado Interstate Gas Company (Applicant), Colorado Springs, Colorado, filed on August 26, 1964, in Docket No. CP64-234, an application to amend an order of the Commission issued August 10, 1964, 32 FPC 567, in Docket No. CP64-234, issuing a certificate of public convenience and necessity authorizing among other things, the installation of 2,640 Hp capacity in its Mocane Compressor Station. The application to amend seeks authorization to install 2,880 Hp capacity in the Mocane Compressor Station rather than the 2,640 Hp capacity authorized by the Commission order issued August 10, 1964, all as more fully set forth in the application to amend.

Applicant is unable to obtain two 1,320 Hp compressor engines, but is able to obtain two 1,440 Hp compressor engines in time to meet construction schedules.

Due notice of the subject application to amend and opportunity for hearing has been given by publication in the Federal Register on September 25, 1964 (29 F.R. 13353). No protest or petition to intervene has been filed concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued August 10, 1964, in Docket No. CP64-234 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued August 10, 1964, in Docket No. CP64-234 be and it is hereby amended by authorizing Colorado Interstate Gas Company to install and operate greater compressor capacity in its Mocane Compressor Station than previously authorized, all as hereinbefore described and as set forth in the subject application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP64-155

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 28, 1964)

On July 30, 1964, Michigan Wisconsin Pipe Line Company (Applicant) filed in Docket No. CP64-155 an application to modify an order of the Commission issued in Docket No. CP64-155 on June 2, 1964, 31 FPC 1333, which authorized, among other things, deliveries of natural gas to American Gas Company (American Gas), Allerton Gas Company (Allerton), Michigan Gas and Electric Company (Michigan Gas) and Wisconsin Fuel and Light Company (Wisconsin Fuel). The application to modify requests revision of Maximum Daily Quantity (MDQ) volumes of natural gas nominated in Exhibit I in Docket No. CP64-155 to the named customer companies, all as more fully set forth in the application to amend.

American Gas, Allerton, Michigan Gas and Wisconsin Fuel have informed the Applicant that they desire to execute service agreements to become effective September 1, 1964, for volumes at variance with their prior nominations which have been included in the Introduction to Exhibit I to the application in this proceeding. The following table sets forth the volumes shown in said Exhibit I and the revised nominations:

Company	Exhibit I nomination (Mcf)	Revised nomination (Mcf)	Increase or decrease (Mcf)
American Gas	2,712	1,200	(1,512)
Allerton	682	625	(57)
Michigan Gas	51,000	50,000	(1,000)
Wisconsin Fuel	33,200	34,300	1,100

Applicant has consented to the changes and the service agreements tendered for filing by Applicant on July 13, 1964, and requests that the said agreements become effective September 1, 1964. The requested effective date should be denied and the service agreements be made effective on the date of the issuance of this order. The service agreement with American Gas also provides for service to be rendered under Applicant's Rate Schedule ACQ-1, as requested by American Gas, in lieu of Rate Schedule SGS-1 under which American Gas previously received service.

Due notice of the filing of the application to amend and opportunity for hearing thereon have been given by publication in the Federal Register on September 26, 1964 (29 F.R. 13412). No protest or petition to intervene has been filed in the proceeding concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require (1) that the Commission's order issued June 2, 1964, in Docket No. CP64-155 be amended as hereinafter ordered, and (2) the executed service agreements filed with the Commission on July 13, 1964, be accepted for filing, effective on the date of this order.

The Commission orders:

(A) The Commission's order, issued June 2, 1964, in Docket No. CP64-155 be and the same is hereby amended by authorizing Michigan Wisconsin to change

maximum daily quantities to conform with volumes designated in revised nominations as set forth hereinabove, all as hereinbefore described and as set forth in the subject application to amend.

(B) The service agreements filed with the Commission on July 13, 1964, be accepted for filing, effective on the date of issuance of this order.

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP64-188

FINDINGS AND ORDER AMENDING ORDER AUTHORIZING ABANDONMENT OF FACILITIES

(Issued October 28, 1964)

On July 14, 1964, as supplemented on August 24, 1964, Northern Natural Gas Company (Applicant) filed in Docket No. CP64-188 an application to amend the Commission's order, issued May 5, 1964, 31 FPC 1100, in said docket by authorizing Applicant to sell in place portions of the two 4-inch branchlines previously used to serve the City of Owatonna, Minnesota, and to construct and operate certain measuring facilities, all as more fully set forth in the application to amend, as supplemented.

The order of May 5, 1964, authorizing Applicant to abandon and remove the two subject branchlines and to construct and operate a new 6-inch branchline to replace the lines to be removed. Subsequent to the authorization of May 5, 1964, Owatonna and certain existing rural customers of Applicant offered to purchase portions of the two branchlines to be removed. Additionally, the rural customers will pay Applicant the cost of the necessary measuring facilities for said existing rural customers, which cost is estimated to be $522. Accordingly, Applicant requests authorization to abandon by sale rather than to abandon and remove portions of the two branchlines and to construct and operate measuring facilities for the existing rural customers.

The sale of portions of the branchlines will relieve Applicant of the cost of removal. Applicant will sell said lines for $1.00 and other good and valuable consideration.

Due notice of the filing of the application to amend and opportunity for hearing thereon have been given by publication in the Federal Register on September 25, 1964 (29 F.R. 13353). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued May 5, 1964, in Docket No. CP64-188 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued May 5, 1964, in Docket No. CP64-188 be and the same is hereby amended by authorizing Applicant to abandon by sale rather than to abandon and remove portions of the subject branchlines and to construct and operate measuring facilities, all as hereinbefore described and as set forth in the application to amend, as supplemented.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP64-5; ALGONQUIN GAS TRANSMISSION COMPANY, DOCKET NO. CP64-6

FINDINGS AND ORDER AMENDING ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 28, 1964)

On July 30, 1964, Texas Eastern Transmission Corporation (Texas Eastern filed in Docket No. CP64-5 and Algonquin Gas Transmission Company (Algonquin) filed in Docket No. CP64-6, applications to amend the Commission's order issued December 19, 1963, 30 FPC 1559, in said dockets by authorizing each Applicant to construct and operate certain additional facilities, and, also, in the case of Texas Eastern to accelerate the construction of third-year facilities heretofore authorized by said order, and to sell and deliver additional volumes of natural gas, all as more fully set forth in the applications to amend.

The order of December 19, 1963, authorized Texas Eastern and Algonquin, among other things, each to construct and operate certain facilities increasing their respective pipeline systems' peak day capacity in order to sell and deliver additional volumes of natural gas. Texas Eastern was authorized to construct facilities over a 4-year period and to commence selling the additional volumes of gas with the 1964-65 heating season. Algonquin was authorized to commence selling certain additional volumes of gas on November 1, 1964, and certain other additional volumes on November 1, 1965.

Texas Eastern proposes herein to sell the following additional daily volumes to three existing customers and to one proposed new customer, York County Gas Company (York Gas):

Customer	Rate schedule	Commencing November 1964 (Mcf)	Commencing November 1965 (Mcf)	Total (Mcf)
Algonquin	GS		3,070	3,070
Lewis Gas Company	GS	322	698	1,020
The Brooklyn Union Gas Company	WS	10,200	15,300	25,500
York Gas	WS	4,590		4,590
Total		15,112	19,068	34,180

Texas Eastern states that the proposed deliveries are needed to meet the increased requirements of the above customers. Subsequent to the issuance of the original authorization in Docket No. CP64-5, said customers found that they needed the additional requested volumes of gas. The sale to Brooklyn Union is for a 2-year period ending November 15, 1966. Texas Eastern also proposes to construct and operate a metering and regulating station in York County, Pennsylvania, at an estimated cost of $54,000, in order to render the proposed service to York Gas. Further, Texas Eastern proposes to accelerate construction of the third-year facilities originally authorized in Docket No. CP64-5 in order to be able to render gas service as currently proposed.

Algonquin proposes herein to sell daily additional volumes of gas to three existing customers and to reduce the sale of gas to a fourth customer, the Norwood Gas Company (Norwood), all as follows:

Customer	Presently authorized (Mcf)	Additional request (reduction) (Mcf)	Total proposed commencing Nov. 1, 1965 (Mcf)
Cambridge Gas Company	18,775	500	19,275
Norwood	2,928	(230)	2,698
Providence Gas Company	31,000	2,000	33,000
Worcester Gas Light Company	17,200	800	18,000
Total		3,070	

Algonquin states that operating experience has demonstrated the need for and such customers have in fact requested the above changes in their maximum daily quantities commencing November 1, 1965.

Algonquin also proposes to construct and operate 23.9 miles of 30-inch pipeline loop between Glastonbury, Connecticut, and a point approximately one mile east of Mansfield, Connecticut, in lieu of constructing the 22.2 miles of 30-inch pipeline loop between Conventry and Pomfret, Connecticut, previously authorized in Docket No. CP64–6. Algonquin states that this change in facilities is required in order to render the proposed additional service.

Due notice of the filing of the applications to amend and opportunity for hearing thereon has been given by publication in the Federal Register on October 3, 1964 (29 F.R. 13619). The Brooklyn Union Gas Company filed a petition to intervene in these proceedings. The burden of said filing is that petitioner does not request formal hearing herein and does not object to the hearing and disposition of the subject applications under the shortened procedure provided for by the Commission's Rules, but that petitioner desires to preserve its rights to appear and participate fully in the event that this matter should be set for formal hearing. Inasmuch as a formal hearing is not being set herein, no further action on said petition appears necessary. No protest or other petition to intervene has been filed in these proceedings.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued December 19, 1963, in Docket Nos. CP64–5 and CP64–6 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued December 19, 1963, in Docket Nos. CP64–5 and CP64–6 be and the same is hereby amended by authorizing Texas Eastern in Docket No. CP64–5 to accelerate the construction of third-year facilities heretofore authorized; to construct and operate facilities for service to York Gas, and to sell and deliver natural gas as herein proposed, and by authorizing Algonquin in Docket No. CP64–6 to construct and operate the hereinabove described facilities in lieu of the facilities heretofore authorized and to sell and deliver natural gas as herein proposed, all as hereinbefore described and as set forth in the applications to amend in Docket Nos. CP64–5 and CP64–6.

(B) The facilities proposed to be constructed by Texas Eastern for the 1965–66 heating season shall not be included as gas plant in service prior to the commencement of such heating season.

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE MONTANA POWER COMPANY, PROJECT NO. 2188

ORDER DETERMINING ACTUAL LEGITIMATE ORIGINAL PROJECT COST, NET CHANGES THEREIN, AND PRESCRIBING ACCOUNTING THEREFOR

(Issued October 29, 1964)

The Montana Power Company, Licensee for Project No. 2188,[1] filed statements from time to time of claimed cost pursuant to Sections 4.1 and 4.20 of the Commission's Regulations under the Federal Power Act, and recorded upon its books of account for the various developments of the project, an aggregate *recorded* project cost of $40,584,237.88 as of December 31, 1959.

For the constructed developments of the Project (Morony, Ryan, Rainbow, Black Eagle, Holter, Madison, Hauser and Hebgen), Licensee claims an aggregate actual legitimate original cost of $29,129,877.51 as of December 1, 1948, the effective date of the license. With respect to Licensee's newly constructed Cochrane development, the claimed cost is $10,621,373.91 as of December 31, 1958. Recorded cost changes for the constructed developments from December 1, 1948 through December 31, 1959. The initial cost for the Cochrane development and changes for the period from December 31, 1958 through December 31, 1959, total a net increase of $11,599,284.49, resulting in Licensee's total recorded project cost of $40,584,237.88 as of December 31, 1959.

The Commission's staff conducted a field examination of the Licensee's books, records and other data for the purpose of ascertaining the correctness of Licensee's claimed costs. As a result of that examination, staff proposed subject to Commission approval, certain adjustments which have been agreed to by the Licensee and are as shown in the attached Schedules. The adjustments effect a total reduction of $836,448.07 in the recorded actual legitimate original project cost as of December 1, 1948, from $28,984,953.39 to $28,148,505.32; a decrease of $342,401.05 in project cost for the period from December 1, 1948, through December 31, 1959, from $11,599,284.49, to $11,256,883.44 (including the initial cost of the Cochrane development); and resulting in a total project cost as of December 31, 1959, of $39,405,388.76.

By letter dated March 6, 1962, Licensee confirmed its agreement with the proposed staff adjustments and resulting project costs as shown in the attached Schedules I, I–A and II.

The Montana Board of Railroad Commissioners was advised by letter of this Commission dated July 27, 1962, as to the proposed staff adjustments and resulting project costs. By letter dated August 13, 1962, the Montana Commissioners indicated no objection thereto.

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[1] The project, known as the Missouri-Madison Project, is located on the Missouri and Madison Rivers in Cascade, Gallatin, Lewis and Clark, and Madison Counties, Montana. The license for the construction, operation, and maintenance of the Cochrane development and the continued operation and maintenance of the constructed Morony, Ryan, Rainbow, Black Eagle, Holter, Hauser, Madison, and Hebgen developments, was issued pursuant to Section 4(e) of the Federal Power Act for a period of 50 years, effective as of December 1, 1948.

Articles 33 and 34 of the license provide for Commission determination of the actual legitimate original cost, accrued depreciation, and resulting net investment of Licensee in the parts of the project completed prior to the effective date of the license; the actual legitimate original cost of parts of the project completed after the effective date of the license and of any additions thereto or betterments thereof, and applicable accrued depreciation.

Licensee, as a part of its initial statement of project cost, claimed accrued depreciation applicable to in-service project properties associated with the constructed developments as the effective date of the Licensee in the aggregate amount of $4,782,210.41. Staff analysis of Licensee's provisions for project depreciation has not been completed, and the Staff recommends that the Commission defer for future consideration and determination all questions associated with Licensee's depreciation practices.

The Commission finds:

(1) Licensee, by its acceptance of the proposed adjustments, including the accounting dispositions and resulting project costs, and the Montana Board of Railroad Commissioners, by its lack of objection thereto, have obviated the necessity for notice and opportunity to protest provided in Sections 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act.

(2) The proposed adjustments, including the accounting dispositions, are reasonable and appropriate for the purposes of the Federal Power Act, and, therefore, should be approved and directed as hereinafter provided.

(3) The actual legitimate original cost of Project No. 2188 as of December 1, 1948, is $28,148,505.32; the net increase or change in the actual legitimate original cost of the project for the period from December 1, 1948, through December 31, 1959, is $11,256,883.44 which includes the initial cost of $10,440,420.74 of the newly constructed Cochrane development; and the resulting actual legitimate original cost of the project as of December 31, 1959, is $39,405,388.76, classified by developments and primary plant accounts, as shown in the attached Schedules I and I–A.

(4) It is necessary and appropriate for the purposes of the Federal Power Act, that the determination of the accrued depreciation of Project No. 2188 be reserved for future Commission consideration.

The Commission orders:

(A) The provisions of Sections 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments, including accounting dispositions, proposed by the staff and agreed to by Licensee, are hereby approved and directed to be made by Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and subsidiary project plant accounts, showing the debit balance of $28,148,505.32 as the actual legitimate original cost of the project as of December 1, 1948, the debit amount of $11,256,883.44, as the net increase or change in the actual legitimate original cost of the project for the period from December 1, 1948, through December 31, 1959, and the debit balance of $39,405,388.76, as the actual legitimate original cost of the project as of December 31, 1959, all as more specifically shown in the attached Schedules I and I–A classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed For Public Utilities and Licensees.

(D) The matter of Commission determination of the project accrued depreciation for Project No. 2188 is hereby expressly reserved for future Commission consideration and decision.

(E) Licensee shall within 90 days from the issuance of this order, file with the Commission FPC Form No. 7 and certified copies of its adjusting journal entries in triplicate and submit two additional copies to the Regional Accountant in San Francisco, California.

SCHEDULE I

PROJECT NO. 2188 (MISSOURI-MADISON) THE MONTANA POWER COMPANY

SUMMARY OF CLAIMED AND RECORDED COST OF THE CONSTRUCTED PLANTS AS OF DEC. 1, 1948, AND RECORDED CHANGES THERETO, INCLUDING THE NEWLY CONSTRUCTED COCHRANE PLANT, FOR THE PERIOD FROM DEC. 1, 1948, THROUGH DEC. 31, 1959, WITH ADJUSTMENTS THERETO AND ALLOWED COST AS OF DEC. 31, 1959

	Particulars	Initial cost as of Dec. 1, 1948					Net changes through Dec. 31, 1959				
		As claimed	Reconciliation of claimed to recorded cost	As recorded	Adjustments	Allowed	As recorded		Adjustments	Allowed	Allowed cost as of Dec. 31, 1959
	(1)	(2)	(3)	(4)	(5)	(6)	(7)		(8)	(9)	(10)
1	*Constructed plants*										
2	Morony	$4,640,733.94	$5,275.16	$4,646,009.04	($399,342.09)	$4,246,666.95	$107,347.89	2		$107,347.89	$4,354,014.84
3	Ryan	5,431,539.62	(6,025.06)	5,425,514.36	(1,341,916.09)	5,290,598.47	85,868.50	3	(33,067.30)	52,801.20	5,343,399.67
4	Rainbow	4,236,059.55	2,477.63	4,238,537.18	(113,863.45)	4,124,733.73	34,713.94	4	(25,265.68)	9,448.26	4,134,181.99
5	Black Eagle	2,034,132.22	651.06	2,034,783.22	(10,161.90)	2,024,621.32	9,138.06)	5		(9,138.06)	2,015,483.26
6	Holter	5,464,527.58	(141,034.32)	5,323,494.76	(35,164.01	5,288,330.75	117,096.99	6	(815.24)	116,281.75	5,404,612.50
7	Hauser	3,934,154.04	(11,340.74)	3,922,313.30	16,009.20)	3,938,322.50	22,538.49	7	(5,789.10)	16,750.39	3,955,072.89
8	Madison	1,969,777.88	5,535.45	1,975,313.33	(121,452.86)	1,853,860.47	662,466.71	8	(96,091.35)	566,375.16	2,420,235.63
9	Hebgen	1,418,953.18	34.82	1,418,988.00	(37,616.87)	1,381,371.13	3,304.69	9		3,304.69	1,384,675.82
10								10			
11	Total constructed plants	29,129,877.51	(144,824.72)	28,984,953.39	(836,448.07)	28,148,505.32	1,024,200.15	11	(161,028.87)	863,171.28	29,011,676.60
12	*Newly constructed plant*							12			
13	Cochrane—Initial cost as of Dec. 31, 1958						[1] 10,621,792.92	13			
14								14	(181,372.18)	10,440,420.74	10,440,420.74
15	Changes to Dec. 31, 1959						(46,708.58)	15		(46,708.58)	(46,708.58)
16	Total						10,575,084.34	16	(181,372.18)	10,393,712.16	10,393,712.16
17								17			
18								18			
19	Total Project No. 2188	29,129,877.51	(144,924.12)	28,984,953.39	(836,448.07)	28,148,505.32	11,389,284.49	19	(342,401.05)	11,256,883.44	39,405,388.76

[1] The newly constructed Cochrane development recorded cost exceeded the claimed cost in the amount of $419.01, as of Dec. 31, 1958.

SCHEDULE I–A

PROJECT NO. 2188 (MISSOURI-MADISON)

THE MONTANA POWER COMPANY

ALLOWED COST, BY DEVELOPMENT, BY DETAILED PLANT ACCOUNTS, AS OF DEC. 31, 1959

	Account		Project No. 2188 balances allowed as of Dec. 31, 1959										
	Number (1)	Description (2)	Total (3)	Morony (4)	Ryan (5)	Rainbow (6)	Black Eagle (7)	Holter (8)	Hauser (9)	Madison (10)	Hebgen (11)	Cochrane (12)	
1		ELECTRIC PLANT IN SERVICE											1
2		*Hydraulic production plant*											2
3	330	Land and land rights	$3,865,796.19	$228,625.95	$1,190,834.72	$790,274.38	$372,795.16	$223,940.10	$240,802.46	$732,582.72	$27,088.91	$58,851.79	3
4	331	Structures and improvements	3,798,692.30	536,297.27	646,640.30	527,391.57	317,950.81	417,382.66	214,458.07	201,160.50	36,669.52	960,741.50	4
5	332	Reservoirs, dams and waterways	20,993,254.37	2,151,370.15	2,084,606.99	1,839,075.31	762,210.51	3,521,553.26	2,981,623.79	1,049,180.68	1,312,928.93	5,292,195.7	5
6	333	Water wheels, turbines and generators	7,269,184.10	845,995.23	875,227.91	544,102.55	342,685.26	759,139.54	283,149.37	148,722.42	----------	3,770,161.83	6
7	334	Accessory electric equipment	1,168,688.11	214,067.86	195,241.63	141,421.08	124,311.54	145,431.46	91,134.84	64,837.24	----------	192,242.40	7
8	335	Miscellaneous power plant equipment	538,728.02	128,023.44	20,627.10	31,877.72	6,867.36	16,800.83	9,544.57	10,978.62	7,821.57	306,187.11	8
9	336	Roads, railroads and bridges	87,536.87	8,373.29	22,936.31	5,569.57	17,237.49	5,740.46	1,989.60	23,603.15	2,087.00	----------	9
10		Total hydraulic production plant	37,721,279.06	4,112,753.13	5,036,114.96	3,879,712.18	1,944,058.13	5,089,988.31	3,822,702.70	2,231,574.33	1,384,595.73	10,220,892.43	10

11		*Transmission plant*				11								
12	350	Land and land rights	2,703.22	948.22	417.50	12				1,096.90				240.60
13	351	Clearing land and rights-of-way	1,242.13	1,202.76	39.37	13								
14	352	Structures and improvements	79.65			14								7,965
15	353	Station equipment	1,361,841.63	143,923.03	265,003.38	15	242,263.49	71,048.84	288,741.04	75,220.90	178,320.08			99,260.97
16	354	Fixtures and fixtures	1,629.37			16								1,629.37
17	355	Poles and fixtures	57,934.28	13,558.22	8,446.17	17	609.81			17,349.78				17,970.30
18	356	Overhead conductors and devices	124,630.74	34,817.66	20,186.62	18	1,003.89			31,574.17				28,048.40
19		Total Transmission plant	1,550,061.02	194,449.59	301,093.04	19	243,877.19	71,048.84	288,741.04	125,241.65	192,320.08			147,229.29
20		*Central plant*				20								
21	389	Land and land rights	175.54			21			175.54					
22	390	Structures and improvement	732.32			22			732.37					
23	392	Transportation equipment	3,725.79			23	1,656.03		400.20		1,669.96			
24	394	Tools, shop and garage equipment	61678.18	6,565.43	112.75	24								
25	397	Communication equipment	122,135.95	40,246.33	6,078.02	25	8,936.59	376.29	24,575.29	70128.54	2,111.23	80.29		25,602.44
26		Total general plant	133,447.78	46,911.76	6,191.67	26	10,592.62	376.29	25,883.45	7,128.54	10,781.22	80.69		25,602.44
27		Total electric plant in service	39,405,388.76	435,402.84	5,343,399.67	27	4,134,181.99	2,015,483.26	5,404,612.50	6,955,072.89	2,420,235.03	1,384,558.82		10,303,912.16

SCHEDULE II

PROJECT NO. 2188 (MISSOURI-MADISON)

THE MONTANA POWER COMPANY

ADJUSTMENTS TO CLAIMED INITIAL COST AS OF DEC. 31, 1958 AND TO THE RECORDED CHANGES THERETO FOR THE PERIOD FROM JAN. 1, 1958, THROUGH DEC. 31, 1959, AND ACCOUNTING DISPOSITION THEREOF

No.	Account Title	Total (1)	To adjust recorded cost to claimed cost as of Dec. 31, 1958 Subtotal (2)	Claimed but not recorded (3)	Recorded but not claimed (4)	Reclassifications claimed but not recorded (5)	Adjustments to claimed initial cost as of Dec. 31, 1958 Subtotal (6)	No. 1 Nonproject items (7)	No. 2 Overstated, understated, and unrecorded retirements (8)
	NEWLY CONSTRUCTED PLANT								
	Cochrane development								
	ELECTRIC PLANT IN SERVICE								
	Hydraulic production plant:								
320	Land and land rights	$5,696.61					$5,696.61	($6,280.20)	
326	Roads, railroads, and bridges	(147,737.48)					(147,737.48)	(147,737.48)	
	Total hydraulic production plant	(142,040.87)					(142,040.87)	(154,017.68)	
340	Transmission plant: Land and land rights	240.60					240.60		
	Indirect construction costs:								
51	Warehouse supplies and expense	(64)					(64)	(64)	
61	Temporary construction facilities	(804.61)					(804.61)	(804.61)	
62	Construction equipment	(120.55)					(120.55)	(120.55)	
64	Labor expense	(1.25)					(1.25)	(1.25)	
65	Superintendence, timekeepers, clerks, etc	(442.35)					(442.35)	(442.35)	
66	Insurance, injuries, and damages	(13.62)					(13.62)	(13.62)	
67	Yard handling, hauling expense, winter protection	(6.02)					(6.02)	(6.02)	
	Total indirect construction costs	(1,389.04)					(1,389.04)	(1,389.04)	
	Overhead construction costs:								
71	Engineering	(7,130.55)					(7,130.55)	(7,130.55)	
72	Legal expense	(132.54)					(132.54)	(132.54)	
75	Taxes during construction	(24,682.86)					(24,682.86)	(1,059.07)	
76	Administrative and general expense	(765.62)					(765.62)	(765.62)	
77	Interest during construction	(6,455.48)					(6,455.48)	(6,455.48)	
81	Earnings and expenses during construction	984.18	($419.01)	($419.01)			1,403.19	984.18	
	Total overhead construction costs	(38,182.87)	(419.01)	(419.01)			(37,763.86)	(14,559.08)	
	Total cochrane development	(181,372.18)	(419.01)	(419.01)			(180,953.17)	(169,965.80)	

No.	Account Title	Adjustments to claimed initial cost as of Dec. 31, 1958					Adjustments to recorded changes Jan. 1, 1959, through Dec. 31, 1959			
		No. 3 Operating expenses and removal costs improperly capitalized (9)	No. 4 Excess interest during construction (10)	No. 5 Other improper charges (11)	No. 6 Transfers (12)	No. 7 Reclassifications (13)	Subtotal (14)	No. 8 Overstated, understated, and unrecorded retirements (15)	No. 9 Excess interest during construction (16)	No. 10 Reclassifications (17)
	NEWLY CONSTRUCTED PLANT									
	Cochrane development									
	ELECTRIC PLANT IN SERVICE									
	Hydraulic production plant:									
320	Land and land rights				$12,217.41	($240.60)				
326	Roads, railroads, and bridges									
	Total hydraulic production plant				12,217.41	(240.60)				
340	Transmission plant: Land and land rights					240.60				
	Indirect construction costs:									
51	Warehouse supplies and expense									
61	Temporary construction facilities									
62	Construction equipment									
64	Labor expense									
65	Superintendence, timekeepers, clerks, etc.									
66	Insurance, injuries, and damages									
67	Yard handling, hauling expense, winter protection									
	Total indirect construction costs									
	Overhead construction costs:									
71	Engineering									
72	Legal expense									
75	Taxes during construction			($23,623.79)						
76	Administrative and general expense									
77	Interest during construction									
81	Earnings and expenses during construction			419.01						
	Total overhead construction costs			(23,204.78)						
	Total cochrane development			(23,204.78)	12,217.41					

( ) Denotes credit.

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PROJECT NO. 2188 (MISSOURI-MADISON)

THE MONTANA POWER COMPANY

ADJUSTMENTS TO CLAIMED INITIAL COST AS OF DEC. 1, 1948, AND TO THE RECORDED CHANGES THERETO FOR THE PERIOD FROM DEC. 1, 1948, THROUGH DEC. 31, 1959, AND ACCOUNTING DISPOSITION THEREOF

No.	Account Title	Total (1)	To adjust recorded cost to claimed cost as of Dec. 1, 1948				Adjustments to claimed initial cost as of Dec. 1, 1948		
			Subtotal (2)	Claimed but not recorded (3)	Recorded but not claimed (4)	Reclassifications claimed but not recorded (5)	Subtotal (6)	No. 1 Nonproject items (7)	No. 2 Overstated, understated, and unrecorded retirements (8)
	CONSTRUCTED PLANTS								
	Morony development								
	ELECTRIC PLANT IN SERVICE								
	Hydraulic production plant:								
320	Land and land rights	($57,018.96)	($6,051.93)		($6,051.93)		($50,967.03)	($12,345.40)	
321	Structures and improvements	(47,726.56)	1,916.58	$1,916.58			(49,643.14)		
322	Reservoirs, dams, and waterways	(170,170.61)					(170,170.61)		
323	Water wheels, turbines, and generators	(64,814.55)	(984.50)		(984.50)		(63,829.88)		
324	Accessory electric equipment	(10,785.72)					(10,785.72)		
325	Miscellaneous power plant equipment	(9,664.82)	(155.25)		(155.25)		(9,499.57)		
326	Roads, railroads, and bridges	(27,416.24)					(27,416.24)		($32,742.39)
	Total hydraulic production plant	(387,587.29)	(5,275.10)	(1,916.58)	(7,191.68)		(382,312.19)	(12,345.40)	(32,742.39)
	Transmission plant:								
340	Land and land rights	712.20					712.20		
341	Clearing land and rights-of-way	(53.83)					(53.83)		
343	Station equipment	(10,451.41)					(10,451.41)		
345	Poles and fixtures	(431.15)					(431.15)		
346	Overhead conductors and devices	(1,530.61)					(1,530.61)		
	Total transmission plant	(11,754.80)					(11,754.80)		
	Total Morony development	(399,342.09)	(5,275.10)	1,916.58	(7,191.68)		(394,066.99)	(12,345.40)	(32,742.39)

	Ryan development								
	ELECTRIC PLANT IN SERVICE								
	Hydraulic production plant:								
320	Land and land rights	(72,517.22)	6,025.06	6,025.06			(78,542.28)	(10,140.50)	
321	Structures and improvements	(7,878.00)					(7,878.00)		
322	Reservoirs, dams, and waterways	(29,355.06)					(29,355.06)		
323	Water wheels, turbines, and generators	(12,089.03)					(12,089.03)		
324	Accessory electric equipment	(2,319.08)	1,593.79			$1,593.79	(2,319.08)		
325	Miscellaneous power plant equipment	(240.60)	(1,593.79)			(1,593.79)	(240.60)		
326	Roads, railroads, and bridges	(6,964.68)					(6,964.68)	(6,665.44)	
	Total hydraulic production plant	(131,363.67)	6,025.06	6,025.06			(137,388.73)	(16,805.94)	
	Transmission plant:								
340	Land and land rights	417.50					417.50)		
343	Station equipment	(36,918.68)					(3,851.38)		
345	Poles and fixtures	(947.10)	(902.30)			(902.30)	(44.80)		
346	Overhead conductors and devices	828.56	902.30			902.30	(73.74)		
	Total transmission plant	(36,619.72)					(3,552.42)		
	Total Ryan development	(167,983.39)	6,025.06	6,025.06			(140,941.15)	(16,805.94)	
	Rainbow development								
	ELECTRIC PLANT IN SERVICE								
	Hydraulic production plant:								
320	Land and land rights	(19,148.58)	3.60	3.60			(19,152.18)	(4,438.10)	
321	Structures and improvements	(7,516.96)	(3.51)	201.70	(208.21)	3.00	(7,513.45)		(1,721.31)
322	Reservoirs, dams, and waterways	(61,772.86)	368.45	816.00	(447.55)		(62,141.31)		(32,250.00)
323	Water wheels, turbines, and generators	(5,212.31)	92.88	191.60	(98.72)		(5,293.35)		
324	Accessory electric equipment	(1,883.83)	(483.55)	30.77	(370.92)	(143.40)	(1,114.96)		(213.49)
325	Miscellaneous power plant equipment	(502.53)	21.95	21.95			(524.48)		(238.94)
326	Roads, railroads, and bridges	(43.10)	37.50	37.50			(80.60)		
	Total hydraulic production plant	(96,080.17)	37.32	1,303.12	(1,125.40)	(140.40)	(95,820.33)	(4,438.10)	(34,423.74)
	Transmission plant:								
343	Station equipment	(42,968.96)	(2,514.95)		(2,655.35)	140.40	(15,505.49)		(13,604.26)
345	Poles and fixtures	(358.41)	(358.41)			(358.41)			
346	Overhead conductors and devices	358.41	358.41			358.41			
	Total transmission plant	(42,988.96)	(2,514.95)		(2,655.35)	140.40	(15,505.49)		(13,604.26)
	Total Rainbow development	(139,069.13)	(2,477.63)	1,303.12	(3,780.75)		(111,325.62)	(4,438.10)	(48,028.00)

See footnote at end of table.

PROJECT NO. 2188 (MISSOURI-MADISON)—continued

THE MONTANA POWER COMPANY—continued

No.	Account Title	Total	To adjust recorded cost to claimed cost as of Dec. 1, 1948				Adjustments to claimed initial cost as of Dec. 1, 1948		
			Subtotal	Claimed but not recorded	Recorded but not claimed	Reclassifications claimed but not recorded	Subtotal	No. 1 Nonproject items	No. 2 Overstated, understated, and unrecorded retirements
		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	Black Eagle development								
	ELECTRIC PLANT IN SERVICE								
	Hydraulic production plant:								
320	Land and land rights	($1,506.39)	($651.00)		($651.00)		($855.39)	($835.20)	
321	Structures and improvements	(11,367.49)					(11,367.49)		
322	Reservoirs, dams, and waterways	(3,430.95)					(3,430.95)		
323	Water wheels, turbines, and generators	(1,822.70)					(1,822.70)		
324	Accessory electric equipment	(970.66)					(970.66)		
325	Miscellaneous power plant equipment	(61.84)					(61.84)		
326	Roads, railroads, and bridges	8,998.13					8,998.13		
	Total hydraulic production plant	(10,161.90)	(651.00)		(651.00)		(9,510.90)	(835.20)	
	Total Black Eagle development	(10,161.90)	(651.00)		(651.00)		(9,510.90)	(835.20)	
	Holter development								
	ELECTRIC PLANT IN SERVICE								
	Hydraulic production plant:								
320	Land and land rights	(16,440.80)					(16,440.80)	(14,066.80)	
321	Structures and improvements	(1,067.89)	13,925.41	$13,925.41			(14,993.30)		
322	Reservoirs, dams, and waterways	(9,200.59)	90,515.19	90,515.19			(99,715.78)		
323	Water wheels, turbines, and generators	(2,331.27)	22,280.66	22,280.66			(24,611.93)		
324	Accessory electric equipment	(1,246.76)	4,177.63	4,177.63			(4,609.15)		
325	Miscellaneous power plant equipment	(36.78)	696.27	696.27			(733.05)		
326	Roads, railroads, and bridges	(6,771.63)	696.27	696.27			(7,467.90)	(2,224.35)	($4,130.95)
	Total Hydraulic Production Plant	(37,095.72)	132,291.43	132,291.43			(168,571.91)	(16,291.15)	(4,130.95)
	Transmission plant:								
343	Station equipment	1,116.47	8,740.89	8,740.89			(7,624.42)		
	Total Holter development	(35,979.25)	141,032.32	141,032.32			(176,196.33)	(16,291.15)	(4,130.95)

	Hauser development							
	ELECTRIC PLANT IN SERVICE							
	Hydraulic production plant:							
320	Land and land rights	3,394.64	15,389.16	16,080.91	(691.75)		(6,205.42)	(4,984.90)	
321	Structures and improvements	114.61	2,810.12			$2,810.12	(2,695.51)		(1,502.00)
322	Reservoirs, dams, and waterways	18,823.58					18,823.58		
324	Accessory electric equipment	(90.63)					(90.63)		
325	Miscellaneous power plant equipment	(12.20)					(12.20)		
326	Roads, railroads, and bridges	(10,124.22)	(5,620.24)		(2,810.12)	(2,810.12)	(4,503.98)	(4,503.98)	
	Total hydraulic production plant	12,105.78	12,579.04	16,080.91	(3,501.87)		5,315.84	(9,488.88)	(1,502.00)
	Transmission plant:								
340	Land and land rights	(107.50)	(107.50)	100.00	(207.50)				
343	Station equipment	(1,778.18)	(1,778.18)		(1,778.18)				
	Total transmission plant	(1,885.68)	(1,885.68)	100.00	(1,985.68)				
	General plant:								
378	Communication equipment		1,147.38	1,147.38			(1,147.38)	(1,147.38)	
	Total Hauser development	10,220.10	11,840.74	17,328.29	(5,487.55)		4,168.46	(10,636.26)	(1,502.00)
	Madison development								
	ELECTRIC PLANT IN SERVICE								
	Hydraulic production plant:								
320	Land and land rights	(1,279.30)					(1,279.30)	(1,279.30)	
321	Structures and improvements	(4,685.29)	6,971.42	6,971.42			(11,656.71)		(11,150.24)
322	Reservoirs, dams, and waterways	(191,992.63)	(37,633.55)	24,602.90	(62,236.45)		(58,267.53)	(8,360.03)	(29,944.77)
323	Water wheels, turbines, and generators	(5,754.64)	4,439.02	4,439.02			(10,193.66)		(9,750.75)
324	Accessory electric equipment	(2,028.56)	1,551.80	1,551.80			(3,580.36		(3,424.80)
325	Miscellaneous power plant equipment	(626.54)	(441.84)		(441.84)		(184.70)		(176.67)
326	Roads, railroads, and bridges	(757.99)	626.60	626.60			(1,384.59)		(1,324.43)
	Total Hydraulic Production Plant	(207,124.95)	(24,486.55)	38,191.74	(62,678.29)		(86,546.85)	(9,639.33)	(55,771.66)
	Transmission plant:								
343	Station equipment	(10,366.96)	19,003.60	19,003.60			(29,370.56)	(17,881.85)	(11,130.57)
	General plant:								
373	Transportation equipment	(52.50)	(52.50)		(52.50)				
	Total Madison development	(217,544.41)	(5,535.45)	57,195.34	(62,730.79)		(115,917.41)	(27,521.18)	(66,902.23)

See footnote at end of table.

PROJECT NO. 2188 (MISSOURI-MADISON)—continued

THE MONTANA POWER COMPANY—continued

No.	Account Title	Total	To adjust recorded cost to claimed cost as of Dec. 1, 1948				Adjustments to claimed initial cost as of Dec. 1, 1948		
			Subtotal	Claimed but not recorded	Recorded but not claimed	Reclassifications claimed but not recorded	Subtotal	No. 1 Nonproject items	No. 2 Overstated, understated, and unrecorded retirements
		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	Hebgen development								
	ELECTRIC PLANT IN SERVICE								
	Hydraulic production plant:								
320	Land and land rights	($2,322.84)					($2,322.84)	($5,436.00)	
321	Structures and improvements	(1,378.92)	($45)		($45)		(1,378.47)	(41.06)	($1,263.36)
322	Reservoirs, dams, and waterways	(33,879.27)	(34.17)		(34.17)		(33,845.10)	(19,773.24)	(3,646.41)
325	Miscellaneous power plant equipment	(35.84)	(20)		(20)		(35.64)	(10.27)	(6.85)
	Total hydraulic production plant	(37,616.87)	(34.82)		(34.82)		(37,582.05)	(25,260.57)	(4,916.62)
	Total Hebgen development	(37,616.87)	(34.82)		(34.82)		(37,582.05)	(25,260.57)	(4,916.62)
	SUMMARY								
	Total adjustments—constructed plants	(997,476.94)	144,924.12	$224,800.71	(79,876.59)		(981,372.19)	(114,133.80)	(158,222.19)
	Total adjustments—Project No. 2188	(1,178,849.12)	144,505.11	224,381.70	(79,876.59)		(1,162,325.36)	(284,099.60)	(158,222.19)
	TOTAL DISPOSITION								
100.1	Electric plant in service—nonproject	203,321.25	(1,147.38)	(1,147.38)			204,468.63	204,468.63	
110	Other physical property	79,144.37	(4,427.05)	(4,427.05)			79,144.37	79,630.97	
250.1	Reserve for depreciation of electric plant in service—project	325,914.73					157,385.16		146,965.18
271	Earned surplus	570,468.77	(138,930.68)	(218,713.34)	79,782.66		721,327.20		11,257.01
	Total disposition—Project No. 2188	1,178,849.12	(144,505.11)	(224,381.70)	79,876.59		1,162,325.36	284,099.60	158,222.19

( ) Denotes credit.

PROJECT NO. 2188 (MISSOURI-MADISON)—continued

THE MONTANA POWER COMPANY—continued

No.	Account Title	Adjustments to claimed initial cost as of Dec. 1, 1948					Adjustments to recorded changes Dec. 1, 1948, through Dec. 31, 1959			
		No. 3 Operating expenses and removal costs improperly capitalized	No. 4 Excess interest during construction	No. 5 Other improper charges	No. 6 Transfers	No. 7 Reclassifications	Subtotal	No. 8 Overstated, understated, and unrecorded retirements	No. 9 Excess interest during construction	No. 10 Reclassifications
		(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)
	CONSTRUCTED PLANTS									
	Morony development									
	ELECTRIC PLANT IN SERVICE									
	Hydraulic production plant:									
320	Land and land rights		($38,343.98)	($42.85)		($234.80)				
321	Structures and improvements		(29,995.22)	(11,788.44)		(7,859.48)				
322	Reservoirs, dams, and waterways		(120,346.14)	(49,824.47)						
323	Water wheels, turbines, and generators		(46,545.88)	(17,284.00)						
324	Accessory electric equipment		(7,866.32)	(2,919.40)						
325	Miscellaneous power plant equipment		(6,790.50)	(2,709.07)						
326	Roads, railroads, and bridges		(1,836.00)	(697.33)		7,859.48				
	Total hydraulic production plant		(251,724.04)	(85,265.56)		(234.80)				
	Transmission plant:									
340	Land and land rights				$477.40	234.80				
341	Clearing land and rights-of-way		(6.20)	(47.63)						
343	Station equipment		(7,638.51)	(2,812.90)						
345	Poles and fixtures		(49.60)	(381.55)						
346	Overhead conductors and devices		(176.00)	(1,354.61)						
	Total transmission plant		(7,870.31)	(4,596.69)	477.40	234.80				
	Total Morony development		(259,594.35)	(89,862.25)	477.40					

See footnote at end of table

PROJECT NO. 2188 (MISSOURI-MADISON)—continued

THE MONTANA POWER COMPANY—continued

No.	Account Title	Adjustments to claimed initial cost as of Dec. 1, 1948					Adjustments to recorded changes Jan. 1, 1959, through Dec. 31, 1959			
		No. 3 Operating expenses and removal costs improperly capitalized (9)	No. 4 Excess interest during construction (10)	No. 5 Other improper charges (11)	No. 6 Transfers (12)	No. 7 Reclassifications (13)	Subtotal (14)	No. 8 Overstated, understated, and unrecorded retirements (15)	No. 9 Excess interest during construction (16)	No. 10 Reclassifications (17)
	Ryan development									
	ELECTRIC PLANT IN SERVICE									
	Hydraulic production plant:									
320	Land and land rights		($69,004.09)	($998.24)	$1,739.75	($139.20)				
321	Structures and improvements		(6,296.82)	(1,579.18)						
322	Reservoirs, dams, and waterways		(22,638.46)	(6,716.60)						
323	Water wheels, turbines, and generators		(10,031.95)	(2,057.08)						
324	Accessory electric equipment		(1,864.34)	(454.74)			($1,593.79)			($1,593.79)
325	Miscellaneous power plant equipment		(190.87)	(49.73)			1,593.79			1,593.79
326	Roads, railroads, and bridges		(168.68)	(130.56)						
	Total hydraulic production plant		(110,197.21)	(119,86.13)	1,739.75	(139.20)				
	Transmission plant.									
340	Land and land rights				278.30	139.20				
343	Station equipment		(3,196.02)	(655.36)			($33,067.30)	($33,067.30)		
345	Poles and fixtures			(44.80)						
346	Overhead conductors and devices			(73.74)						
	Total transmission plant		(3,196.02)	(773.90)	278.30	139.20	($33,067.30)	($33,067.30)		
	Total Ryan development		(113,393.23)	(12,760.03)	2,018.05		($33,067.30)	($33,067.30)		
	Rainbow development									
	ELECTRIC PLANT IN SERVICE									
	Hydraulic production plant:									
320	Land and land rights			(1.22)	(14,712.86)					
321	Structures and improvements		(4,519.29)	(1,272.85)						
322	Reservoirs, dams, and waterways	($9,491.98)	(18,821.84)	(1,577.49)						
323	Water wheels, turbines, and generators		(4,429.22)	(864.13)			($11.84)		($11.84)	

324	Accessory electric equipment		(699.51)	(201.96)			(285.32)		(285.32)	
325	Miscellaneous power plant equipment		(55.37)	(230.17)						
326	Roads, railroads, and bridges			(80.60)						
	Total hydraulic production plant	(9,491.98)	(28,525.23)	(4,228.42)	(14,712.80)		(297.16)		(297.16)	
	Transmission plant:									
343	Station equipment		(1,536.79)	(364.44)			(24,968.52)	(24,420.14)	(548.38)	
345	Poles and fixtures									
346	Overhead conductors and devices									
	Total transmission plant		(1,536.79)	(364.44)			(24,968.52)	(24,420.14)	(548.38)	
	Total rainbow development	(9,491.98)	(30,062.02)	(4,592.86)	(14,712.86)		(25,265.68)	(24,420.14)	(845.54)	
	Black Eagle development									
	ELECTRIC PLANT IN SERVICE									
	Hydraulic production plant:									
320	Land and land rights			(20.19)						
321	Structures and improvements			(2,299.76)		(9,067.73)				
322	Reservoirs, dams, and waterways			(3,430.95)						
323	Water wheels, turbines, and generators			(1,822.70)						
324	Accessory electric equipment			(970.66)						
325	Miscellaneous power plant equipment			(61.84)						
326	Roads, railroads, and bridges			(69.60)		9,067.73				
	Total hydraulic production plant			(8,675.70)						
	Total Black Eagle development			(8,675.70)						
	Holter development									
	ELECTRIC PLANT IN SERVICE									
	Hydraulic production plant:									
320	Land and land rights			(2,374.00)						
321	Structures and improvements		(13,925.41)	(1,067.89)						
322	Reservoirs, dams, and waterways		(90,515.19)	(9,200.59)						
323	Water wheels, turbines, and generators		(22,280.66)	(2,331.27)						
324	Accessory electric equipment		(4,177.63)	(431.52)			(815.24)			
325	Miscellaneous power plant equipment		(696.27)	(36.78)						
326	Roads, railroads, and bridges		(696.27)	(416.33)						
	Total Hydraulic Production Plant		(132,291.43)	(15,858.38)			(815.24)	(815.24)		
	Transmission plant:									
343	Station equipment		(6,962.71)	(661.71)						
	Total Holter development		(139,254.14)	(16,520.09)			(815.24)	(815.24)		

See footnote at end of table.

PROJECT NO. 2188 (MISSOURI-MADISON)—continued

THE MONTANA POWER COMPANY—continued

No.	Account Title	Adjustments to claimed initial cost as of Dec. 1, 1948					Adjustments to recorded changes Jan. 1, 1959, through Dec. 31, 1959			
		No. 3 Operating expenses and removal costs improperly capitalized	No. 4 Excess interest during construction	No. 5 Other improper charges	No. 6 Transfers	No. 7 Reclassifications	Subtotal	No. 8 Overstated, understated, and unrecorded retirements	No. 9 Excess interest during construction	No. 10 Reclassifications
		(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)
	Hauser development									
	ELECTRIC PLANT IN SERVICE									
	Hydraulic production plant:									
320	Land and land rights			($770.52)		($450.00)	($5,789.10)	($5,789.10)		
321	Structures and improvements	($928.00)		(265.51)						
322	Reservoirs, dams, and waterways			18,373.58		450.00				
324	Accessory electric equipment			(90.63)						
325	Miscellaneous power plant equipment			(12.20)						
326	Roads, railroads, and bridges									
	Total hydraulic production plant	(928.00)		17,234.72			(5,789.10)	(5,789.10)		
	Transmission plant:									
340	Land and land rights									
343	Station equipment									
	Total transmission plant									
	General plant:									
378	Communication equipment									
	Total Hauser development	(928.00)		17,234.72			(5,789.10)	(5,789.10)		
	Madison development									
	ELECTRIC PLANT IN SERVICE									
	Hydraulic production plant:									
320	Land and land rights									
321	Structures and improvements	(506.47)								
322	Reservoirs, dams, and waterways	(799.73)		(19,163.00)			(96,091.55)	(94,292.86)	($1,798.69)	

323	Water wheels, turbines, and generators	(442.91)								
324	Accessory electric equipment	(155.56)								
325	Miscellaneous power plant equipment	(8.03)								
326	Roads, railroads, and bridges	(60.16)								
	Total Hydraulic Production Plant	(1,972.86)		(19,163.00)			(96,091.55)	(94,292.86)	(1,798.69)	
	Transmission plant:									
343	Station equipment	(358.14)								
	General plant:									
373	Transportation equipment									
	Total Madison development	(2,331.00)		(19,163.00)			(96,091.55)	(94,292.86)	(1,798.69)	
	Hebgen development									
	ELECTRIC PLANT IN SERVICE									
	Hydraulic production plant:									
320	Land and land rights					3,113.16				
321	Structures and improvements	(26.52)	(35.26)	(12.27)						
322	Reservoirs, dams, and waterways	(2,618.52)	(3,482.00)	(1,211.77)		(3,113.16)				
325	Miscellaneous power plant equipment	(6.63)	(8.82)	(3.07)						
	Total hydraulic production plant	(2,651.67)	(3,526.08)	(1,227.11)						
	Total Hebgen development	(2,651.67)	(3,526.08)	(1,227.11)						
	SUMMARY									
	Total adjustments—constructed plants	(15,402.65)	(545,829.82)	(135,566.32)	($12,217.41)		(161,028.87)	(158,384.64)	(2,644.23)	
	Total adjustments—Project No. 2188	(15,402.65)	(545,829.82)	(158,771.10)			(161,028.87)	(158,384.64)	(2,644.23)	
	TOTAL DISPOSITION									
100.1	Electric plant in service—nonproject									
110	Other physical property		(486.60)				4,427.05	4,427.05		
250.1	Reserve for depreciation of electric plant in service—project	10,419.98					168,529.57	168,529.57		
271	Earned surplus	4,982.67	546,316.42	158,771.10			(11,927.75)	(14,571.98)	2,644.23	
	Total disposition—Project No. 2188	15,402.65	545,829.82	158,771.10			161,028.87	158,384.64	2,644.23	

Denotes credit.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PACIFIC GAS & ELECTRIC COMPANY, PROJECT NOS. 77, 78, 96, 99, 137, 175, 178, 184, 187, 233, 619, 1333, 1354, 1403, 1962, 2019, 2105 AND 2130

ORDER DETERMINING PROJECT ACCRUED DEPRECIATION AND PRESCRIBING ACCOUNTING THEREFOR

(Issued October 29, 1964)

The Commission has here under consideration the matter of the determination of the respective reserves for accrued depreciation applicable to the project properties of 18 licensed projects of the Pacific Gas & Electric Company. Under consideration is the initial accrued depreciation of the constructed portions of Project Nos. 77, 2105, and 2130 as of April 15, 1922, November 1, 1954, and January 1, 1955, respectively, and the accrued depreciation for Project Nos. 77, 2105, and the 15 other licensed projects as of December 31, 1954. The accrued depreciation for Project No. 2130 is determined as of January 1, 1955, the effective date of the license for that project.

The 18 hydroelectric projects[1] have been in operation for varying periods of time, and all were in operation as of December 31, 1954, or January 1, 1955, the terminal dates of the various periods of time of concern herein for all projects.

Previously, the Commission by various orders determined the respective amounts of accrued depreciation applicable to in-service project properties of a number of the projects as of the following dates:

Dates	Reference FPC reports	Project Nos.	Issuance dates of Commission orders	Depreciation reserve, approved amount
Dec. 29, 1921	21 FPC 377	78	Mar. 24, 1959	$55,840.00
Dec. 2, 1922	12th Ann. Rep. of Comm., p. 110	96	Mar. 28, 1932	89,849.69
Feb. 12, 1923	13th Ann. Rep. of Comm., p. 186	99	Apr. 12, 1933	44,220.00
June 26, 1947	19 FPC 448	137	Apr. 2, 1958	408,804.00
Apr. 30, 1925	12th Ann. Rep. of Comm., p. 112	178	Mar. 28, 1932	71,753.37
Feb. 23, 1922	28 FPC 15	184	July 3, 1962	2,917.00
May 1, 1939	9 FPC 534	1333	Feb. 27, 1950	202,842.40
May 1, 1939	9 FPC 542	1354	Feb. 27, 1950	868,113.31
Nov. 6, 1946	16 FPC 846	2019	Aug. 16, 1956	265,580.00

The Commission's staff made a field examination of the books, records and other data of Licensee for the purpose of ascertaining the correctness of the recorded initial accrued depreciation of the constructed portions of Projects Nos. 77, 2105 and 2130 as of April 15, 1922, November 1, 1954, and January 1, 1955, respectively, the changes therein, and in the recorded depreciation for

[1] Licenses for the eighteen projects were issued pursuant to the Federal Water Power Act or Federal Power Act and became effective on the following dates: Project No. 77, April 15, 1922; Project No. 78, December 29, 1921; Project No. 96, December 2, 1922; Project No. 99, February 12, 1923; Project No. 137, November 24, 1925; Project No. 175, July 28, 1922; Project No. 178, April 30, 1925; Project No. 184, February 23, 1922; Project No. 187, April 23, 1923; Project No. 233, October 23, 1923; Project No. 619, April 14, 1926; Project No. 1333, May 1, 1939; Project No. 1354, May 1, 1939; Project No. 1403, August 1, 1941; Project No. 1962, October 1, 1947; Project No. 2019, November 6, 1946; Project No. 2105, November 1, 1954; and Project No. 2130, January 1, 1955.

all the other projects through December 31, 1954 (in the case of Project No. 2130, January 1, 1955). As a result of that examination, the staff proposes no change in the respective amounts recorded by Licensee as accrued depreciation for the various projects involved herein, and recommends that such amounts be allowed. In recommending allowance of the recorded amounts the staff does not necessarily concur in the particular depreciation methods that were utilized by the Licensee for the eighteen projects.

By letter dated October 31, 1963, Licensee concurred in the recommendations of the staff.

By letter of November 14, 1963, the California Public Utilities Commission indicated no objection to Licensee's recorded amounts of accrued depreciation applicable to in-service project properties of the 18 projects considered herein, and the staff's recommendations with respect thereto.

The Commission finds:

(1) The staff's recommendations herein respecting Licensee's recorded amounts of accrued depreciation applicable to in-service project properties of the above-mentioned projects and the California Public Utilities Commission's letter dated November 14, 1963, have obviated the necessity for notice and opportunity to protest provided by Sections 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act.

(2) The amounts of the initial accrued depreciation applicable to in-service project properties of Project Nos. 77, 2105 and 2130, the net changes in accrued depreciation applicable to in-service project properties of the various projects here involved and the total amounts of accrued depreciation applicable to in-service project properties of Project Nos. 77, 78, 96, 99, 137, 175, 178, 184, 187, 233, 619, 1333, 1354, 1403, 1962, 2019, and 2105 as of December 31, 1954, and of Project No. 2130 as of January 1, 1955, are in the respective amounts set forth in columns 4, 5, and 6 of the attached schedule, classified by functional groups as shown in columns 7 through 10.

The Commission orders:

(A) The provisions of Sections 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act are hereby waived for the purpose of this order.

(B) The respective amounts of initial accrued depreciation applicable to in-service project properties of Project Nos. 77, 2105 and 2130, net changes therein with respect to those and other projects, and the respective total depreciation reserves for all projects considered herein, all as set forth in finding (2) above, classified by functional groups as shown in the attached schedule, are hereby approved.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain reserves for accrued depreciation for Project Nos. 77, 78, 99, 137, 175, 178, 184, 187, 233, 619, 1333, 1354, 1403, 1962, 2019, 2105, and 2130, showing balances as of December 31, 1954 (Project No. 2130 as of January 1, 1955) in the respective amounts shown in column 6 of the attached schedule, classified by functional groups as shown in columns 7 through 10.

(D) Licensee shall within 90 days from the issuance of this order file with this Commission three certified copies of its journal entries showing compliance therewith and submit two copies thereof to the Regional Accountant, Federal Power Commission, San Francisco, California.

SCHEDULE

PACIFIC GAS AND ELECTRIC COMPANY
PROJECTS NO. 77, ET AL.

SUMMARY OF ACCUMULATED PROVISION FOR DEPRECIATION OF ELECTRIC PLANT IN SERVICE, PROJECTS NO. 77, ET AL., SHOWING INITIAL ACCRUED DEPRECIATION FOR THE CONSTRUCTED PROJECTS, NET CHANGES FOR ALL PROJECTS THROUGH DEC. 31, 1954, AND BALANCES ALLOWED, AS OF DEC. 31, 1954, CLASSIFIED BY FUNCTIONS [1]

	Project		Initial depreciation		Net changes through Dec. 31, 1954	Balances as of Dec. 31, 1954					
	Number	Plant	Date	Amount		Total		Hydraulic production	Transmission	Distribution	General
	(1)	(2)	(3)	(4)	(5)	(6)		(7)	(8)	(9)	(10)
1	77	Potter Va ley	4/15/22	$124,465.00	$1,169,182.38	$1,293,647.38	1	$1,246,835.23	$36,911.34		$9,900.81
2	[2] 78	American River	12/29/21	55,840.00	300,524.94	356,364.94	2	322,221.47	24,376.24		9,767.23
3	[2] 96	Kerchoff	12/ 2/22	89,849.69	2,525,534.31	2,615,384.00	3	2,093,933.00	515,508.00		5,943.00
4	[2] 99	Canyon Creek	2/12/23	44,220.00	462,898.98	507,118.98	4	92,830.45	346,975.31		67,313.22
5	[2] 137	Salt Springs				639,307.78	5	461,773.84	177,533.94		
		Bear River				77,821.00	6	77,678.00			143.00
6		Tiger Creek				1,289,495.11	7	950,379.22	283,756.52		55,359.37
7		Electra				1,223,286.75	8	1,134,794.75	83,120.00		5,372.00
8		West Point				234,282.46	9	212,839.46	20,431.00		4,012.00
9		Common				650,647.06	10	506,963.06	143,664.00		
10		Total	6/26/47	408,804.00	3,706,036.16	4,114,840.16	11	3,344,448.33	708,505.46		61,886.37
11	175	Balch			1,522,733.09	1,522,733.09	12	1,254,198.69	258,339.00		10,196.00
12	[2] 178	Kern Canyon	4/30/25	71,753.37	714,665.63	786,419.00	13	691,311.00	90,025.00		5,083.00
13	[2] 184	El Dorado	2/23/22	2,917.60	1,500,478.18	1,503,395.18	14	1,163,236.86	218,320.13		121,838.19
14	187	Bullards Bar			211,132.00	211,132.00	15	181,261.00	28,962.00		908.00
15	233	Pit No. 3				2,984,502.00	16	2,341,871.00	616,969.00		25,662.00
16		Pitt No. 4 (Part I)				53,024.00	17	53,024.00			
17		Pitt No. 5				1,927,571.00	18	1,686,544.00	221,668.00		19,359.00
18		Total			4,965,087.00	4,965,097.00	19	4,081,439.00	838,637.00		45,021.00
19	619	Bucks Creek			1,361,474.21	1,361,474.21	20	1,008,186.65	339,704.56		15,583.00
20	[2] 1,333	Upper Tule	5/ 1/39	202,842.40	141,059.60	343,902.06	21	258,224.00	79,146.00		6,532.00
21	[2] 1,354	Wishon				525,874.00	22	446,662.00	77,140.00		2,072.00
22		San Jacquin 1A				47,882.00	23	47,707.00			175.00
23		San Joaquin 2				165,150.00	24	149,001.00	15,880.00		269.00
24		San Joaquin 3				270,566.36	25	210,206.00	58,460.36		1,900.00

25		Crane Valley				424,061.00	26	419,387.00	2,923.00			1,741.00
26		Common				128,839.00	27		120,658.00			18,181.00
27		Total	5/ 1/39	868,113.31	904,259.05	1,572,372.36	28	1,272,963.00	275,071.36			24,338.00
28	1,403	Narrows			343,100.00	343,100.00	29	314,195.00	27,551.00			1,354.00
29	1,962	Rock Creek				1,130,583.00	30	1,006,955.00	106,636.00			16,992.00
30		Cresta				695,568.00	31	619,410.00	64,857.00			11,301.00
31		Total			1,826,151.00	1,826,151.00	32	1,626,365.00	171,493.00			28,293.00
32	[2] 2,019	Murphys				178,737.25	33	168,189.71		$9,208.24		1,340.00
33		Spicer Meadows				20,472.00	34	20,472.00				
34		Total	11/ 6/46	265,580.00	(66,370.05)	199,209.95	35	188,661.71		9,208.24		1,340.00
35	2,105	Lake Almenor				218,470.30	36	218,470.30				
36		Caribon No. 2				4,760,532.00	37	3,949,691.00	804,861.00			5,980.00
37		Total	11/ 1/54	4,924,178.30	54,824.00	4,879,002.30	38	4,168,161.30	804,861.60			5,980.00
38	2,130	Stanislaus				1,479,038.59	39	1,386,521.19	92,517.40			
39		Spring Gap				391,240.17	40	230,455.17	160,785.00			
40		Melones				606,320.00	41	513,079.00	91,776.00			1,465.00
41		Common				266,735.72	42	200,265.85				6,469.87
42		Total	1/ 1/55	2,683,334.48		2,683,334.48	43	2,330,321.21	345,078.40			7,934.27
43		Total projects 77, et al		9,741,897.55	21,442,780.48	31,184,678.03	44	25,636,792.30	5,109,464.80	9,208.24		429,212.69

(#) Denotes reduction.

[1] Accrued depreciation for project No. 2130 as of effective date of license Jan. 1, 1955.

[2] Accrued depreciation previously approved by Commission order for the following projects:

Project number	Date order was issued
78	3/24/59
96	3/28/32
99	4/12/33
137	4/ 2/58
178	3/28/32
184	7/ 3/62
1333	2/27/50
1354	2/27/50
2019	8/16/56

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., PROJECT NO. 2338

ORDER CONDITIONALLY DENYING MOTION FOR HEARING AND DENYING REQUEST FOR POSTPONEMENT OF ORAL ARGUMENT

(Issued October 30, 1964)

This order involves a motion filed on October 19, 1964, by the Town of Yorktown under Section 1.12 of the Commission's Rules of Practice and Procedure. Yorktown, which is an intervener in this proceeding, requests that we amend our October 1, 1964, order to provide for a further hearing before an examiner in regard to the proposed route of the project transmission line and that, in order to permit such hearing, the oral argument now set for November 17, 1964, be postponed to some future date. Answers opposing the motion were filed on October 26, 1964, by staff and applicant.

An initial decision was issued in the case by the examiner on July 31, 1964. Briefs on exceptions to the decision, as provided in Section 1.31 of the Rules, were submitted thereafter by various parties, including a filing by Yorktown on August 21, 1964. In a motion filed August 27, 1964, Yorktown requested that the "hearings be reopened to permit further testimony on behalf of the Town of Yorktown." Our order of October 1, 1964, *supra*, p. 885, reopened the record to permit Yorktown to file, by November 2, 1964, such written testimony as it deems relevant to the issue of the location and characteristics of the project transmission line and affords applicant an opportunity to file rebuttal testimony by November 9, 1964. The order also set the proceeding for oral argument to take place before the Commission on November 17, 1964.

Yorktown's motion is predicated entirely upon the assumption that rebuttal evidence will be submitted by the applicant. Our order of October 1, 1964, permits but does not require the filing of rebuttal evidence. To this date no evidence of the type contemplated under the order has been filed by Yorktown and, of course, none has been filed by the applicant. Thus, in the present posture of the case, Yorktown's request for the opportunities of cross examination and the submission of rebuttal material to applicant's evidence must be held both speculative and premature. At the oral argument on November 17, 1964, Yorktown and the other parties may present such argument as they may care to make as to claimed deficiencies in the record, including those contained in the present motion. In any event it would be wholly premature to now grant further hearing for cross examination on evidence which has not been filed.

The motion for hearing will be denied at this time without prejudice to its renewal when no longer premature. The request for postponement of the oral argument, being dependent upon the granting of the motion for hearing, will be denied.

The Commission orders:

(A) The motion for further hearing is denied, without prejudice.

(B) The request for postponement of the oral argument set for November 17, 1964, is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

DUKE POWER COMPANY, DOCKET NO. E-7122

ORDER ACCEPTING RATE SCHEDULES FOR FILING AND TERMINATING CERTAIN ISSUES OF ORDER TO SHOW CAUSE

(Issued October 30, 1964)

On August 21, 1963, 30 FPC 524, the Commission issued an order in this docket directing Duke Power Company (Duke) to show cause why certain provisions in it wholesale contracts are not unduly restrictive and therefore unlawful. Following discussion with the Commission's staff and other interested persons, Duke filed supplements to a number of its rate schedules and on August 12, 1964, 32 FPC 594, the Commission issued an order accepting those supplements for filing and terminating certain issues of the order to show cause. The remaining issues relate to territorial restrictions in Duke's contracts with rural electric cooperative customers and a resale limitation of 5 horsepower in its contract with the City of High Point, North Carolina.

On October 2, 1964, Duke, of Charlotte, North Carolina, pursuant to Section 205 of the Federal Power Act, completed the filing of 16 rate schedules for service to 16 rural electric cooperative customers in North Carolina and South Carolina. The contracts eliminate the territorial restriction referred to in the Commission's Order to Show Cause [1] from Duke's Standard Schedule No. 11–A, Rural Resale Service, and Standard Schedule No. 11, Rural Resale Service. The customers and the designations of the proposed rate schedules are listed in Appendix A attached hereto.

The Commission finds:

(1) It is necessary and appropriate for purposes of the Federal Power Act that the rate schedules listed in Appendix A attached hereto be accepted for filing effective November 2, 1964.

(2) It is necessary and appropriate for purposes of the Federal Power Act that the issues raised in the Commission's Order to Show Cause issued August 21, 1963, in this docket, with respect to restrictions in Duke's Standard Schedule No. 11–A, Rural Resale Service, and its Standard Schedule No. 11, Rural Resale Service, for customers listed in Appendix B to that Order, be severed from this docket and terminated.

The Commission orders:

(A) The proffered rate schedules referred to in finding (1) above are accepted for filing effective November 2, 1964.

(B) The issues raised in the Commission's Order to Show Cause issued August 21, 1963, in this docket, with respect to restrictions in Duke's Standard Schedule No. 11–A, Rural Resale Service, and its Standard Schedule No. 11, Rural Resale Service, for customers listed in Appendix B to that order, are hereby severed from this docket and terminated.

(C) Nothing contained in this order shall be construed as constituting approval by this Commission of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such service or rate provided for in the rate schedules as above designated, nor shall this order be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate.

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[1] The customers whose contracts contained the paragraph referred to in the Commission's order of August 21, 1963, are listed in Appendix B to that order.

(D) This order is without prejudice to any findings or orders which have been or may hereafter be made by this Commission in any proceeding now pending, or hereafter instituted, by or against the afore-mentioned company.

APPENDIX A

DUKE POWER COMPANY

RATE SCHEDULE DESIGNATIONS

Rate schedule designation	Customer	Supersedes rate schedule FPC No.'s
Rate Schedule FPC No. 131	Blue Ridge EMC	Nos. 58, 59, 60, 61.
Rate Schedule FPC No. 132	Burke-McDowell EMC	Nos. 62, 63.
Rate Schedule FPC No. 133	Cornelius EMC	Nos. 64, 65, 66.
Rate Schedule FPC No. 134	Davidson EMC	Nos. 67, 68, 69, 70 71.
Rate Schedule FPC No. 135	Davie EMC	Nos. 72, 73, 74, 75, 76.
Rate Schedule FPC No. 136	Haywood EMC	No. 77
Rate Schedule FPC No. 137	Pee Dee EMC	No. 78
Rate Schedule FPC No. 138	Piedmont EMC	Nos. 79, 80 81
Rate Schedule FPC No. 139	Rutherford EMC	Nos. 82, 83, 84, 85, 86, 87.
Rate Schedule FPC No. 140	Surry-Ya kin EMC	Nos. 88, 89, 90, 91.
Rate Schedule FPC No. 141	Union EMC	Nos. 92, 93, 94.
Rate Schedule FPC No. 142	Blue Ridge EC	Nos. 95, 96, 97, 98, 99, 100, 101, 102, 103.
Rate Schedule FPC No. 143	Broad River EC	Nos. 104, 105, 106, 107, 108, 109.
Rate Schedule FPC No. 144	Laurens EC	Nos. 110, 111, 112, 113, 114, 115.
Rate Schedule FPC No. 145	Little River EC	Nos. 116, 117, 118.
Rate Schedule FPC No. 146	York EC	Nos. 119, 120, 121, 122, 123.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

INVESTMENT TAX CREDIT UNDER 1962 AND 1964 AMENDMENTS TO INTERNAL REVENUE CODE; ACCOUNTING TREATMENT BY NATURAL GAS COMPANIES, DOCKET NO. R-232; INTERIM ACCOUNTING TREATMENT OF INVESTMENT TAX CREDIT UNDER 1962 AMENDMENTS TO INTERNAL REVENUE CODE BY PUBLIC UTILITIES, LICENSEES, AND NATURAL GAS PIPELINE COMPANIES, DOCKET NO. R-231

ORDER NO. 289

AMENDING THE UNIFORM SYSTEM OF ACCOUNTS AND ANNUAL REPORT F.P.C. FORM NO. 2 PRESCRIBED FOR NATURAL GAS PIPELINE COMPANIES

(Issued November 2, 1964)*

The Commission, in this order, is concluding the portion of this proceeding wherein, by notice issued January 15, 1963 (28 F.R. 528), it proposed the prescription of accounting requirements with respect to natural gas pipeline companies to reflect the tax credit for investment in certain depreciable property (investment tax credit) provided under section 2 of the Internal Revenue Act of 1962 (26 U.S.C. 38).[1]

Following the receipt of numerous responses to the invitation in the notice for the submission of comments on the proposals, oral argument was had before the Commission on October 7, 1963. However, due to the pendency in the Congress of legislation dealing with the investment credit, further consideration was postponed until after the enactment of the Revenue Act of 1964 (P.L. 88-272, Feb. 26, 1964).

Thereafter, on May 1, 1964, the Commission announced the accounting treatment it proposed to provide—that the accounting to be prescribed should afford the various choices afforded by the Congress in that Act to the companies affected. Then, as also announced, the Commission issued, on July 22, 1964, a notice of proposed rulemaking (29 F.R. 10473, July 28, 1964) with respect to natural gas pipeline companies. It is the subject matter of that notice which is now before us for action.[2]

The July 22 notice invited the submission of comments from interested parties by September 15, 1964. The time was extended to October 1 (29 F.R. 11756). Comments were received from 19 sources including pipeline companies, distributors, State regulatory agencies, firms of accountants, the NARUC Committee

*Published in the Federal Register on November 20, 1964 (29 F.R. 15020). Amended by order issued January 7, 1965, 33 FPC 27.

[1] On Jan. 9, 1963, the Commission had prescribed an interim accounting treatment (Order No. 261 in Docket No. R-231, 29 FPC 62, 28 F.R. 402) to be followed by the companies in closing their books for the year 1962 and in accounting for income taxes. Order No. 261 was continued in effect by a subsequent Interim Order, still effective as of the date hereof, issued in the instant proceeding January 23, 1964 (31 FPC 175, 29 F.R. 1567).

[2] It should be noted that the other notice of proposed rulemaking, issued on September 1, 1964, in this proceeding (29 F.R. 12735, September 9, 1964), relates to similar proposals affecting public utilities and licensees under the Federal Power Act. We will consider those proposals at a later date.

on Accounts and one federal agency. The majority of the responses approve the basic accounting proposed in the notice. Some requested clarification in texts, eight recommended deletion of the amendment (attachment C) which proposes an amendment with respect to annual reports to stockholders, four requested that we provide accounting for balances accumulated in 1962 and 1963 under the interim order of the Commission, five recommended removal of the provision that approval by the Commission is needed for accounting changes when a company changes its election to pass or not to pass on the benefits of the tax credit to consumers, two included recommendations for changes in the reporting schedules, and one, a natural gas company, objected to the rulemaking as being improper and requested a hearing to discuss the propriety of any action by the Commission in this matter.

All comments, recommendations and objections have been carefully considered. Many of the clarifying suggestions have been adopted and we will provide, as requested by four respondents, for the disposition of the investment tax credits which have been accumulated in Account 253 pursuant to the Commission's Interim Order of January 9, 1963, in Docket No. R-231.

We agree with the respondents making the point that when a company changes its method of accounting, as previously required in Account 255, Accumulated deferred investment tax credits, from a deferral to a flow-through basis, provided that such change is in accordance with the instructions in the texts of the accounts, that they need not report such change to the Commission for its approval. We are also revising paragraph A of Account 411.1, Investment tax credit adjustments, to require that account to be debited to the same extent that investment tax credits are used in calculating the current year's income taxes charged to Account 409, Income Taxes, but if any or all of such credits are to be passed on to customers currently, either at the election of the company or pursuant to State commission direction, then the amounts so passed on to customers should be treated solely as a reduction in income taxes for the year and no entries made in Account 411.1. This, we believe, clarifies the language proposed in the notice and more closely corresponds to the actual treatment of the investment tax credit to which the companies are subject.

Paragraphs 2 and 3 of the July 22 notice herein fully explain the provisions of the Revenue Acts of 1962 and 1964 upon which this proceeding is based and the conclusions the Commission reached with respect to the proper and adequate accounting treatment for investment tax credits. The statements there made are still pertinent and we here include their essence.

Under the Revenue Act of 1962, natural gas companies generally were allowed a credit on federal income tax of seven percent (7%) of investment in qualified properties. However, section 203(e) of the Revenue Act of 1964 has eliminated any authority on the part of the Commission to use the investment tax credit without the consent of the taxpayer to reduce the federal income taxes of a natural gas company in establishing its cost of service. Thus, insofar as federal regulation is concerned, gas pipeline companies are free to retain the tax savings derived from the investment tax credit and use them in any proper manner decided upon by company management, including reinvestment, payment in dividends to stockholders, or voluntary reduction of rates. Section 203(e) specifically recognizes that such natural gas companies might voluntarily pass along the tax credit to their customers in the form of lower rates.

In interpreting section 203(e) the Commission has concluded that the accounting should accommodate the choices afforded the gas pipeline companies by the Congress, and that it should give such companies the option in accounting for the investment tax credit to elect between (1) prorating the benefits of the investment

tax credit over a period of years by means of deferred account, or (2) reflecting the benefits of the investment tax credit in the income statement of the years in which the credits are earned.

Upon consideration of the entire record in this proceeding, *the Commission further finds:*

(1) The amendments herein adopted are necessary and appropriate for the purposes of the administration of the Natural Gas Act.

(2) Since the amendments to the Uniform System of Accounts herein adopted will, in effect, supersede the interim accounting prescribed in Order No. 261, in Docket No. R–231, issued January 9, 1963, and the Interim Order in Docket No. R–232, issued January 23, 1964, it is appropriate to rescind those orders insofar as they relate to accounting by natural gas companies.

(3) In view of the rescissions referred to in finding clause (2), above, it is necessary and appropriate for the purposes of the administration of the Natural Gas Act to provide, as hereinafter ordered, for the disposition of amounts of investment tax credits which have been accumulated in Account 253, Other deferred credits, pursuant to the directions contained in Order No. 261.

(4) Since it is desirable that the new schedule being added to F.P.C. Form No. 2 be made available for reporting for the year 1964, good cause exists for making the amendments herein effective forthwith.

The Commission, acting pursuant to the authority granted by the Natural Gas Act, as amended, particularly sections 8, 10 and 16 thereof (52 Stat. 825, 826, 830, 15 U.S.C. 717g, 717i, 717o), *orders:*

(A) Part 201, Uniform System of Accounts prescribed for natural gas companies, Subchapter F of Chapter I, Title 18 of the Code of Federal Regulations, is amended by adding at appropriate points therein three new accounts, viz., Account 255, Accumulated deferred investment tax credits, Account 411.1, Investment tax credit adjustments, and Account 420, Investment tax credits, to read, respectively, as set out in Attachment A, hereto. [Attachments A and B, omitted in printing.]

(B) F.P.C. Form No. 2, prescribed for natural gas companies by § 260.1 of Part 260, Subchapter G, Chapter I, Title 18 of the Code of Federal Regulations, is amended, effective for the reporting year 1964, by adding at appropriate points therein, two new schedules, viz.: Investment Tax Credits Generated and Utilized and Accumulated Deferred Investment Credits (Account 255), to read as set forth in Attachment B, hereto.

(C) Paragraph (c) of the aforesaid § 260.1 is amended by inserting between "Accumulated Deferred Income Taxes" and "Income from Utility Plant Leased to Others", the following new schedule titles:

"Investment Tax Credits Generated and Utilized."

"Accumulated Deferred Investment Tax Credits."

(D) The aforesaid Part 260 is amended by adding a new § 260.100 to read as follows:

"§ 260.100 General requirements for annual reports to stockholders and others.

All annual reports to stockholders and others shall include an appropriate summary of the investment tax credits generated and utilized and a statement of the accounting method elected by the company in connection with the utilization of the credits."

[Secs. 8, 10, 16, 52 Stat. 825, 826, 830; 15 U.S.C. 717g, 717i, 717o]

(E) Effective upon the issuance of this order, the provisions of Order No. 261 in Docket No. R–231 and the Interim Order of January 23, 1964 in Docket No.

R-232 are rescinded to the extent that they relate to natural gas companies.

(F) In view of our order herein rescinding Order No. 261, issued January 9, 1963, insofar as it relates to the interim accounting of natural gas companies, such companies shall dispose of the amounts of accumulated investment tax credits in Account 253, Other deferred credits, accumulated in accordance with the interim procedure established by that order during 1962 and 1963, as follows:

1. Companies which will not follow deferral accounting whereby all or a part of the tax credits are not to be passed on to customers in accordance with the provisions of this order and the text of accounts prescribed herein, shall credit all or such part of those balances as applicable to Account 420, Investment Tax Credits, for the reporting period ending December 31, 1964.

2. Companies which will not follow deferral accounting whereby all of a part of the tax credits are to be passed on to customers in accordance with the provisions of this order and the texts of accounts prescribed herein, shall credit all or such part of those balances as applicable to Account 411.1, Investment tax credit adjustments, for the reporting period ending December 31, 1964.

3. Companies which will follow deferral accounting for all or part of the investment tax credits in accordance with the provisions of this order and the texts of accounts prescribed herein, shall transfer the applicable balances from Account 253 to Account 255, Accumulated deferred investment tax credits. Any amounts in such balances shall be recorded in the same manner as if the procedures and instructions in texts of Accounts 255, 411.1 and 420, as promulgated in this order, had been effective in 1962 and 1963. In other words, amounts under deferral accounting procedures pertaining to 1962 and 1963 that would have been amortized in those respective years to Accounts 411.1 and 420 had this order been then in effect, shall be recorded in the same manner as the amounts to be amortized for 1964.

It is recognized that for 1964 the amounts that will be shown as credits to Accounts 411.1 and 420 will be overstated. It is believed that such amounts should not be sufficiently large in most instances to distort the net income of reporting companies. Separation of the amounts in Accounts 411.1 and 420 by years (1962, 1963 and 1964) will be shown in the schedules of F.P.C. Form No. 2 prescribed herein.

(G) The caption of Docket No. R-232 is amended, for the purposes of this order, to read as set forth above.

(H) The amendments herein made to Parts 201 and 260 and to Annual Report F.P.C. Form No. 2 shall be effective upon the issuance of this order.

(I) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Commissioner O'Connor *dissenting* to § 260.100 prescribed by Paragraph (D) of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. RP64-9

ORDER REVERSING ORDER OF PRESIDING EXAMINER DENYING SUBPOENA

(Issued November 3, 1964)

We are here concerned with an appeal filed on August 31, 1964, by the Municipal Interveners[1] from an order of the Presiding Examiner issued August 20,

[1] They consist of The Municipal Group for Opposing Increase in Natural Gas Rates, the City of Springfield, Missouri, and the Board of Public Utilities of the City of Springfield, Missouri.

1964, denying their request filed June 15, 1964, for issuance of a subpoena *duces tecum*. The Municipal Interveners seek from several affiliates of the Cities Service holding company system,[2] information alleged to be relevant to issues said to arise in this case, which is a rate case under Section 4 of the Natural Gas Act (Act) involving Cities Service Gas Company (respondent), the pipeline affiliate of the Cities Service system. Under Section 1.23 of our Rules of Practice and Procedure, the relevance and materiality of the information sought must be shown to obtain a subpoena.

Respondent, by answer filed on September 10, 1964, opposes the Municipal Interveners' appeal on the grounds that the application for a subpoena was untimely filed, that the Municipal Interveners were guilty of laches, and that the information sought is not relevant or material to any issue in this case.

The information sought by the Municipal Interveners is discussed in three categories below.

First. The Municipal Interveners seek the information summarized below[3] concerning the sale on May 8, 1963, of the stock of Cities Service Gas Producing Company,[4] formerly a wholly owned gas-producing subsidiary of respondent, to an unaffiliated company, the Continental Oil Company. Cities Service Gas Producing Company had acquired all the production properties of respondent in 1954, and the effect of the stock transfer, which took place on May 8, 1963, was to turn control of such properties over to an unaffiliated company.

Related to the above request, the Municipal Interveners seek certain information, including balance sheet data, and income, plant, revenue and other data, all as more fully set forth in the application for subpoena.

In support of these requests, the Municipal Interveners contend that the above-described data is relevant and material to the issue of what is the proper purchased gas cost to respondent. They contend that the transfer of the Cities Service Gas Producing Company stock to an unaffiliated company is an attempt to increase the cost of the gas respondent purchases up to the "area rate" applicable to producers, and to obtain benefits for respondent in the form of part of the consideration received for the stock. Also, the Municipal Interveners contend that during most of the test period[5] respondent and Cities Service Gas Producing Company were 100 percent affiliated companies with identical officers and directors, and the gas purchase contracts may not have been at arm's-length. They argue that the above-described materials are essential to determine whether respondent has assumed unnecessary or imprudent gas purchase costs which the Commission may properly disallow under such cases as *Mississippi River Fuel Corp.* v. *F.P.C.*, 252 F. 2d 619 (1957). The Municipal Interveners further contend that the Commission's Opinion No. 414, issued January 9, 1964, in the *Union Producing Company* case, in Docket No. G–13811, *et al.*, 31 FPC 41, justifies treating a producing subsidiary as the producing arm of the pipeline company insofar as purchased gas costs are concerned.

The Examiner denied these requests on the ground that the above data is not relevant to any issue in this rate case. He noted that the rate base and the

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[2] The parent of the system is Cities Service Company; certain of the affiliates are described hereinafter.

[3] They request details of the transactions involved in the sale of the stock of Cities Service Gas Producing Company to third parties in the last three years, including (1) the identity of all participants in negotiations, (2) the terms of sale, (3) all consideration to the seller and date of receipt thereof, and (4) the disposition of such consideration. Respondent in its rebuttal case has presented testimony covering a portion of this information.

[4] By order issued May 18, 1964, in Docket No. G–2737, we recognized the change in name of Cities Service Gas Producing Company to Continental Gas Producing Company, and redesignated filed rate schedules accordingly. In this order we use the former name, Cities Service Gas Producing Company.

[5] The test period is the year ended June 30, 1963; the stock was transferred on May 8, 1963.

cost of service of respondent would not be affected by the above-described stock transfer because the test year in this case, the year ended June 30, 1963, would be adjusted for known changes, including the transfer of the stock and the termination of the relationship between respondent and Cities Service Gas Producing Company on May 8, 1963. Also, he noted that sales of gas by the unaffiliated purchaser of the stock, Continental Oil Company, are themselves subject to regulation under Section 4 of the Act; and that no order can be issued in this case changing Continental Oil Company's rates, or applying sanctions against respondent because of the stock transfer. Accordingly, he held that issues arising from the stock transfer are "dead," and that the materials alleged to pertain thereto are not germane to this proceeding.

We conclude that the Examiner's denial of a subpoena covering the above-described information should be reversed. The information requested is directed toward the issue raised in this proceeding regarding the proper allowance in respondent's cost of service for purchased gas. Continental Gas Producing Company's filed rates are of course not in issue, but the allowance in respondent's cost of service for purchased gas costs is certainly a proper issue which must be resolved in the determination of its just and reasonable rates. The fact that the stock transfer did not need our prior approval before consummation is not controlling. That transfer does not foreclose interveners from attempting to show that respondent is not entitled to an allowance equal to continental's filed rates. Whether the Municipal Interveners' particular position regarding purchased gas cost allowance is supportable can, of course, only be determined on the complete record in this case. We believe the information sought by the Municipal Interveners is relevant to this issue.[6]

The Examiner should also receive such evidence responsive to the above evidence, and permit such cross-examination, as he finds necessary or desirable.

Second. The Municipal Interveners also seek the information described in the subpoena application concerning the operating expenses, plant investment, working capital, and revenues, etc., of two extraction plants of Cities Service Oil Company, which is an oil-producing affiliate of the Cities Service system. These plants, located at Wichita, Kansas, and Blackwell, Oklahoma, on respondent's main lines, extract heavier hydrocarbons from respondent's gas stream for sale in the form of natural gasoline, etc.

The Municipal Interveners contend that the above information is relevant to the issue of how these plants' extraction operations should be treated for the purpose of determining respondent's rates. They contend that on this issue the respondent has adduced evidence to support a cost allocation method like that applied to Panhandle Eastern Pipe Line Company's Tuscola extraction plant in Commission Op. No. 344, 25 FPC 787, 798 (1961), which the Municipal Interveners contend is not a proper method to apply in this case. Also, they do not favor the Staff's treatment of the plant operations, which involves crediting to respondent's cost of service revenues received from Cities Service Oil Company for reduction in the Btu content of respondent's gas. The Municipal Interveners contend that they need the information requested to support the treatment they recommend, which involves crediting respondent's cost of service with revenues

[6] See also our order issued May 18, 1964, in Docket No. G-2737, amending the certificate heretofore granted Cities Service Gas Producing Company to change the name of the certificate holder to Continental Gas Producing Company. That order notes that the application stated that "only a change in name and not a succession in interest has occurred." Also, as that order states, our action was without prejudice to any future decision with respect to the proper rate to be allowed applicant for natural gas produced from the properties involved, or with respect to the proper costs to be included in respondent's cost of service for the purchase of natural gas.

from the sale of liquids from these plants, less an amount allowable for the plants' cost of service and return. The Municipal Interveners contend that their recommended treatment was employed in respondent's most recent fully litigated rate case in 3 FPC 459, 480, and that it also has the approval of more recent Commission and court decisions.[7]

The Examiner denied the above request on the ground that the material sought is no longer relevant to any issue in this proceeding. He held that the Commission by order issued herein on July 10, 1964, 32 FPC 92, noted that it would provide for a separate proceeding to determine the amount to be allowed in respondent's cost of service for gas purchased from Cities Service Oil Company (and another affiliate not here involved).[8] Also, the Examiner said that on July 27, 1964, respondent agreed to the procedure prescribed in the said order, which made the matter of Cities Service Oil Company's cost of service moot in this proceeding.

We conclude that the Examiner's denial of a subpoena for the above-described information should be reversed.

Contrary to the Examiner, the separate proceeding prescribed by our July 10 and September 9, 1964 orders does not involve the issue of how the costs and revenues related to the extraction plants of Cities Service Oil Company should be treated in fixing respondent's rates. That order provides for determining the amounts to be allowed in respondent's cost of service for gas purchased from Cities Service Oil Company, but costs and revenues from the two extraction plants will be given no effect in such a determination. Therefore, the issues related to the proper treatment of the operations of the extraction plants in fixing respondent's rates are proper to consider in the present case. Indeed, as the Municipal Interveners point out, such issues have in fact been raised in this case by respondent and the Commission's Staff, each supporting a different recommended method for treating extraction plant operations.

The respondent contends that the extraction plant costs cannot be relevant in the absence of any showing that such activities are necessary, or at least useful for the conduct of their jurisdiction transportation activities; that respondent's direct testimony denies any such relationship; and that the direct testimony of the staff and the Municipal Interveners does not take issue with this contention, or support a contrary conclusion that the extraction activities have any useful relationship to the pipeline operations. Assuming, without determining, that such a showing is necessary before any extraction revenues can be credited, we note that one of these very plants has previously been held by this Commission to perform useful functions in and of pipeline operations, and that cross-examination of the witnesses who have testified that the situation is now different, has not yet been held. Under these circumstances, we do not believe we can conclude that the information sought would necessarily prove to be irrelevant or immaterial.

Accordingly, to provide a full record with respect to this controversial and difficult issue, and to permit the Municipal Interveners to support the method they recommend for treating the extraction plant operations in fixing respondent's rates, the Municipal Interveners are entitled to the information they request. The Examiner should also receive such evidence responsive to the above evidence, and permit such cross-examination, as he finds necessary or desirable.

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[7] Among the decisions cited are Commission Opinions Nos. 269-B and 344-A, issued August 20, 1964, 32 FPC 634 and 636, respectively; *Cities Service Gas Co.* v. *F.P.C.*, 155 F. 2d 694 (1946); *City of Detroit* v. *F.P.C.*, 230 F. 2d 810 (1955); and *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 305 F. 2d 763 (1962).

[8] See also Commission order issued September 9, 1964, 32 FPC 720, in this proceeding.

Third. The Municipal Interveners also seek the information described in the subpoena application, including "estimates" of operating expenses, plant investment, working capital, revenues, and operating data, etc., of an affiliate, Cities Service Helex, Inc. (Helex), which operates a plant for extracting helium from natural gas furnished by respondent.

The Municipal Interveners contend that this information is relevant because Helex extracts heavier hydrocarbons from the gas stream in addition to helium, and the information would show that revenues from the sale of such hydrocarbons should be credited against respondent's cost of service in the same manner as revenues from the two plants discussed in the preceding section. They say this information is material, in view of the large amount of gas consumed by the Helex operation.

The Municipal Interveners also say that they have not been dilatory in seeking this information, since they requested it at most only a month after learning that evidence based on such material would not otherwise be placed in the record. And they say that respondent's assertion that producing this material would excessively delay this case because three months would be required to analyze it and synthesize it in exhibits, is greatly exaggerated. They say they would require only four weeks to analyze and synthesize *all* the material they seek. As to difficulties alleged by respondents in supplying estimates, the Municipal Interveners state that they are willing merely to use the materials in their present form on the premises where they are located, if that would better suit the convenience of the parties involved.

The Examiner denied this request on the ground that the Commission's Staff has already made a full examination of the costs in issue, and that any small benefits from a further investigation of Helex would be outweighed by the lengthy delay resulting from granting this request. Also, he cited the Commission's order issued November 22, 1963, instituting this proceeding, which stated that the public interest requires expediting this proceeding to whatever extent is reasonably possible. And he pointed out that while under that order, all interveners were to have served their testimony by February 17, 1964, the Municipal Interveners did not ask the respondent for this information until April 1964, and did not file their subpoena until June 15, 1964; and that respondent's rebuttal case was filed August 18, and continuous cross-examination was scheduled to start September 15, 1964.

We conclude that here too, the Examiner's denial of a subpoena should be reversed.

As in the case of the information respecting the two extraction plants discussed above, the information requested concerning the Helex plant's extraction of hydrocarbons is relevant and material to the issue of the proper treatment of such operations in fixing respondent's rates. Considering all the circumstances, we do not think the Municipal Interveners' efforts to obtain this information has been dilatory. Also, we think that the delay that may result is outweighed by the desirability of making as full a record as possible concerning this issue, which is of growing importance in the regulation of natural gas. Here too, the Municipal Interveners are entitled to support their recommended treatment of such operations, and accordingly they are entitled to the information requested. If it is not available in the form sought, they are entitled to access to the sources of the information, upon such terms as the Examiner finds reasonable. The Examiner should also receive such evidence responsive to the above evidence, and permit such cross-examination, as he finds necessary or desirable.

The Commission orders:

(A) The Presiding Examiner's order issued in this proceeding on August 20, 1964, denying the Municipal Intervener's application filed on June 15, 1964, for a subpoena *duces tecum*, is hereby reversed.

(B) The Presiding Examiner is hereby directed to issue the subpoena requested in conformance with the determinations herein and to set the date for compliance therewith.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PENNSYLVANIA POWER & LIGHT COMPANY AND METROPOLITAN EDISON COMPANY, DOCKET NO. E-7173

ORDER AUTHORIZING ACQUISITION AND MERGER OR CONSOLIDATION OF FACILITIES

(Issued November 3, 1964)

Pennsylvania Power & Light Company (Pennsylvania Power), incorporated under the laws of the State of Pennsylvania and doing business in that State, with its principal place of business in Allentown, Pennsylvania, and Metropolitan Edison Company (Metropolitan Edison),[1] incorporated under the laws of the State of Pennsylvania and doing business in that State, with its principal place of business in Muhlenburg Township, Berks County, Pennsylvania, filed a joint application on July 21, 1964, as amended or supplemented on August 27, 1964 and September 2, 4, 21 and 30, 1964, for an order pursuant to Section 203 of the Federal Power Act, authorizing Metropolitan Edison to acquire from Pennsylvania Power, a portion of said Company's facilities, subject to the jurisdiction of this Commission of a value in excess of $50,000 through the purchase thereof by Metropolitan Edison. Pennsylvania Power proposes to dispose of a section of 66 kv double circuit wood pole electric transmission line, approximately 7.6 miles in length together with all land rights appurtenant thereto and useful in connection therewith. The sale is to be consummated in accordance with the letter of agreement, dated July 10, 1964, between Metropolitan Edison and Pennsylvania Power for a purchase price of $90,000. The application indicates that this price was arrived at by arm's-length bargaining.

Pennsylvania Power is engaged principally in the generation, transmission, distribution and sale of electric energy. It serves a 10,000 square mile territory which embraces 29 counties in central eastern Pennsylvania including parts of the counties of Lebanon and Dauphin with a population of 2,265,000. Steam heating service is furnished in the City of Harrisburg.

Metropolitan Edison is also engaged in the generation, transmission, distribution and sale of electric energy. It serves a 3,274 square mile territory, which embraces all or part of fourteen counties in eastern and central Pennsylvania, including parts of the counties of Lebanon and Dauphin with a population of approximately 750,000. Steam heating service is furnished in the Cities of York and Easton, Pennsylvania.

Pennsylvania Power and Metropolitan Edison are part of the Pennsylvania, New Jersey and Maryland Interconnection, an Interconnection of utility systems

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[1] A wholly-owned subsidiary of General Public Utilities Corporation, a registered holding company.

in the States of Pennsylvania, New Jersey and Maryland (PJM) and is connected through PJM to the systems of other companies in the States of Delaware, New York, Virginia, West Virginia and the District of Columbia. Both companies own networks operating at a nominal 66 kv, 110 kv, 132 kv and 220 kv interconnecting their generating stations and load centers and forming ties with other companies in the PJM interconnection. The section of wood pole line to be disposed of is presently part of a pole line consisting of two 66 kv, three phase circuits owned by Pennsylvania Power, one connecting its Pine Grove and Paxton Substations and the other its Pine Grove and Harrisburg Substations. Taps off those circuits supply Metropolitan Edison's Indiantown Gap Substation. Those 66 kv circuits, as a part of Pennsylvania Power's regional supply network, have declined in importance due to the growth of its 220 kv system and the establishment of a major generating source in the Harrisburg region at Brunner Island. The facilities to be acquired by Metropolitan Edison are the portion of that 66 kv double circuit from which taps extend to supply Metropolitan Edison's Indiantown Gap Substation. Pennsylvania Power proposes to retire all portions of those circuits remaining in its ownership except for a seven mile section of the Pine Grove-Harrisburg line near Harrisburg. The section of transmission line to be purchased by Metropolitan Edison will be connected to 69 kv transmission facilities to be constructed in its Lebanon Division from its Middletown Substation by way of its Hershey Substation and from its Frystown Substation thus forming a loop which will enable Metropolitan Edison to supply its Indiantown Gap Substation from its own system as well as providing other advantages.

The Indiantown Gap Substation taps and switches presently owned by Pennsylvania Power will also be transferred to Metropolitan Edison upon the termination of the Indiantown Gap Interconnection, presently provided for in an Interconnection Agreement (Pennsylvania Power Rate Schedule FPC No. 22). That agreement provides for payment under a formula which returns to Pennsylvania Power that portion of its investment which has not theretofore been returned to it by Metropolitan Edison through the payments made for the use of the facilities up to the time of termination.

According to the application, the proposed transaction is mutually advantageous in that Metropolitan Edison will obtain existing facilities at a cost substantially less than constructing comparable facilities new and Pennsylvania Power will recover a portion of its investment in facilities no longer useful for its own purposes.

The consideration of $90,000 will be $10,516.18 in excess of net plant of $79,483.82. On the books of Pennsylvania Power, the difference of $10,516.18 will be a gain on the sale plant and that company proposes to credit this amount to Account 421, Miscellaneous non-operating income. On the books of Metropolitan Edison, the difference of $10,516.18 will be an electric plant acquisition adjustment, which Metropolitan Edison proposes to eliminate by a debit to Account 426, other income deductions. The net plant was obtained from the total original cost of the facilities on the books of Pennsylvania Power of $117,528.62, and the accumulated provision for depreciation attributable thereto of $38,044.80.

Written notice of the application has been given to the Public Utilities Commission of Pennsylvania and to the Governor of that State. Notice was also published in the Federal Register on August 8, 1964 (29 F.R. 11482), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before August 24, 1964 with the Federal Power Commission, Washington, D.C. 20426. No protest or petition or request to be heard in opposition to the granting of the application has been

received. By order entered September 9, 1964, the Public Utilities Commission of Pennsylvania approved the proposed transacton.

The Commission finds:

(1) Pennsylvania Power is a corporation organized and existing under the laws of the State of Pennsylvania. It owns and operates facilities, among others, for the transmission and sale at wholesale for resale of electric energy, which is transmitted between the States of Pennsylvania and New Jersey, and consumed at points outside the State in which it is generated, all of which facilities are in addition to, and do not include, facilities used for the generation of electric energy or facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or facilities used for the transmission of electric energy consumed wholly by the transmitter. Pennsylvania Power is, therefore, a public utility within the meaning of that term as used in Section 203 of the Federal Power Act.

(2) Metropolitan Edison is a corporation organized and existing under the laws of the State of Pennsylvania. It owns and operates facilities, among others, for the transmission and sale at wholesale for resale of electric energy, which is transmitted between the States of Pennsylvania and New Jersey and consumed at points outside the State in which it is generated, all of which facilities are in addition to, and do not include facilities used for the generation of electric energy or facilities used in local distribution or only for the transmission of electric, energy in intrastate commerce, or facilities used for the transmission of electric energy consumed wholly by the transmitter. Metropolitan Edison is, therefore, a public utility within the meaning of that term as used in Section 203 of the Federal Power Act.

(3) By the proposed sale of facilities Pennsylvania Power will dispose of a part of its facilities of a value in excess of $50,000, subject to the jurisdiction of the Commission within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(4) By the proposed acquisition of facilities Metropolitan Edison will merge or consolidate its facilities subject to the jurisdiction of the Commission with certain facilities of Pennsylvania Power, another person within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(5) Neither Pennsylvania Power nor Metropolitan Edison is, with respect to proposed transaction, as described above, subject to any requirement of the Public Utility Holding Company Act of 1935 or a rule, regulation or order thereunder, and neither company is, therefore, exempt from the requirements of Section 203 of the Federal Power Act by reason of Section 318 thereof.

(6) The proposed disposition of a portion of its facilities by Pennsylvania Power and the proposed acquisition and merger or consolidation of those facilities by Metropolitan Edison with its facilities will be consistent with the public interest for the reasons as set forth in the recital above.

The Commission orders:

(A) The proposed disposition of a portion of its facilities subject to the jurisdiction of the Commission of a value in excess of $50,000 by Pennsylvania Power and the proposed acquisition and merger or consolidation of those facilities with its facilities by Metropolitan Edison, as described above, are authorized and approved upon the terms and conditions as set forth in the application, subject to the provisions of this order.

(B) This authorization is subject to the condition that both Pennsylvania Power and Metropolitan Edison file appropriate journal entries based upon the

original cost of the facilities acquired by Metropolitan Edison from Pennsylvania Power within six months from the date of consummation of the transaction authorized herein.

(C) This authorization shall expire unless the transaction herein authorized is consummated within 90 days from the issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any matter whatsoever which may come before this Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

AREA RATE PROCEEDING (HUGOTON-ANADARKO AREA), DOCKET NO. AR64–1, ET AL; AREA RATE PROCEEDING (TEXAS GULF COAST AREA), DOCKET NO. AR64–2, ET AL.

ORDER DECLINING TO ISSUE SMALL PRODUCER REPORT FORM BUT MAKING COPIES AVAILABLE AS TRIAL AID FOR SMALL PRODUCER GROUPS

(Issued November 4, 1964)*

The Commission staff has submitted for our consideration a draft report form (Form 20) designed for response by producers who are subject to these new area rate proceedings and whose 1962 company-wide jurisdictional sales were under 10,000,000 Mcf. The report form is an abbreviated version of the all-areas questionnaire issued to major producers on October 30, 1963. The form provides a vehicle for the presentation of small producer data on a basis comparable to the data of major producers, while avoiding the much heavier burdens of the all-areas questionnaire.

Early drafts of the report were distributed by the staff to State agencies, small producer associations, and others and have been the subject of written comments and critical conferences. At the prehearing conference of July 28, 1964, the Chief Examiner set August 17, 1964, as the deadline for further comments. Most of the suggestions for changes in the form of the report have favored greater similarity to related parts of the all-areas questionnaire, and most of these suggestions were adopted. The only suggestion rejected in *toto* was a major producer request that the form be identical with the all-areas questionnaire. Otherwise the form of report is relatively uncontroversial. The participation of small producers, major producers, State agencies, distributors and others in conferences respecting the form was helpful to its improvement.

Texaco, Cities Service Oil, Pan American, Phillips, Shamrock, Gulf, Warren, Humble, Continental, Marathon, Socony Mobil, Skelly, and the Hunt interests request a mandatory report. Oklahoma Independent Producers Association requests a mandatory questionnaire for respondents above 500,000 Mcf in Oklahoma. The California PUC suggests a mandatory report for respondents but in a very scaled down form. However, the Texas Independent Producers and Royalty Owners Association (TIPRO) and independents such as Reuel W. Little and W. J. Copping oppose a mandatory report. TIPRO and the staff suggest a voluntary report.

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*Reconsideration denied by order issued December 29, 1964, 32 FPC 1536. Petition to Review dismissed, *Amax Petroleum Corp.* v *F.P.C.*, 350 F. 2d 92 (CA10-1965).

We issued a report form, the so-called Appendices C, in both the Permian Basin and Southern Louisiana area rate proceedings, 27 FPC 20, 28 FPC 1001; those reports were sent out to all area operators as well as non-operators whose data were not covered by others. Without judging the representativeness or meaningfulness of the small producer responses summarized by the staff in those proceedings, we do know that many producers failed to respond or filed incomplete responses. At the same time, we are aware that data from public and trade sources were put in evidence in those proceedings relating to the special problems of small producers.

Under these circumstances we shall not at this time solicit and compile further small producer data; nor will we impose any obligation to do so upon any party to the proceeding. We do not mean thereby to discourage evidence by or about small producers in the new area rate proceedings or prevent producers or other parties to the hearings from demonstrating any differences between small producers and large or eliciting testimony as to any special small producer problem or circumstance. The report form provides one suitable means for small producer presentations. We therefore offer the printed form for groups of small producers, trade association interveners, or other parties who wish to gather their own data and, if it appears material and representative for substantial numbers of small producers or substantial volumes of gas, to present that data in the new proceedings.

The Commission finds:

(1) The small producer form will assist parties to the area rate proceedings in Docket Nos. AR64–1 and AR64–2 to gather and present small producer data which are uniform in meaning and comparable to the data submitted by large producers in answer to the all-areas questionnaire.

(2) The Commission will not require or request small producers to answer Form 20: a mandatory filing requirement would be infeasible because of the inadequate records of many small producers, and a voluntary filing requirement would be undesirable because of the uncertainty that responses would be representative.

The Commission orders:

(A) The Commission will not require or request the submission of data by small producers on report Form 20 drafted for use in the area rate proceedings in Docket Nos. AR64–1 and AR64–2, *et al.*

(B) Copies of FPC Form 20 (with filing instructions appropriately revised) will be made available in reasonable numbers upon request to the Secretary of the Commission to facilitate the private gathering and presentation of representative and material small producer group data in these proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65–52

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT

(Issued November 4, 1964)

On August 20, 1964, El Paso Natural Gas Company (Applicant) filed in Docket No. CP65–52 an application pursuant to Section 7 of the Natural Gas Act for authorization to abandon certain facilities located in Hockley County, Texas,

and for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities in said county, all as more fully set forth in the application.

The application indicates that Applicant's Slaughter Compressor Station in Hockley County was destroyed by fire. Said compressor station contained one 500 horsepower unit and appurtenant facilities. Applicant proposes herein to abandon the 500 horsepower unit and to construct and operate in place of said unit a 550 horsepower unit, together with appurtenant facilities. Applicant states that a unit comparable in size to the 500 horsepower unit is no longer manufactured, and, therefore, Applicant proposes to replace said unit with a 550 horsepower unit.

The total estimated cost of the proposed facilities is $210,000. Of this amount, the estimated out of pocket cost will be $78,000; the remainder of the estimated cost will be covered by an insurance claim credit of $130,000 and by a salvage value credit of $2,000. The estimated out of pocket cost will be financed out of current working funds.

By letter dated September 9, 1964, Applicant was issued a temporary certificate authorizing the construction and operation of the proposed 550 horsepower unit.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on October 29, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued January 11, 1944, in Docket No. G–288 (4 FPC 486).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The proposed construction and operation of the subject facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(6) The facilities to be abandoned, as hereinbefore described, are subject to the jurisdiction of the Commission and the abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(7) Such abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity and an order authorizing and approving same should be issued as hereinafter ordered.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the subject facilities, as hereinbefore described, all as more fully described, in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

(D) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application in this proceeding, be and the same are hereby granted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

JAMES P. EVANS, JR., ET AL., DOCKET NO. RI60-237

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE, AND TERMINATING PROCEEDINGS

(Issued November 4, 1964)

On September 17, 1964, James P. Evans, Jr., *et al.* (Evans) submitted an offer of settlement in this proceeding pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, and in accordance with the refund policy for small producers set forth in our order in *Jack W. Grigsby (Operator), et al.*, Docket Nos. RI61-96 and RI62-536 (order issued August 6, 1964, 32 FPC 529). The offer relates to a proposed increased rate for a sale of natural gas to United Gas Pipe Line Company (United) under Supplement No. 1 to Evans' FPC Gas Rate Schedule No. 2, in the Baxterville Field, Lamar and Marion Counties, Mississippi. This is the only rate schedule of Evans presently on file. The proposed increased rate of 22.8827¢ per Mcf of natural gas would be reduced to 14.0¢ per Mcf at 15.025 psia., under the settlement; Evans annual revenues will be reduced approximately $17,350 below that which it presently is charging and collecting, and it will refund to United approximately $46,200, exclusive of interest. Additionally, Evans proposes a filing moratorium for any increase in rate for this sale, for a 36 month period beginning September 15, 1964, in accordance with our order in *Grigsby* (*supra*). No protests or objections have been filed to the offer.

The proposed settlement is consistent with the provisions of the Commission's Statement of General Policy No. 61-1, issued December 20, 1960, 24 FPC 1107, and its acceptance would serve the public interest.

Consistent with the action taken in the Commission's order issued July 8, 1964, 32 FPC 49, in Humble Oil & Refining Company, Docket Nos. G-9287 and G-9288, *et al.*, we shall require Evans to retain the amounts of refunds ordered herein until further order directing the nature of their disposition and also to submit within 30 days of this order to the Commission and to United a detailed

report setting out the amount of refund related to the subject rate schedule the volume of gas sold thereunder and the period covered. We shall also by separate action direct that United, within 10 days from the receipt of such report, submit a report of its own setting forth whether they intend to pass on all or part of such refund amounts to its customers, the names of such customers and the amounts of refund each should receive, or, if it claims to retain any portion of the refunds, a brief statement as to the legal or equitable basis of such claim. In the event such reports indicate that the refund will flow through to ultimate customers or distributing companies not subject to the Commission's jurisdiction, the Commission will authorize the release of such refunds by Evans (unless a state regulatory authority after notification of the sum to be made available to a company subject to its regulatory jurisdiction asks us to defer releasing the funds until it can determine their ultimate disposition). In the event that United (or a pipeline customer of United) indicates that it is asserting a claim to retain substantial refund sums the Commission will by further order prescribe the procedure for determining the relative rights to such funds of United or its customers.

Evans shall deposit the refunds required herein in savings accounts of any bank or savings and loan association where such deposits are insured by the Federal Deposit Insurance Corporation and shall credit all such interest earned thereon to the savings accounts. Each savings account shall not exceed $10,000.

However, we desire to make it clear that acceptance of Evan's offer of settlement shall not be construed as constituting approval of any future rate increase that may be filed under the subject rate schedule, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Evans' rate and rate schedule.

The Commission finds:

(A) The offer of settlement filed with the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Evans on September 17, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Evans on September 17, 1964, is hereby approved in accordance with the provisions of this order.

(B) Evans shall file, within 30 days from the date of issuance of this order, a notice of change in rate providing for the 14.0¢ per Mcf rate specified in its offer of settlement. The notice of change shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) For the purpose of making refunds, Evans shall compute that amount of monies collected subject to refund in Docket No. RI60-237 in excess of 14.0¢ per Mcf under its FPC Gas Rate Schedule No. 2, together with interest at 7 percent, to the date of this order in accordance with the following percentages: 1963 and thereafter, 100%; 1961 and 1962, 70%; 1960, 25%; and thereafter Evans shall within 30 days from the date of this order submit a report to the Commission and serve a copy of such on United, setting out the amount of refunds (showing separately the principal and interest), the basis used for such determination and the period covered.

(D) Evans shall retain the amount shown in the report required under paragraph (C) above, subject to further order of the Commission directing the disposition of these amounts.

(E) Evans shall deposit within 45 days of the date of this order the refund amounts computed in accordance with paragraph (C) above in savings accounts in any bank or savings and loan association where deposits are insured by the Federal Deposit Insurance Corporation, with all interest earned thereon to be credited to the savings accounts. Each savings account shall not exceed $10,000.

(F) Upon full compliance by Evans with all the terms and provisions of this order, the proceedings in Docket No. RI60–237 shall be terminated and Evans shall be relieved of the existing surety bond in this proceeding.

(G) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Evans, the Commission staff, or any affected party hereto, in any proceedings now pending, including area rate or similar proceedings, or hereafter instituted by or against Evans or any other companies, person or parties affected by this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MONTANA-DAKOTA UTILITIES CO., DOCKET NO. CP65–36

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT

(Issued November 4, 1964)

On August 5, 1964, Montana-Dakota Utilities Co. (Applicant) filed in Docket No. CP65–36 an application pursuant to Section 7(b) of the Natural Gas Act for permission (1) to abandon certain facilities and the sale of natural gas to The Montana Power Company (Montana Power) and (2) to cancel Applicant's FPC Gas Tariff, Original Volume No. 2, effective January 1, 1965, and its Service Agreement with Montana Power, all as more fully set forth in the application.

Applicant is under contract to supply Montana Power with an average of 10,000 Mcf of natural gas per day, but not more than 15,000 Mcf on any one day until December 31, 1964. Under said contract Applicant is obligated to supply Montana Power with a long-term supply of gas, which it now will be unable to do. Montana Power is contracting for a long-term supply of gas from other sources and will not need the services of Applicant after the expiration date of said contract with Applicant *viz.*, December 31, 1964.

The estimated cost of retiring the metering and regulating facilities proposed to be abandoned is $750.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on October 29, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Montana-Dakota Utilities Co., a Delaware corporation having its principal place of business in Minneapolis, Minnesota, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by

the Commission in its order issued April 16, 1943, in Docket No. G–282 (3 FPC 968).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transporation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities and service is permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

(4) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Notice of Cancellation of Applicant's FPC Gas Tariff, Original Volume No. 2, and the Notice of Termination of Applicant's contract with The Montana Power Company dated November 26, 1954, relating to service under the said Gas Tariff (Sheet Nos. 1 to 13, incl.) be accepted for filing to be effective January 1, 1965.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities and service hereinbefore described, as more fully described in the application in this proceeding, are hereby granted to Applicant, Montana-Dakota Utilities Co.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities and service as authorized in paragraph (A) above within ten days of such abandonment.

(C) Notice of cancellation of Applicant's FPC Gas Tariff and Notice of Termination of Applicant's Service Agreement with The Montana Power Company dated November 26, 1954, are hereby accepted for filing effective January 1, 1965.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOUTHERN CALIFORNIA EDISON COMPANY, PROJECT NO. 2198

ORDER DETERMINING ACTUAL LEGITIMATE ORIGINAL PROJECT COST, NET CHANGE THEREIN, AND PRESCRIBING ACCOUNTING THEREFOR

(Issued November 4, 1964)

Southern California Edison Company, Licensee for Project No. 2198,[1] filed its initial statement of claimed cost, pursuant to Section 4.20 of the Commission's Regulations under the Federal Power Act, on May 16, 1960, showing a claimed actual legitimate original cost of $406,254.94 as of May 1, 1959.[2] In addition, Licensee's books and records show for the period from May 1, 1959, through December 31, 1962, a net increase in project cost of $1,339.83, resulting in a total claimed project cost of $407,594.77, as of December 31, 1962.

The Commission's staff conducted a field examination of the Licensee's books, records and other data for the purpose of ascertaining the correctness of Licensee's

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[1] The project, known as Santa Ana No. 3 project is located on the Santa Ana River in San Bernardino County, California. The license for the operation and maintenance of the constructed project was issued to Southern California Edison Company pursuant to Section 4 (e) of the Federal Power Act for a period of 50 years, effective as of May 1, 1959.

[2] Article 19 of the license provides for Commission determination of the actual legitimate original cost of the project, and of any additions thereto or betterments thereof.

claimed costs. As a result of that examination, staff proposed, subject to Commission approval, certain adjustments which have been agreed to by licensee and are as shown in the attached Schedule. The adjustments effect a total reduction of $2,346.14 in the claimed actual legitimate original project costs as of May 1, 1959, from $406,254.94 to $403,908.80. No adjustments in the claimed or recorded project costs are proposed for the period from May 1, 1959 through December 31, 1962.

By letter dated January 30, 1964, Licensee confirmed its agreement with the proposed staff adjustments and resulting project costs as shown in the attached Schedules I and II.

The California Public Utilities Commission was advised by letter of this Commission dated February 7, 1964, as to the proposed staff adjustments and resulting project costs. By letter dated February 17, 1964, the California Commission indicated no objection thereto.

Licensee, as a part of its initial statement of project cost, claimed accrued depreciation applicable to in-service project properties as of May 1, 1959 in the amount of $90,910.97. Staff analysis of Licensee's provisions for project depreciation has not been completed, and the staff proposes that the Commission defer for future consideration and determination the amount of accrued depreciation applicable to in-service properties.

The Commission finds:

(1) Licensee, by its acceptance of the proposed adjustments, including the accounting dispositions and resulting project costs, and the California Public Utilities Commission by its lack of objection thereto, have obviated the necessity for notice and opportunity to protest provided in Sections 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act.

(2) The proposed adjustments, including the accounting dispositions are reasonable and appropriate for the purposes of the Federal Power Act and, therefore, should be approved and directed as hereinafter provided.

(3) The actual legitimate original cost of Project No. 2198 as of May 1, 1959, is $403,908.80; the net increase or change in the actual legitimate original cost of the project for the period from May 1, 1959, through December 31, 1962, is $1,339.83; and the resulting actual legitimate original cost of the project as of December 31, 1962, is $405,248.63, classified by primary plant accounts as shown in the attached Schedule I.

(4) It is necessary and appropriate for the purposes of the Federal Power Act, that the determination of the accrued depreciation of Project No. 2198 be reserved for future Commission consideration.

The Commission orders:

(A) The provisions of Sections 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The foregoing adjustments including accounting dispositions, proposed by the staff and agreed to by the Licensee, are hereby approved and directed to be made by the Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and subsidiary project plant accounts, showing the debit balance of $403,908.80 as the actual legitimate original cost of the project as of May 1, 1959, the debit amount of $1,339.83, as the net increase or change in the actual legitimate original cost of the project for the period from May 1, 1959, through December 31, 1962, and the debit balance of $405,248.63, as the actual legitimate

original cost of the project as of December 31, 1962, all as more specifically shown in the attached Schedule I, classified by primary plant accounts of the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(D) The matter of Commission determination of the project accrued depreciation for Project No. 2198 is hereby expressly reserved for future Commission consideration and decision.

(E) Licensee shall within 90 days from the issuance of this order file with the Commission FPC Form No. 7 and five certified copies of its adjusting journal entries showing compliance therewith, three to be filed with the Commission and two to be submitted to the Regional Accountant in San Francisco, California.

SCHEDULE 1

PROJECT NO. 2198 (SANTA ANA NO. 3) SOUTHERN CALIFORNIA EDISON COMPANY

Summary by detailed plant accounts of claimed initial cost as of May 1, 1959, and recorded changes thereto for the period from May 1, 1959 through Dec. 31, 1962 with adjustments thereto and allowed cost as of Dec. 31, 1962

Account No.		Title	Initial cost as of May 1, 1959			Recorded changes from May 1, 1959 through Dec. 31, 1962			Allowed cost as of Dec. 31, 1962
	[1]		As claimed (1)	Adjustments (2)	As allowed (3)	As recorded (4)	Adjustments (5)	As allowed (6)	(7)
		Hydraulic production plant							
330	(320)	Land and land rights	$14,930.06		$14,930.06				$14,930.06
331	(321)	Structures and improvements	37,551.80	($2,346.14)	35,205.66	[2] $1,432.44		[2] $1,432.44	36,638.10
332	(322)	Reservoirs, dams, and waterways	255,805.79		255,805.79	(269.83)		(269.83)	255,535.96
333	(323)	Water wheels, turbines, and generators	29,833.94		29,833.94				29,833.94
334	(324)	Accessory electric equipment	15,684.14		15,684.14	154.82		154.82	15,838.96
336	(328)	Miscellaneous powerplant equipment	6,681.64		6,681.64	22.40		22.40	6,704.04
336	(326)	Roads, railroads, and bridges	1,659.98		1,659.98				1,659.98
		Total hydraulic production plant	302,147.35	(2,346.14)	359,801.21	1,339.83		1,339.83	361,141.04
		Transmission plant							
353	(342)	Station equipment	41,634.12		41,634.12				41,634.12
		General plant							
397	(378)	Communication equipment	2,473.47		2,473.47				2,473.47
		Total cost of project	406,254.94	(2,346.14)	403,908.80	1,339.83		1,339.83	405,248.63

( ) Denotes credit.

[1] Account numbers in effect prior to Jan. 1, 1961.

[2] Recorded in Account No. 106, Completed construction Not Classified-Electric, as of Dec. 31, 1962.

SCHEDULE 11

PROJECT NO. 2198 (SANTA ANA NO. 3) SOUTHERN CALIFORNIA EDISON COMPANY

Summary of adjustments to claimed initial cost as of May 1, 1959, and accounting disposition thereof

Account No.		Title	To adjust recorded cost to claimed cost						Adjustment to claimed initial cost; No. 1 nonproject plant
			Total	Total	Miscellaneous equipment	Claimed costs recorded in nonproject accounts	Retirement corrections	Reclassification	
			(1)	(2)	(3)	(4)	(5)	(6)	(7)
	[1]	*Hydraulic production plant*							
330	(320)	Land and land rights	$9,763.13	$9,763.13		$9,763.13			
331	(321)	Structures and improvement	(3,386.77)	(1,040.63)			($1,293.11)	$252.48	($2,346.14)
332	(322)	Reservoirs, dams, and waterways	(4,418.45)	(4,418.45)			(2,926.98)	(1,491.47)	
333	(323)	Water wheels, turbines, and generators	2,062.40	2,062.40			(458.37)	2,520.77	
334	(324)	Accessory electric equipment	2,977.90	2,977.90			332.18	2,645.72	
335	(325)	Miscellaneous power plant equipment	610.80	610.80	($515.65)		(582.05)	1,708.50	
336	(326)	Roads, railroads, and bridges	110.73	110.73				110.73	
		Total hydraulic production plant	7,719.74	10,065.88	(515.65)	9,763.13	(4,928.33)	5,746.73	(2,346.14)
		Transmission plant							
353	(343)	Station equipment	(3,878.66)	(3,878.66)			1,868.07	(5,746.73)	
		Total adjustments	3,841.08	6,187.22	(515.65)	9,763.13	(3,060.26)		(2,346.14)
		Accounting disposition							
101	(100.1)	Electric plant in service—nonproject	(7,416.99)	(9,763.13)		(9,763.13)			2,346.14
108	(250.1)	Reserve for depreciation of electric plant in service—nonproject	3,575.91	3,575.91	515.65		3,060.26		
		Total disposition	(3,841.08)	(6,187.22)	515.65	(9,763.13)	3,060.26		2,346.14

( ) Denotes credit.

[1] Account numbers in effect prior to Jan. 1, 1961.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP65-35

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 4, 1964)

On August 6, 1964, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP65-35 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities for a new delivery point for natural gas service to Piedmont Natural Gas Company, Inc. (Piedmont), all as more fully set forth in the application.

Applicant proposes to construct and operate a sales meter station and appurtenant equipment on its main 30-inch transmission line "A" near Stokesdale in Guilford County, North Carolina. Gas delivered at the proposed new delivery point will be used by Piedmont to provide additional natural gas service on an interruptible basis to the Formost Screen Print Plant, of Fieldcrest Mills, Inc., and to provide new firm service to a tourist court and residences in the area. The larger part of the load at this point will be the interruptible service. The third year over-all total annual volume is estimated to be 55,000 Mcf. The volumes of natural gas to be delivered at the new point will be out of allocations to Piedmont previously authorized by the Commission.

The proposed facilities are estimated to cost approximately $19,100, which cost will be initially financed by Applicant from its general funds. Piedmont has agreed to reimburse Applicant in full for the entire cost of facilities.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on October 29, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G-1143 (7 FPC 145).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Transcontinental Gas Pipe Line Corporation, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CABOT CORPORATION (SW), DOCKET NO. RI62-3

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICES OF CHANGE, AND TERMINATING PROCEEDING

(Issued November 5, 1964)

On October 1, 1964, Cabot Corporation (Cabot) submitted an offer of settlement in the above-designated proceeding, involving the jurisdictional sale of natural gas under Cabot's FPC Gas Rate Schedule No. 25 to Hugoton Plains Gas and Oil Company (Plains) from the Hugoton Field, Seward County, Kansas (Kansas Area) and Texas County, Oklahoma (Oklahoma Panhandle Area). Plains gathers and processes the gas in its Tyrone Gasoline Plant and resells the residue gas to Northern Natural Gas Company (Northern).

The presently effective rate is 18.92¢ per Mcf at 14.65 psia. The increased rate has been in effect subject to refund since July 29, 1961. Cabot's rate is based on a revenue sharing arrangement with Plains whereby Cabot is entitled as a contractual matter to receive a rate which is 1.1166¢ per Mcf (corrected for compressibility) less than Plains' resale rate to Northern. The rate in effect subject to refund was based on Plains' increased rate of 20.1628¢ per Mcf for the sale of gas to Northern which was suspended in Docket No. RI60-102. The proposed settlement rate is based on Plains' settlement rate of 15.75¢ which was approved by order issued October 8, 1963 in Docket No. RI60-102, 30 FPC 973.

In its offer of settlement, Cabot proposes to reduce its increased rate effective from July 29, 1961, to 14.6334¢ per Mcf at 14.65 psia, subject to any applicable contractual deduction for compression, if any. Refunds are not involved because Cabot has not collected rates above the proposed settlement rate.

Inasmuch as the proposed settlement rate is directly related through a revenue sharing arrangement to the 15.75¢ per Mcf resale settlement rate of Plains, acceptance of Cabot's proposed settlement is in the public interest. Our action here

does not constitute either a change in our present policy of suspending all increased rates above 11¢ per Mcf in these areas for the sale of pipeline quality gas within the meaning of the Commission's Statement of General Policy No. 61–1, as amended, or a change in our general settlement policy, but is based solely on the special circumstances presented in this case, in which the Commission's recognition of the agreement made by the parties does not affect the price to the pipeline purchaser.

Our action should not be construed as constituting approval of any future rate increases, if any, that may be filed under the subject rate schedule, and is without prejudice to any findings or order of the Commission in any future rate proceedings, including area rate proceedings, involving Cabot's rate and rate schedule.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Cabot on October 1, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Cabot on October 1, is hereby approved in accordance with the provisions of this order.

(B) Cabot shall file within 30 days from the date of issuance of this order, a notice of change in rate providing for the 14.6334¢ per Mcf at 14.65 psia rates specified in its offer of settlement. The notice of change shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Upon notification by the Secretary of the Commission that Cabot has complied with the terms and conditions of the order, the rate and charge of 14.6334¢ per Mcf at 14.65 psia, specified in its offer of settlement, subject to any applicable contract deductions, shall be effective as of the issuance of this order, and the above-designated proceeding shall be deemed terminated.

(D) The acceptance by the Commission of Cabot's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Cabot, including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CENTRAL MAINE POWER COMPANY, PROJECT NO. 2329

ORDER ISSUING LICENSE (MAJOR)

(Issued November 6, 1964)

Application was filed on December 3, 1962 by Central Maine Power Company (Applicant) of Augusta, Maine, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2329, known as the Wyman Project located on the Kennebec River in Kennebec County, Maine, in the towns of Bingham and Moscow.

According to the application, the project, consisting primarily of a dam, reservoir and power plant, was constructed during the period 1928–1931. Apparently, there has been no major construction of the project after 1931.

Applicant requests a 50-year license effective from the date of its issuance. In its order issued May 21, 1954,[1] the Commission found the Kennebec River to be a navigable water of the United States. In accordance with the criteria set forth in our April 25, 1962, Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of May 1, 1954 and a termination date of December 31, 1993.

The Secretary of the Army and the Chief of Engineers have advised that the plans of the project structures affecting navigation have been approved pursuant to Section 4(e) of the Act.

The Department of the Interior in reporting on the application has recommended for inclusion in any license for the project certain conditions in the interests of fish and wildlife.

The Commission finds:

(1) The project affects navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of Maine, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 96,000 horsepower, and the amount of annual charges, based on such capacity to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(7) The 13.8/115 kv substation and all transmission circuits connecting the substation to the non-project 115 kv switching station mentioned in paragraph (B) below, and which were included in the application for license, are parts of the project within the meaning of Section 3(11) of the Act and should be included in the license for the project.

(8) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of this license.

The Commission orders:

(A) This license is hereby issued to Central Maine Power Company (Licensee) of Augusta, Maine, under Section 4(e) of the Federal Power Act (Act) for a period effective as of May 1, 1954 and terminating December 31, 1993, for the continued operation and maintenance of the Wyman Project No. 2329, located on the Kennebec River, Maine, a navigable water of the United States, subject to the terms and conditions of the Act, which is incorporated herein by reference as a

[1] Docket No. E-6456 (13 FPC 1076).

part of this license, and subject to such rules and regulations as the Commission issued or prescribed under the provisions of the Act.

(B) Project No. 2329 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by the following exhibits which formed a part of the application for license:

Exhibit J; Sheet 1 (FPC No. 2329–1) "General Map, Flowage, Dam & Power Plant Areas";

Exhibit K; Sheets 1 to 5 incl. (FPC Nos. 2329–3 to –7 inclusive) "Detail Map, Reservoir."

(ii) a dam consisting of an earth dike (with concrete core wall) about 2,640 feet long and about 160 feet high; a reinforced concrete retaining wall 772 feet long and about 160 feet high parallel to the river course; a concrete gravity intake section 168 feet long and about 149 feet high; concrete gravity overflow sections totaling about 430 feet in length consisting of three shallow stanchion sections, three deep stanchion sections, three Tainter gate sections, a Broome gate section, and a log sluice about 22 feet wide and extending about 550 feet downstream from the face of the dam; (2) a reservoir about 14.4 miles long with a normal elevation of 485 feet (USGS Datum); (3) a reinforced concrete powerhouse containing three hydroelectric units each with a generating capacity of 24,000 kw; (4) a substation and transmission circuits connecting said substation with a non-project switching station; (5) an excavated tailrace extending about 7,500 feet downstream of the powerhouse; and (6) appurtenant electrical and mechanical facilities—the location, nature and character of which structures are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit L; Sheet 1 (FPC No. 2329–8) "Plan and Sections, Concrete Dam"

Sheet 2 (FPC No. 2329–9) "Plan and Sections, Earth Dam & Retaining Wall"

Sheet 3 (FPC No. 2329–10) "Plan and Section, Intake & Powerhouse"

Sheet 4 (FPC No. 2329–11) "Retaining Wall Sections, Downstream Elevation—Dam"

Sheet 5 (FPC No. 2329–12) "Transformer & Bus Switching Bays"

Sheet 7 (FPC No. 2329–14) "Tailrace Excavation"

Exhibit M; Twelve typewritten pages, "General Description and Specifications of Equipment and Appurtenances", filed in the Commission December 3, 1962.

(iii) all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–3 (Revised August 1, 1964), entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (32 FPC 1114), which terms and conditions, designated as Articles 1 through 29, are attached hereto and made a part hereof; and subject to the following special condition set forth herein as an additional article:

Article 30. The Licensee shall pay to the United States the following annual charge, effective as of May 1, 1954:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its reguations, in effect from time to time. The authorized installed capacity for such purpose is 96,000 horsepower.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SINCLAIR OIL & GAS COMPANY, ET AL., DOCKET NO. G–16760, ET AL.

ORDER REJECTING SETTLEMENT PROPOSAL

(Issued November 6, 1964)

On July 29, 1964, Texas Eastern Transmission Corporation (Texas Eastern) filed a Settlement Proposal and Motion for Severance of the proceedings in Docket Nos. CP63–192 and CP63–193 from the consolidated proceedings in Docket No. G–16760, *et al.* The settlement proposes to reduce the rate charged under Texas Eastern's Rate Schedule F–7[1] from 18.0¢ to 16.0¢ per Mcf beginning with the date of initial delivery until March 31, 1967,[2] with any amounts collected in excess of the 16.0¢ rate being refunded together with 7 percent interest. In the event that the pending consolidated proceedings result in a price below 16.0¢ per Mcf, Texas Eastern would reduce its rate accordingly under Rate Schedule F–7, and would refund the difference without interest from the date of Settlement until the date determining the in-line price. However, Texas Eastern would continue to charge 12.0¢ per Mcf under its Rate Schedule F–8[1] for sour gas through March 31, 1967, without refund in the event a lower in-line price for sour gas is determined. The settlement specifies that it is effective until September 1, 1964.

On August 17, 1964, the Commission Staff filed an answer in opposition to the proposal. In essence this answer contends that the proposal could result in the retention of excess monies collected under the 16.0¢ settlement rate prior to the date of determining the fina in-line price in the event that price is below 16.0¢ per Mcf, and that on the other hand, Texas Eastern has not ceded in consideration for settlement any rights which it could assert against the Commission's determination of an in-line price and ultimate ordering of refunds.

On September 15, 1964, Texas Eastern filed a document entitled "Supplement to Motion for Approval of Settlement Proposal and Severance of Proceedings". Therein, Texas Eastern extends the effective period of the original settlement and states that its escalations under the particular rate schedules involved herein would not result in increases for over three years and hence provide a more or

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[1] The purchaser is Lone Star Gathering Company.

[2] Date of first periodic escalation.

less *de facto* moratorium comparable to that we approved in the *Socony* Settlement. In fact, however, by the terms of its contracts, Texas Eastern is precluded from filing rate increases prior to the end of the time period indicated. Thus, the offer provides no moratorium.

Hearings before the presiding examiner have already been held in these consolidated proceedings and briefs are due to be filed in the near future. It does not appear, therefore, that a substantial acceleration in the matter of Texas Eastern's applications could be achieved by settlement at this juncture. In view of this fact and the other foregoing considerations, we do not find that Texas Eastern has shown good cause why its proposed settlement should be approved at this time.

The Commission orders:

The Motion for Approval of the Settlement Proposal and Severance of Proceedings as filed on July 29, 1964, and supplemented by filing of September 15, 1964, is hereby denied.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP64-78

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 9, 1964)

On September 30, 1963, as supplemented on February 28 and August 28, 1964, Arkansas Louisiana Gas Company (Applicant) filed in Docket No. CP64-78 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1964 and the operation of natural gas facilities for the sale of natural gas to direct customers and to distributors for resale, all as more fully set forth in the application and supplements.

Applicant proposes to construct approximately 200 pipeline taps on its existing system to deliver natural gas to individual domestic and commercial customers or for new town border connections or rural extensions to consumers, and approximately 150 pipeline taps for direct sales to consumers for road building, irrigation, agricultural, processing and general use in areas outside of local distributors' franchise areas.

The total cost of facilities proposed under this application will not exceed a maximum of $300,000 and the total deliveries to any one consumer will not exceed a maximum of 100,000 Mcf of natural gas per year.

Due notice of the subject application was published in the Federal Register on October 21, 1964 (29 F.R. 14449). No petition to intervene, notice of intervention or protest to the granting of the application has been received.

At a hearing held on November 5, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplements and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Arkansas Louisiana Gas Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the

Commission in its order of January 26, 1943, in Docket No. G–252 (3 FPC 910).

(2) The facilities hereinbefore described, as more fully described in the application and supplements in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the calendar year 1964 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $300,000, with the total deliveries to any one customer not to exceed a maximum of 100,000 Mcf of natural gas per year.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(8) The certificate issued hereinafter should be conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Arkansas Louisiana Gas Company, to construct during the calendar year 1964 the proposed facilities hereinbefore described, as more fully described in the application and supplements in this proceeding, and to operate such facilities to sell natural gas to direct customers and to distributors for resale as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1964 and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $300,000, with the total deliveries to any one customer limited to a maximum of 100,000 Mcf of natural gas per year.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(E) The certificate issued by paragraph (A) above is expressly conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the

aforesaid Regulations and, further, shall not entitle any industrial customer to whom firm deliveries are authorized therein to any priorities or rights to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65-45

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 9, 1964)

On August 10, 1964, El Paso Natural Gas Company (Applicant) filed in Docket No. CP65-45 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing, for a term continuing through but not beyond December 31, 1965, the delivery of natural gas to Pacific Gas & Electric Company (PG&E), on an interruptible, best efforts basis, limited, however, to a quantity during such term not to exceed that quantity which PG&E has paid for in prior years, and has been unable to take, but has the right to take without further payment, all as more fully set forth in the application.

PG&E has presently paid for 70,147,076 Mcf (14.9 psia) of gas under Rate Schedule G of Applicant's FPC Gas Tariff, Original Volume No. 1. Of this amount, 26,365,612 Mcf are receivable by PG&E through the calendar year 1967 without further charge and the remaining 43,781,464 Mcf are receivable by PG&E through the calendar year 1968 without further charge. In order to enable PG&E to receive, at least in part, the said quantity of 70,147.076 Mcf on an accelerated basis, Applicant proposes herein to make gas available when requested by PG&E, on an interruptible, best efforts basis, in excess of the daily quantities which Applicant is obligated to deliver to PG&E and to other California purchasers on a firm basis.

Applicant and PG&E have entered into an agreement dated July 24, 1964, providing for the proposed deliveries.

The proposed deliveries will be made by use of existing facilities at an existing delivery point near Topock, Arizona.

On October 8, 1964, The People of the State of California and the Public Utilities Commission of the State of California filed a notice of intervention in support of the subject application.

After due notice, no petition to intervene, other notice of intervention or protest to the granting of the application has been filed.

At a hearing held on November 5, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued January 11, 1944, in Docket No. G-288 (4 FPC 486).

(2) The proposed transportation and delivery of natural gas by Applicant hereinbefore described, as more fully described in the application in this proceeding, will be in interstate commerce, subject to the jurisdiction of the Commission, and such proposed transportation and delivery are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c) (3) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to transport and deliver natural gas during the period ending December 31, 1965, as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3) and (e) of Section 157.20 of such Regulations.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP65-26

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 9, 1964)

On July 27, 1964, Florida Gas Transmission Company (Applicant) filed in Docket No. CP65-26 an application for a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act authorizing the construction and operation of certain facilities and the sale of natural gas to the City of Bonifay, Florida, and the City of Florala, Alabama, for resale for ultimate public consumption, all as more fully set forth in the application.

Applicant proposes to install and operate a line tap and meter station together with appurtenances near its existing city gate station at Chipley, Washington County, Florida, and by means thereof to sell and deliver natural gas to the City of Bonifay, Florida, for resale and distribution through a municipally-owned gas distribution system to customers in the City of Bonifay and its environs. The City of Bonifay proposes to transport the gas by means of approximately 6.25 miles of 6⅝-inch transmission pipe line owned by the City from the point of delivery by Applicant to the city gate of Bonifay.

Applicant further proposes to construct and operate a line tap and meter station together with appurtenances on its existing 24-inch main transmission pipe line on Okaloosa County Road 285, near the County Line between Okaloosa and Walton Counties, Florida, and by means thereof, to sell and deliver natural gas to the City of Florala, Alabama, for resale and distribution through a municipally-owned gas distribution system to customers in the City of Florala and its environs. The City of Florala proposes to transport the gas by means of approximately 15.13 miles of 6⅝-inch and .57 mile of 4½-inch transmission pipe line owned and operated by the City from the point of delivery by Applicant to the city gate of Florala.

Maximum daily deliveries through the proposed facilities in the third year of operations will be approximately 1,347 Mcf to Florala and 1,134 Mcf to Bonifay. Third year annual deliveries are estimated to be approximately 75,929 Mcf to Florala and 54,072 Mcf to Bonifay.

The total estimated cost to Applicant is $40,000 to be paid from cash on hand. The total estimated costs to the City of Bonifay and the City of Florala are $380,000 and $588,000, respectively, which it is proposed will be financed by revenue bonds bought by the Housing and Home Finance Agency.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on November 5, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Florida Gas Transmission Company, a Delaware corporation having its principal place of business in Winter Park, Florida, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued July 3, 1963, in Docket No. CP63-277 (30 FPC 27).

(2) The proposed construction and operation of facilities and sale of natural gas, as hereinbefore described and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and sale of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to preform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Florida Gas Transmission Company, authorizing the construction and operation of facilities and the sale of natural gas as more fully described in the application in this proceeding subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

PHILADELPHIA ELECTRIC COMPANY, PROJECT NO. 2355

ORDER MODIFYING LICENSE ORDER AND OTHERWISE DENYING APPLICATION FOR REHEARING

(Issued November 9, 1964)

On October 12, 1964, Philadelphia Electric Company (Applicant) filed an application for rehearing, pursuant to Section 1.34 of the Commission's Rules of Practice and Procedure on the Commission's Memorandum Opinion No. 443, and accompanying order issued September 21, 1964, for Project No. 2355, 32 FPC 826, proposed to be located on the Susquehanna River and its tributary Muddy Run, in Lancaster and York Counties, Pennsylvania.

Applicant seeks (1) a license period of 50 years, (2) a modification of Article 42 to provide for the use of the Conowingo reservoir by Muddy Run for as long as it is licensed and (3) modification of Article 44 to provide for the payment of a lump sum of $2,700,000 within six months of the effective date of the license, in lieu of annual payments in the amount of $285,000 for the use of the Conowingo reservoir as provided in the opinion and order.

In the original joint application, Applicant's subsidiaries had requested a 50-year license period.[1] In an amended application filed January 29, 1964 by Philadelphia Electric Company (Applicant) a 40-year license was requested. However, the request for a 40-year license was based on the concurrent request for the Commission's approval of a 40-year contract for the sale of power by Licensees of Conowingo to the Applicant which was to have assured Applicant the continued availability of the Conowingo reservoir.

Applicant believes that the reasons for the 40-year period have been eliminated by the Commission's failure to approve the contract and therefore, there is no reason for the Commission to limit its project to a license period shorter than that normally granted by the Commission for unconstructed projects. We agree with Applicant that the license term should be 50 years and are so providing.

Applicant desires a revision of Article 42 to authorize Muddy Run the use of the Conowingo reservoir for as long as it is under license. Applicant suggests that in addition to covering the proposed 50-year license term the revised language would be applicable to any subsequent period for which an annual license

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[1] Susquehanna Power Company and Philadelphia Electric Power Company filed a joint license application for the Muddy Run project on April 1, 1963.

might be issued. We have no reason to assume that any annual licenses will be necessary. However, if such is the case, they would be issued pursuant to Section 15 of the Act under the terms and conditions of the original license. We see no need to adopt the language proposed by Applicant. However, we shall change Article 42 to make it clear that licensee is authorized to utilize the Conowingo pool when operating under the license.

Applicant further requests a modification of Article 44 of the license to provide for the payment of the annual $285,000 charge which it is to pay after 1976 for the use of the Conowingo reservoir by means of a lump sum payment in the amount of $2,700,000. Applicant states that the sum of $2,700,000 represents the present worth at 5.4%, as of September 1, 1964, of $285,000 paid annually for 50 years beginning in 1976.

The reasons for the lump sum payment advanced by Applicant are that the payments of a lump sum rather than a series of annual payments would provide a more definite and orderly disposition of the charge and, furthermore, would avoid continual explanations in registration statements of the future liability now provided in Article 44.

Applicant has indicated that Licensees of Conowingo would reduce their net investment [1] by the amount of the lump sum payment. A reduction in the net investment of Conowingo by the amount of the lump sum payment would serve to pass on the benefit of the lump sum payment to the United States in the event of recapture or to a new licensee, in the event of relicensing. However, neither the United States nor the new licensee would derive any benefits from such a transaction until 1976.

While the reduction in the net investment of Conowingo by the amount of $2,700,000 would reduce Conowingo rate base, no benefits would necessarily flow to the public since Applicant purchases substantially all of Conowingo's output. Indeed Applicant would be the sole beneficiary.

With reference to Applicant's computation of the lump sum payment, as indicated above, there is no basis for assuming that the annual payments in the amount of $285,000 under the license would extend 50 years from 1976 since the license expires not later than 50 years from September 1, 1964.

It should be noted that the annual payments of $285,000 were assessed against Muddy Run on the basis of equitable principles as compensation to Conowingo for the joint use of the Conowingo reservoir and not as compensation for property rights which the licensee for Muddy Run may acquire from the present licensees of Conowingo. We, accordingly, believe that it would be in the public interest to reject Applicant's lump sum proposal.

The Commission finds:

(1) It is appropriate and consistent with the public interest that Opinion No. 443 and accompanying order in Project No. 2355 be modified as hereinafter provided.

(2) It is appropriate and in the public interest in administering Part I of the Federal Power Act (16 U.S.C. 791a–823r) that the Philadelphia Electric Company's application for rehearing, filed October 12, 1964, of Opinion No. 443, and accompanying order issued September 21, 1964, granting a license for Project No. 2355, to the extent that it seeks modification in addition to that provided herein be denied.

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[1] Applicant has attached to the application herein a letter to the Commission from the Conowingo Licensees indicating that they would be agreeable to reducing the net investment of the Conowingo project in the amount of $2,700,000 if such a lump sum payment were approved by the Commission.

The Commission orders:

(A) Opinion No. 443 and accompanying order issued September 21, 1964, in Project No. 2355 is hereby modified as follows:

1. Paragraph (B) of the license order is modified to read as follows:

(B) This license is hereby issued to Philadelphia Electric Company (Licensee) of Philadelphia, Pennsylvania, under Section 4(e) of the Federal Power Act (Act) for a period of 50 years, effective as of September 1, 1964 for the construction, operation and maintenance of Project No. 2355 on the Susquehanna River, a navigable water of the United States, and its tributary Muddy Run, in Lancaster and York Counties, Pennsylvania, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

2. Article 42 is modified to read as follows:

Article 42. The Licensee for Muddy Run project is authorized to utilize the Conowingo reservoir as a source of water and as a lower pool for the operation of the Muddy Run project when operating under this license.

(B) In all other respects the aforesaid application for rehearing in Project No. 2355 be and is hereby denied.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. G-8472

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT

(Issued November 9, 1964)

On December 8, 1961, Southern Natural Gas Company filed in Docket No. G-8472 an application [1] pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities constructed and operated to provide service to the Marine Minerals, Inc. (Marine) a direct industrial customer, all as more fully set forth in the application.

Applicant states it has not made any sales of natural gas to Marine for approximately two years, and that the facilities consisting of a tap, meter and regulating facilities utilized in the rendering of service to Marine and the facilities are no longer used. The cost of the said facilities is fixed by Applicant at $9,000.00.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on November 5, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record, finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued October 6, 1942, in Docket No. G-296 (3 FPC 822).

[1] The application filed on December 8, 1961, to withdraw an application for a certificate of public convenience and necessity filed on February 14, 1955, is treated herein as an application for permission to abandon the facilities constructed to provide service to Marine in accordance with temporary certificate issued by the Commission on May 19, 1955.

(2) The facilities as hereinbefore described, and as more fully described in the application herein, have been used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and said abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The abandonment of the aforesaid facilities are permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, and as more fully described in the application in this proceeding, treated herein as an application to abandon facilities, are hereby granted to Applicant, Southern Natural Gas Company.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP65-28

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued November 9, 1964)

On August 3, 1964, as supplemented on August 25, 1964, Tennessee Gas Transmission Company (Applicant) filed in Docket No. CP65-28 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a certain pipeline facility in Middlesex County, Massachusetts, all as more fully set forth in the application, as supplemented.

The facility, proposed to be abandoned by sale to the Lowell Gas Company (Lowell), is a lateral pipeline known as the Lowell Lateral, consisting of approximately 5.3 miles of 6-inch pipeline and approximately 0.3 mile of 8-inch pipeline. Purchase of the lateral by Lowell will permit tapping at any desirable point, thereby increasing the flexibility of Lowell's distribution system, and will make the duplication of the facilities by Lowell unnecessary. The line will be sold to Lowell for $186,281, its original depreciation cost.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on November 5, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits, submitted in support of the permission and approval sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 12, 1947, in Docket No. G-910 (6 FPC 777).

(2) The facilities to be abandoned, as hereinbefore described, are subject to the jurisdiction of the Commission and abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity and an order permitting and approving same should be issued as hereinafter ordered.

(4) The permission for and approval of the abandonment by Applicant, as hereinafter granted, should be granted upon the condition that the sale of these facilities shall be recorded on the books of Applicant in accordance with the provisions of Gas Plant Instruction 5, and the text of Account 102, Gas Plant Purchased or Sold, of the Uniform System of Accounts Prescribed for Natural Gas Companies. Federal and State income taxes payable resulting from this transaction shall be charged to Account 426.5, Other Deductions, if not significant with respect to net income determination for the year, or to Account 435, Miscellaneous Debits to Surplus, also as provided in the Uniform System of Accounts.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application in this proceeding, be and the same are hereby granted.

(B) The permission and approval granted in paragraph (A) above, are granted on the condition that the sale of these facilities shall be recorded on the books of Applicant in accordance with the provisions of Gas Plant Instruction 5, and the text of Account 102, Gas Plant Purchased or Sold, of the Uniform System of Accounts Prescribed for Natural Gas Companies. Federal and state income taxes payable resulting from this transaction shall be charged to Account 426.5, Other Deductions, if not significant with respect to net income determination for the year, or to Account 435, Miscellaneous Debits to Surplus, also as provided in the Uniform System of Accounts.

(C) Applicant shall advise the Commission of the date of said abandonment within ten days thereof.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP65-78

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 9, 1964)

On September 21, 1964, United Gas Pipe Line Company (Applicant) filed in Docket No. CP65-78 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the 12-month period from November 1, 1964, to October 31, 1965, and the operation of facilities to render natural gas service to existing distributor customers at rates on file with the Commission for resale and distribution in existing market areas, and for certain prescribed direct sales, all as more fully set forth in the application.

Applicant states that the total cost of all facilities for which authorization is sought herein will not exceed a maximum of $300,000; that the maximum delivery to any one customer will not exceed 100,000 Mcf of natural gas annually; and that none of the gas so delivered will be used as boiler fuel.

Due notice of the subject application was published in the Federal Register on October 21, 1964, (29 F.R. 14450). No petition to intervene, notice of intervention or protest to the granting of the application has been received.

At a hearing held on November 5, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of January 20, 1942, in Docket No. G–216 (3 FPC 3, 11).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (c) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the 12-month period from November 1, 1964, to October 31, 1965, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $300,000, with the total deliveries to any one customer not to exceed a maximum of 100,000 Mcf of natural gas per year.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(c) (8) of the Commission's Regulations under the Natural Gas Act.

(8) The certificate issued hereinafter should be conditioned upon Applicant's compliance with the provisions of Section 157.7(c) (7) of the aforesaid Regulations.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, United Gas Pipe Line Company, to construct during the 12-month period from November 1, 1964, to October 31, 1965, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities to sell natural gas to direct customers and to distributors for resale as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (c) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is hereby limited to construction during the 12-month period from November 1, 1964, to October 31, 1965, and the total expenditures for facilities to be constructed thereunder are

hereby limited to a maximum of $300,000, with the total deliveries to any one customer limited to a maximum of 100,000 Mcf of natural gas per year.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(E) The certificate issued by paragraph (A) above is expressly conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations and, further, shall not entitle any industrial customer to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

CAROLINA PIPELINE COMPANY, COMPLAINANT v. SOUTHERN NATURAL GAS COMPANY, DEFENDANT, DOCKET NO. RP63-4

ORDER REOPENING PROCEEDING

(Issued November 10, 1964)

On March 30, 1964, 31 FPC 705, we issued herein our Opinion No. 423 and accompanying order dismissing the complaint of Carolina Pipeline Company (Carolina) naming Southern Natural Gas Company (Southern) defendant. Carolina had complained, in effect, that its supplier, Southern, improperly classified it as a limited service customer subject to a partial requirements rate schedule and under that classification unduly discriminated against Carolina by curtailing or by eliminating entirely deliveries of over-run gas while at the same time delivering over-run gas to its other customers. Carolina stated that as a result, its competitive position in the marketing area has been injured unlawfully.

After exhausting its administrative remedies, Carolina appealed to the United States Court of Appeals for the District of Columbia for review of the order issued March 30, 1964, said appeal being docketed by the Court as *Carolina Pipeline Company* v. *F.P.C.*, No. 18713.

While the foregoing appeal was pending the same court issued its decision in *Lynchburg Gas Company* v. *F.P.C.*, 336 F. 2d 942, setting aside our order in *Atlantic Seaboard Corporation, et al.*, Docket No. G-16401 (Opinion No. 368 and accompanying order issued November 27, 1962, 28 FPC 860) and remanded that case to the Commission for further proceedings. This case also involved the applicability of a partial requirements rate schedule to a pipeline customer having a second source of supply and presented the issue of the lawfulness of the classification of customers.

On August 25, 1964, we filed with the Court our motion for remand of the instant proceeding in order to re-examine it in the light of the *Lynchburg* case, *supra*. Therein we stated, among other things, that it is the Commission's intention to reopen the proceedings and invite the views of the parties with respect to the adequacy of the findings and of the record; that thereafter we will take such further action as appears indicated by further analysis including the study of such statements as may be submitted.

On October 2, 1964, the case was remanded to the Commission for further consideration.

The Commission orders:

(A) The proceeding herein is hereby reopened for the purposes set forth above.

(B) All parties of record herein may submit on or before December 2, 1964, a statement, not exceeding 30 pages, expressing their views regarding the adequacy of the findings and of the record herein with respect to any relevant criteria enunciated in the *Lynchburg* decision, *supra*.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

NATURAL GAS PIPELINE COMPANY OF AMERICA, CP64–150; OKLAHOMA NATURAL GAS COMPANY AND OKLAHOMA NATURAL GAS STORAGE COMPANY, CP64–273

ORDER WAIVING INTERMEDIATE DECISION PROCEDURE AND ADOPTING PRESIDING EXAMINER'S BRIEFING SCHEDULE

(Issued November 10, 1964)

On October 21, 1964, the presiding examiner in the above-entitled proceeding filed a "Report to the Commission of Oral Motion for Waiver and Omission of the Intermediate Decision Procedure" to which were attached copies of the portions of the transcript containing the oral motion made, on October 20, 1964, by counsel for Natural Gas Pipeline Company of America (Natural), together with the various responses of other counsel thereto.

The sole issue to be resolved is whether the proposed transaction will subject either Oklahoma Natural Gas Company (Oklahoma) or Oklahoma Natural Gas Storage Company (Gas Storage) to the jurisdiction of the Commission. The jurisdictional facts are not in dispute and, therefore, the nature of the question to be decided is purely legal.

Counsel for Oklahoma Natural Gas Company and Oklahoma Natural Gas Storage Company concurred in Natural's motion for omission of the intermediate decision procedure. Staff counsel did not object.

In view of the nature of the question to be resolved and the need for expediting the decision making process it appears that the intermediate decision procedure should be waived in this proceeding.

The presiding examiner also ordered, subject to the approval of this Commission, that Natural, Oklahoma and Gas Storage file initial briefs on November 20, 1964, and that the staff file its brief on December 11, 1964. Reply briefs are to be filed on or before January 4, 1965.

The Commission finds:

(1) The due and timely execution of the Commission's functions imperatively and unavoidably requires the omission of the intermediate decision procedure.

(2) Good cause has been shown for waiving and omitting the intermediate decision procedure.

The Commission orders:

(A) The intermediate decision procedure in the above-entitled proceeding be and it is hereby waived and omitted.

(B) The briefing schedule proposed by the presiding examiner is hereby adopted.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

CITY OF WETMORE, KANSAS, DOCKET NO. CP64-177

ORDER REMANDING PROCEEDING TO PRESIDING EXAMINER

(Issued November 10, 1964)

On September 22, 1964, the Presiding Examiner issued his initial decision herein, denying the application of the City of Wetmore, Kansas (Applicant), for an order of this Commission under Section 7(a) of the Natural Gas Act, directing Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant its natural gas requirements for resale and distribution in the community of Wetmore, Kansas. It was found by the Examiner that the Applicant had failed to show that the proposal was economically feasible.

It was ordered by the Examiner that if the Applicant desired an opportunity to present further evidence in support of the economic and financial feasibility of the present application, it should, within 20 days from the date of said order, file a statement with the Commission making known such desire and stating fully the nature of the evidence it wished to present. Said order further provided for service upon the other participants not later than the time of filing and for the filing of answers to Applicant's statement within ten days of service.

Thereafter, on October 12, 1964, pursuant to the order of the Presiding Examiner, Applicant filed a statement reciting that it desires an opportunity to present further evidence in support of the economic and financial feasibility of its project and setting forth in detail the evidence which it proposes to present. Applicant requests a period of not less than 90 days from the issuance of such order within which to file or present the further evidence.

No exceptions have been filed to the Presiding Examiner's decision and no answer has been filed to the statement of Applicant.

The Commission finds:

It is necessary and appropriate in the administration of the Natural Gas Act to remand this proceeding to the Presiding Examiner for the purpose of fixing the time within which Applicant shall file or present further evidence and for such other appropriate action as he may deem proper.

The Commission orders:

This proceeding is hereby remanded to the Presiding Examiner for the purpose of fixing a time for filing or presenting further evidence by the Applicant and for such other appropriate action as the Presiding Examiner may deem proper.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

IDAHO POWER COMPANY, PROJECT NO. 1971

ORDER GRANTING REHEARING FOR THE PURPOSE OF FURTHER CONSIDERATION

(Issued November 12, 1964)

On October 14, 1964, the Secretary of the Interior filed an application for rehearing on the Commission's order issued September 15, 1964, 32 FPC 759, amending

Article 39 of the License of the Idaho Power Company for its project on the Snake River in Idaho and Oregon, Project No. 1971. The Secretary's petition also requested that the Commission make clear by a supplemental order that the Secretary is a party to this proceeding. On October 27, 1964, Idaho Power Company filed its motion "to strike or deny" the application for rehearing.

In the application for rehearing, the Secretary of the Interior states that on December 31, 1963, the Assistant Secretary of the Interior wrote to the Chairman of the Commission and requested an extension of time to March 13, 1964, "for presenting our recommendations." By letter dated January 24, 1964, the Chairman notified the Secretary of the Interior that the Commission had granted the requested extension for the submission of his Department's "views on this matter." On December 3, 1963, the Commission had given public notice of the application of the Idaho Power Company for an amendment of its license and January 13, 1964, had been set as the final date for the filing of protests or petitions to intervene. On March 13, 1964, the Department of Interior filed a document containing both the Department's comments and the petition of the Secretary of the Interior to intervene in this proceeding.

In our order of September 15, 1964, we stated in reference to the Secretary's submission of March 13, 1964, that "as comments, the document was timely filed; as a petition to intervene, it was not filed within the period prescribed." We did not thereby intend to recognize the Secretary as a party nor to grant his petition to intervene; but we did not formally dismiss his petition to intervene.

The Secretary's application for rehearing among other things maintains that his comments and petition to intervene, filed March 13, 1964, were, under the circumstances of this case, timely filed and that the Commission should recognize him as a party to this proceeding.

At the outset, we are faced with the question whether the Secretary has been or should be accorded the status as an intervenor and a party to this proceeding. If we resolve this issue in favor of the Secretary, we will be faced with the further question whether our order of September 15, 1964, amending Article 39 of the license should be modified or rescinded. Both of these questions require further consideration, and we shall accordingly grant rehearing of our order of September 15, 1964, for such purposes, it being understood that this action is not to be deemed a prejudgment of the jurisdictional question presented.

The Commission finds:

It is appropriate and in the public interest in administering Part I of the Federal Power Act that the Secretary of the Interior's aforesaid application for rehearing of our order of September 15, 1964, be granted for purposes of further consideration.

The Commission orders:

The Secretary of the Interior's aforesaid application for rehearing of our order of September 15, 1964, is hereby granted for purposes of further consideration of the questions presented thereby.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNION CARBIDE CORPORATION, PROJECT NO. 1856

ORDER ON REHEARING AND MOTIONS TO SUPPLEMENT THE RECORD AND FOR A STAY OF ORDER

(Issued November 12, 1964)

On October 14, 1964, the Union Carbide Corporation and the State of West Virginia filed applications for rehearing of our Opinion No. 442 issued September 15, 1964, 32 FPC 770. In addition, Union Carbide has filed motions to supplement the record in this proceeding and for a stay of our order accompanying Opinion 442. On October 26, 1964, the Commission staff filed an opposition to the motion to supplement the record.

In Opinion 442, we found that Union Carbide should apply for and secure a license for two hydroelectric developments owned by Union Carbide and located on the New and Kanawha Rivers in West Virginia. We found that these rivers were navigable within the meaning of the Federal Power Act and that in addition the developments were capable of affecting navigation on the New and Kanawha Rivers below the projects.[1]

In its application for rehearing Union Carbide argues against our findings of fact but sets forth nothing which was not considered by us before issuing Opinion No. 442. The accompanying motion to supplement the record is for the purpose of introducing evidence which allegedly would show that one logging operation referred to in the opinion may not in fact have been carried on over one stretch of the New River. Our finding of navigability was based on numerous grounds, including logging operations, all supported by the record before us. This particular bit of cumulative evidence could not affect our decision as to navigability or even as to logging operations. We will, therefore, deny the motion.

The State of West Virginia in its application for rehearing adopts the application of Union Carbide and in addition argues that the licensing of these projects might deprive the State of the right to take them over at their fair market value at some time in the future. Our duty under the Federal Power Act to license projects located on navigable waters of the United States is based on the jurisdictional facts in each case and cannot be affected by the provisions of state laws.

Union Carbide has moved that we stay our order directing it to apply for and secure a license for these projects until 90 days after the disposition of this application for rehearing. It does not appear that it would be unreasonable to grant this request.

The Commission finds:

The assignments of error and grounds for rehearing set forth in the applications for rehearing filed in this proceeding present no facts or legal principles which would warrant any change or modification in the Commission's Opinion No. 442 except as specified below.

The Commission orders:

(A) The applications for rehearing filed by Union Carbide Corporation and the State of West Virginia on October 14, 1964, in this proceeding are hereby denied.

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[1] Because the power produced from these projects is used entirely for industrial operations we did not find it necessary to determine if there were other effects on interstate commerce as contemplated by Section 23 of the Federal Power Act.

(B) The motion of Union Carbide Corporation to supplement the record in this proceeding is hereby denied.

(C) Ordering paragraph (B) accompanying our Opinion No. 442 is hereby amended to provide that the application by Union Carbide for a license shall be filed within 90 days from the date of issuance of this order on rehearing.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

HOME GAS COMPANY, DOCKET NO. CP62-51

ORDER AMENDING ORDER PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued November 16, 1964)

On July 14, 1964, as supplemented on September 11, 1964, Home Gas Company (Petitioner) filed in Docket No. CP62-51 a petition to amend the order of the Commission issued December 15, 1961, 26 FPC 880, which order permitted Petitioner to abandon 159.8 miles of four parallel 6-inch transmission lines, with 6.7 miles to be abandoned by sale to Columbia Gas of New York, Inc. (Columbia) and the remaining portion to be lifted and salvaged. In the subject petition, Petitioner requests authorization to sell an additional 1.6 mile section of the lines to Columbia for $3,989 in lieu of salvage.

Petitioner seeks further amendment of the order of December 15, 1961, by requesting authorization to abandon an additional 14.2 miles of four parallel 6-inch lines located immediately west of the facilities for which abandonment authorization was previously issued. The 14.2 miles of lines are no longer needed to provide service. The service can and will be provided through existing parallel 12-inch lines.

Due notice of the subject petition to amend has been given by publication in the Federal Register on October 21, 1964 (29 F.R. 14449). No protest, petition to intervene, or notice of intervention has been filed herein.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued December 15, 1961, in Docket No. CP62-51 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued December 15, 1961, in Docket No. CP62-51 be and the same is hereby amended by authorizing Home Gas Company to abandon by sale to Columbia Gas of New York, Inc. 1.6 miles of pipeline as hereinbefore described, as more fully described in the petition in this proceeding; and authorizing Home to abandon an additional 14.2 miles of pipeline, with 7.1 miles of such pipeline to be abandoned by sale to Columbia and the remainder to be abandoned in place, as hereinbefore described, all as more fully described in the petition in this proceeding.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SUPERWELL DEVELOPMENT CORPORATION, DOCKET NO. RI65–138

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued November 16, 1964)

Superwell Development Corporation (Superwell) on September 28, 1964 filed a motion for reconsideration of the Commission's order issued August 11, 1964, in the above-entitled proceeding suspending the proposed renegotiated increased rate of 14.6 cents per Mcf contained in Supplement No. 2 to its FPC Gas Rate Schedule No. 1 until January 16, 1965, and thereafter until made effective as prescribed by the Natural Gas Act. The proposed rate relates to the sale of gas to Transcontinental Gas Pipe Line Corporation from Stuart City Field, La Salle County, Texas (R.R. Dist. No. 1).[1] The proposed rate is in excess of the 14-cent increased rate ceiling for sales in this area as set forth in the Commission's Statement of General Policy No. 61–1, as amended.

In support of its motion for reconsideration, Superwell asserts that the subject rate filing is in accordance with the Seventh Amendment to the Statement of General Policy No. 61–1 issued November 27, 1963, 30 FPC 1370, which provides for a 14.6-cent-per-Mcf rate in this area if all price escalation clauses are eliminated from a rate schedule except for specified periodic escalation provisions. Superwell states that it amended its contract with the purchaser so as to come within the provisions of the Seventh Amendment. By the amendment Superwell reduced the present contract price, eliminated substantial existing tax reimbursement, and changed the periodic price escalations. Superwell further claims that the fact that it did not eliminate any indefinite pricing provisions from its basic contract (because it did not have any therein) is of no importance, and is not inconsistent with the language of the Seventh Amendment. The important point, Superwell says, is what pricing provisions are being retained. Here, periodic pricing provisions are being retained.

In *Sunray Mid-Continent Oil Company*, Docket No. RI62-196, order issued January 19, 1962, 27 FPC 94, we ruled that the Second Amendment to the policy statement was not applicable where no favored-nation or price redetermination provisions were eliminated from the contract and the producer did not propose to eliminate the periodic escalation clauses from its contract. At that time the Second Amendment issued December 20, 1960, 24 FPC 1107, provided in pertinent part:

> For rate schedules from which favored-nation and price redetermination provisions have been eliminated, * * *

By Order No. 264 issued March 27, 1963, 29 FPC 589, the Second Amendment was revised as follows:

> For rate schedules from which all price escalation clauses are being eliminated except for periodic escalation provisions as specified below * * *

The stated purpose of that order was to "express with a greater degree of clarity" several statements in the original Second Amendment. Language similar to that used in Order No. 264 was utilized in the Seventh Amendment.

Superwell asserts that the use of the words "all price escalation clauses are being eliminated except for periodic escalation provisions" means that it is unnecessary to eliminate either favored-nation or price redetermination clauses

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[1] As Superwell correctly points out in its motion the Commission's suspension order on page 6 inadvertently refers to the instant sale as being in R.R. Dist. No. 2.

to come within the provisions of the Seventh Amendment. We do not agree. The purpose in enacting the Seventh Amendment was to extend to other areas the benefits of a settlement procedure previously limited under the Second Amendment to the policy statement to a few areas in Texas (R.R. Dist. Nos. 2, 3, 4, and 6). It was not intended, however, by the Seventh Amendment to otherwise broaden the provisions of the Second Amendment, as amended. Certainly, neither the order amending the Second Amendment nor the Seventh Amendment order evince any purpose to disavow our previous ruling in the *Sunray* case as to the necessity for *eliminating* indefinite pricing clauses. The purpose of the change in lanuage in Order No. 264, noted above, was merely to relate the Second Amendment provisions to the elimination of any indefinite pricing provision,[1] and to codify the then existing Commission practice of approving settlements under the Second Amendment when a producer eliminated the sole indefinite pricing provision from his contract (even though the language in the original Second Amendment provided for the elimination of favored-nation *and* price redetermination provisions). Since the language utilized in the Seventh Amendment is similar to that used in Order No. 264, it is clear that the situations in which higher rates were to be applicable were the same. We shall therefore adhere to our ruling in *Sunray* and shall deny Superwell's motion for reconsideration.

The Commission orders:

For the reasons set forth above, the motion for reconsideration of the suspension order issued August 11, 1964, in the above-entitled proceeding is hereby denied.

OPINION NO. 446

EDWIN L. COX, CI61-153; ROBERT A. HEFNER, JR., ET AL., CI61-393; JEROME M. WESTHEIMER, ET AL., CI61-554; ROLAND S. BOND, CI61-804; RAY RYAN, ET AL., CI61-1087; EDWIN L. COX, CI61-1308; TAM OIL, INC., CI62-27; SAM K. VIERSEN, CI62-90; MACK OIL COMPANY (OPERATOR), ET AL., CI62-273; EDWIN L. COX, CI62-471; J. I. GOINS, ET AL., CI62-1392; THE HEFNER COMPANY, CI62-1500; GLOBAL OILS, INC. (OPERATOR), ET AL., CI63-96; FOREST OIL CORPORATION, CI63-265; KEENER OIL COMPANY, CI63-381; SAM K. VIERSEN, JR., CI63-392; CALVERT EXPLORATION COMPANY (OPERATOR), ET AL., CI63-393; GULF OIL CORPORATION (OPERATOR), ET AL., CI63-417; C. L. MCMAHON, JR., ET AL., CI63-690; APACHE CORPORATION, CI63-787; PETROLEUM INCORPORATED (OPERATOR), ET AL., CI63-797; TIDEWATER OIL COMPANY, CI63-876; J. A. CHAPMAM, CI63-936; HALL-JONES NO. 4, ET AL., CI63-985; CRESCENT OIL & GAS CORPORATION, CI63-1230; EASON OIL COMPANY, CI63-1276; APACHE CORPORATION, CI63-1394; FOREST OIL CORPORATION, ET AL., CI63-1398; W. C. PICKENS, CI63-1476; JOE A. HUMPHREY, CI63-1519; EDWIN L. COX, CI63-1574; W. RAY WALLACE, CI63-1584; ROBERT P. LAMMERTS, CI64-28; EASON OIL COMPANY, CI64-65; GLOBAL OILS, INC., CI64-109; ROLAND S. BOND, CI64-121; CARL E. GUNGOLL, & HENRY H. GUNGOLL, CI64-181; PETROLEUM INC. (OPERATOR), ET AL., CI64-361.

[1] Although favored-nation and price redetermination provisions are the most widely used type of indefinite price clauses, there are other types.

OPINION AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENTS OF SERVICE

(Issued November 17, 1964)*

Syllabus

1. Carving out separate sales or fields above guideline or in-line pricing should be strictly limited to situations of distinctly compelling nature; such is not the case here. P. 1306.
2. Evidence conclusively establishes that in-line price was 15 cents per Mcf for "Oklahoma-Other" area at time Gulf and Tidewater contracts were executed. PP. 1306, 1307.
3. Were allegations of greater depths and higher well-drilling costs accepted at full value, such circumstances would not constitute "very compelling showing" necessitating *ad hoc* change from general area standard. P. 1307.
4. Generally, in-line price is that applicable at point of delivery negotiated at arm's-length between parties; no extra allowance is in order for producer's services beyond wellhead necessary in effecting deliveries. P. 1307.
5. *Elk City* (Opinion No. 350) *distinguished* on basis of volume of gas and related extent of gathering operation. P. 1307.
6. There is no evidence whereby value of producers' specific service, if any, could even be estimated, let alone accurately measured—thus no basis for extra allowance here. P. 1307.
7. Commission *finds* in-line price for all sales is 15 cents per Mcf, inclusive of any tax reimbursement. P. 1307.
8. There is no necessity for moratorium condition in Gulf and Tidewater certificates since by time next contractual escalation will occur just and reasonable rates will probably have been determined for all sales herein. P. 1308.
9. Since neither Gulf nor Tidewater have commenced deliveries in interstate commerce from acreage involved, they are free to accept or reject tendered certificates—Commission decides here that interstate consumer does not need subject gas at initially certificated rate in excess of 15 cents. P. 1308.
10. Btu adjustment clauses made subject prospectively to decision in Docket No. R-200 rule-making proceeding. P. 1308.
11. Moratorium for other sales fixed at 17.9 cents, the point above which increases would prompt general escalation of area prices. P. 1308.
12. Producers having initial contract price of 20.495 cents allowed to file for increases up to 17.9 cents per Mcf, inclusive of tax reimbursement, until July 1, 1967, or issuance of final decision in Hugoton-Anadarko area rate proceeding, whichever is earlier. P. 1309.
13. In proceedings arising under Section 7 of the Natural Gas Act, Commission *issues* certificates of public convenience and necessity, *permits* and *approves* abandonments of service, *prescribes* initial in-line price and *provides* for refunds.

Commissioner O'Connor; *dissenting in part*
Commissioner Black; *dissenting in part*

Angus A. Davidson, Charles E. McGee and *James D. McKinney, Jr.* for Sin-

*Initial decision appears on P. 1313.

clair Oil & Gas Company

Joseph C. Johnson, Tom Burton, and *Bruce R. Merrill* for Continental Oil Company

Sherman S. Poland and *Stuart Scott* for The Atlantic Refining Company

John P. Egan and *K. R. Edsall* for Pacific Lighting Gas Supply Company

Milford Springer, Robert M. Olson, Jr. and *K. R. Edsall* for Southern Counties Gas Company of California

John Ormasa and *K. R. Edsall* for Southern California Gas Company

John A. Ward, III, Phillip D. Endom and *William Phelps* for Sun Oil Company

H. L. Hester for Ashland Oil & Refining Company

Justin R. Wolf, Charles A. Case, Jr. and *Stanley Wanger* for Union Texas Petroleum, a division of Allied Chemical Corporation

J. P. Hammond, Harold H. Young, Jr., Norton Standeven, R. H. Landt, William J. Grove and *Carroll L. Gilliam* for Pan American Petroleum Corporation

Charles C. McDugald, Philip A. McKinsey and *Kenneth R. Myers* for Natural Gas Pipeline Company of America

Anthony G. Riddlesperger and *Arthur F. Whitt* for Gulf Oil Corporation

R. Joseph Opperman for Marathon Oil Company

John C. Snodgrass for The Pure Oil Company

Clyde E. Willbern for Tidewater Oil Company

Tom P. Hamill, Robert D. Haworth and *Lamar Smith* for Socony Mobil Oil Company, Inc.

Albert C. McClain and *Jesse H. Foster, Jr.* for Humble Oil & Refining Company

Charles B. Parker, Richard F. Generelly and *Gene P. Bond* for Forest Oil Corporation

David S. Lichtenstein for Staff of the Federal Power Commission

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

Ross, *Commissioner:*

This case involves the remainder of an originally large number of pending applications for permanent certificates of public convenience and necessity under Section 7(c) of the Natural Gas Act for sales of gas from the Oklahoma "Other" pricing area, as that area is defined and established in the Commission's Statement of General Policy No. 61–1.[1] The matter is now before the Commission for decision on exceptions filed by Gulf Oil Corporation, which exceptions have been adopted by Tidewater Oil Company, to the presiding examiner's initial determination issued July 13, 1964 recommending the issuance of permanent certificates at a conditioned initial price of 15 cents per Mcf,[2] the applicable area guideline rate. Tidewater and Gulf request that the certificates in their dockets No. CI63–876 and CI63–417, respectively, be granted at the currently specified contract rate of 17.9 cents per Mcf. All other remaining applicants either have settled out, as hereinafter described, or, since no other exceptions have been filed, seemingly are willing to accept the conditions imposed in the initial decision. Abandonment of service and cancellation of the related rate schedules is sought without opposition in two dockets, Nos. CI61–153 and CI61–393, because of depletion of the underlying reserves.

For the reasons hereinafter expressed, we conclude that the public convenience and necessity requires that the certificates tendered to Gulf and Tidewater be conditioned to preclude a total initial price in excess of 15 cents per Mcf.

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[1] Issued September 28, 1960, 24 FPC 818, 18 CFR 2.56.

[2] All prices herein are at 14.65 psia.

Background of Proceeding

The proceeding was initiated by Commission order dated December 12, 1963, which consolidated 82 pending producer applications for certificates, or applications to amend an outstanding certificate by the incorporation of additional acreage, for sales to seven pipelines from 15 counties [3] in the Oklahoma "Other" area at total initial contract prices ranging from 15.5 cents to 20.495 cents, plus some form of Btu price adjustment in most instances. The contract dates of execution for the sales originally in issue extended from July 1959 to April 1963. With the exception of the two dockets here contested, all of the sales had commenced prior to the consolidation order under temporary authorizations [4] which conditioned the proposed initial prices to 15 cents per Mcf (or 15.5 cents subject to refund to a floor of 15 cents) and the take-or-pay and Btu price adjustment provisions on the outcome of the rule-making proceedings in Docket Nos. R–199 and R–200. The temporary authorizations also provided that the producers could substitute prospectively any higher initial price which might become applicable in the event the boundary between the Oklahoma Panhandle and Oklahoma "Other" areas thereafter was adjusted.

Following the consolidation, but before the date set for the convening of a prehearing conference, numerous motions for severance were filed proposing settlement at the 15-cent per Mcf price level. On March 30, 1964, 31 FPC 730, an order was issued approving the proposed settlements and issuing certificates in 36 of the original dockets. With the subsequent settlement of six additional dockets, 38 sales are left for decision herein. The terms of the settlement in each instance provided for an initial price not in excess of 15 cents per Mcf, increase in the event of subsequent adjustment of the Policy Statement area boundaries, and prospective revision of the take-or-pay and Btu adjustment provisions, if any, on the basis of the decision in the applicable rule-making proceeding.

On April 1, 1964, the presiding examiner issued a notice calling upon those applicants who had not joined in the settlement to show cause why their requests for permanent certification at rates in excess of 15 cents per Mcf should not be denied.

Contested Dockets

The only producer-applicant to present evidence or file briefs was Gulf Oil Corporation in support of a proposed sale to Cities Service Gas Company from the Laverty Field, underlying the boundary between Grady and Caddo counties. The contract, which is dated August 21, 1962, provides an initial price of 16.8 cents per Mcf with an escalation to 17.9 cents per Mcf on July 1, 1963. Further price escalations are at the rate of 1.1 cents per Mcf each five years. There is no provision for price redetermination, tax reimbursement or Btu adjustment. Tidewater Oil Company, which also proposes a sale from the same field under a contract identical in major provisions with Gulf's,[5] joined in Gulf's evidentiary presentation and has adopted Gulf's briefs and exceptions to the initial decision. Applicants seek certification at the currently applicable contract rate of 17.9 cents per Mcf. The estimated first month's volumes as reported in the certificate applications are 150,000 Mcf for Gulf and 90,000 Mcf for Tidewater.

Applicants opposing the initial decision contend that the proposed Laverty

[3] Counties of Love, Major, Woods, Dewey, Bryan, Custer, Carter, Stephans, Alfalfa, Caddo, Grady, Beckam, Blaine, Kingfisher and Garfield.

[4] Another sale for which no temporary authorization had been requested, Tidewater Oil Company Docket No. CI63–1009, has been settled and severed from this proceeding.

[5] Gulf is the operator under both leasehold interests. The Tidewater contract bears date of December 7 1962.

Field sales are comparable with gas produced in the Carter-Knox and Oklahoma Panhandle areas, where the applicable initial guideline and certificated prices are 16.8 cents and 17 cents per Mcf, respectively, and that an initial price in excess of the 15-cent guideline rate for the Oklahoma "Other" area is justified by the provisions for dehydration, gathering to a central field point and compression of the gas before delivery, and by the great depth (16,400 feet) and high drilling and completing costs ($800,000 to $1,000,000 per well) encountered in Laverty Field. Applicants also argue that since no provision is made in the contracts for an upward Btu price adjustment, the 17.9-cent contract price would not exceed the Panhandle area guideline level because a proportionate adjustment from a 17-cent base price for 1,000 Btu gas would be equivalent to 18.105 cents per Mcf for 1,065 Btu Laverty Field gas.

In essence, Gulf and Tidewater request that the Commission carve out the Laverty Field from the existing Oklahoma "Other" area in a manner similar to the establishment in 1959 of Carter-Knox as a separate pricing area.[6] Noting that Carter-Knox is approximately 24 to 25 miles southeast of Laverty, applicants claim that the former is an "analogous" producing area with "fairly comparable" contracts within the meaning and intendment of *U.G.I.* v. *F.P.C.*, 283 F. 2d 817 (9th Cir. 1960, cert. denied 365 U.S. 879; 1961) and that the appropriate in-line price for these sales may properly be fixed by reference thereto. Applicants rely on that decision for the allowance of a higher price based on greater than normal depths of the producing formation and on the Commission's "Elk City" Opinion No. 350[7] granting an additional increment of 2.5 cents per Mcf above the 15-cent area wellhead price because of the gathering, dehydration and compression services performed by one of the producers in that case.[8]

Gulf and Tidewater, through their witnesses, contend that the entire Anadarko Basin area of north-central and central Oklahoma, including Carter-Knox and Laverty, should be consolidated into a single 17-cent pricing area together with the present Oklahoma Panhandle area. The applicants refer to the geographical proximity between the two fields, the close similarity to Carter-Knox in the depth of wells and drilling costs, and the fact that the sale is to be made at a field delivery point rather than at the wellhead to support certification at their higher than guideline price. Applicants also presented evidence comparing contract prices as well as certificated prices in various parts of Oklahoma in an effort to bear out their claim that the proposed sales should be compared for certificate pricing purposes with sales in the Oklahoma Panhandle and Oklahoma Anadarko areas, as these areas are defined in the pending Docket No. AR64–1 area rate proceeding for the Hugoton-Anadarko area, rather than the Oklahoma "Other" area as defined in the Policy Statement.

Staff presented evidence to establish that the in-line price in the Oklahoma "Other" area was and is 15 cents per Mcf for the period from January 1959 to December 1963 and that the quality and delivery requirements of the proposed Laverty Field sales are comparable to those of other sales previously certificated at a 15-cent initial price level in the Oklahoma "Other" area. Staff also contended that the Elk City and proposed Laverty Field sales are readily distinguishable from the standpoints of gathering system mileage and expenditures and in the volumes of gas involved.

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[6] *Phillips Petroleum Co., et al.*, Docket No. G-17697, *et al.*, Order Adopting Presiding Examiner's Initial Decision, 22 FPC 528.

[7] *Panhandle Eastern Pipe Line Co., et al.*, Docket No. CP60-103, *et al.*, Opinion and Order Issuing Certificates of Public Convenience and Necessity, 27 FPC 35.

[8] *Id., Shell Oil Company*, Docket No. CI60-660, 27 FPC at p. 44.

The examiner divided the case into two basic issues: (1) The appropriate pricing area for determining the in-line price for sales from Laverty Field, and (2) the justification, if any, for the issuance of certificates to Gulf and Tidewater at an initial price higher than the in-line price on the basis of the special services to be rendered prior to delivery of the gas to the pipeline-purchaser.

As to the first issue, the examiner found that the appropriate pricing area for determining the in-line price for the Laverty Field sales, and the sales properly to be looked to in comparison, is the Oklahoma "Other" area delineated in the Policy Statement, within which Laverty is situated. Regarding applicant's argument that Laverty is comparable to the higher priced Panhandle and Carter-Knox areas, he noted that a similar contention was rejected in the Elk City opinion where we indicated that the appropriate procedure for effecting changes in area prices is not through piecemeal determinations in individual certificate proceedings but rather in a rule-making or rate proceeding in which all relevant factors may be evaluated. The examiner observed that since Laverty Field is located in the Oklahoma Anadarko production area, the just and reasonable rates for these sales would be established in the area rate proceeding already underway.

On the second issue, the justification for an initial price higher than the area ceiling, the examiner found that the evidence did not warrant a separate increment. No evidence was submitted of a point-by-point comparison between Laverty Field and other fields in the Oklahoma "Other" area in respect to differences in costs, geology, gas quality and contract provisions. He also found, as argued by staff, that the alleged similarity between Laverty Field and Elk City Field was not sustained on closer examination, particularly on the matters of the mileage of gathering systems and volumes of gas to be delivered. Finally, he held that no evidence had been presented whereby the extra services claimed by Gulf could be objectively measured to provide a basis for a separate allowance.

Applicants advance in their exceptions many of the same arguments contained in their briefs. They contend that the examiner erred in refusing to consider prices outside the Oklahoma "Other" area in determining the price line, that he erred in finding an in-line price for Laverty Field of 15 cents per Mcf, and that he erred in refusing to grant compensation above the wellhead in-line price for the special services.

Applicants' claim that the Oklahoma Anadarko area is comparable to the Panhandle and Carter-Knox areas on the basis of production, geological conditions, marketing conditions, etc., and that the areas should be amalgamated into a single pricing area has some validity. In fact, in the Notice of Proposed Revision of Area Boundaries, Docket No. R–218, issued July 11, 1962, this joinder was suggested by the Commission and comments were invited and received from interested parties. Action on the revision has been suspended for the present pending the accumulation of additional information as to area costs and historical pricing patterns currently being developed in the area rate proceeding.[9] More recently, the Commission gave further recognition to the mutual identification between these areas in the scheduling and setting up of the Hugoton-Anadarko area rate proceeding in Docket No. AR64–1. Pending any further realignment in these areas, however, it is our opinion that any carving out of separate sales or fields for above guideline or in-line pricing, as has been sought here and in other cases, should be strictly limited to situations of a distinctly compelling nature. No such situation is presented in this case. The staff exhibit conclusively establishes

[9] Order Deferring Further Consideration of Proposed Changes in Pricing Area Boundaries Fixed Under Statement of General Policy No. 61–1, issued November 27, 1963, 30 FPC 1374.

that the in-line price for the Oklahoma "Other" area at the time Gulf and Tidewater executed their contracts was 15 cents per Mcf. With the exception of two sales certificated at 15.5 cents in Love County and the Shell Elk City sale, no permanent certificates were issued at prices over 15 cents during the entire 1959-1963 period. No detailed comparison between Laverty Field and other fields in the Anadarko Basin sector of the Oklahoma "Other" area was offered. Although the depth of the wells at Laverty is greater than at Elk City, and is even somewhat in excess of Carter-Knox, this fact standing alone cannot and does not serve to satisfy applicants' entire burden of proof in establishing their entitlement to an otherwise out-of-line price. Even accepting the allegations of greater depths and higher well drilling costs at full value, these circumstances do not constitute in our opinion the "very compelling showing" which would necessitate an *ad hoc* change from the general area standard.[10]

As a general rule the in-line price is the price applicable at the point of delivery negotiated at arm's-length between the parties and no extra allowance is in order for services performed by the producer beyond the wellhead necessary in effecting deliveries under the contract. Thus, the fact that a producer may be required to compress and dehydrate his gas or transport it in order to make a sale does not necessarily justify a higher price for the gas in an in-line proceeding.[11] As stated by the court in the *California* case,[12] there are "serious doubts" that costs of exploration and drilling or costs of delivery services rendered by a producer are requisite considerations in arriving at the in-line price in a certificate proceeding. While we recognize that the 15-cent price established in *Panhandle* was based on wellhead sales, and that an increment of 2.5 cents per Mcf was allowed Shell Oil Company in that proceeding for services performed beyond the wellhead, that sale is readily distinguishable on the basis of the volume of gas and the related extent of the gathering operation. The Shell contract at Docket No. CI60-660 involved deliveries of approximately 150,000 Mcf per *day*. As noted, Gulf's estimated deliveries in this proceeding are approximately 150,000 Mcf per *month*, while Tidewater's at 90,000 Mcf per month are even less. No substantial gathering is involved. Although we have stated that consideration will be given at the certification stage to additional features of a sale which are of "objectively measurable value",[13] the record contains no information whereby the value of the special service to be provided by these producers, if any, could be even estimated, let alone accurately measured. Thus, even if an exception to our general rule might otherwise be warranted, the evidence submitted affords no basis for an extra allowance herein.

On our consideration of the evidence submitted, the briefs, the examiner's decision and the exceptions thereto, it is our opinion, and we so find, that the in-line price for all the sales in this proceeding, including these proposed by Gulf and Tidewater, is 15 cents per Mcf, inclusive of any tax reimbursement, and that certification of prices above this rate is not in the public interest and would not serve the public convenience and necessity. Accordingly, we shall condition the certificates issued herein upon the charging of this rate as the initial price.

Under the examiner's decision, Gulf and Tidewater, after acceptance of certificates at the 15-cent conditioned price, could file immediately for an increase

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[10] Opinion No. 350, *supra*, 27 FPC at p. 42; *Michigan Wisconsin Pipe Line Co., et al.*, Docket No. CP61-102, Opinion No. 353, 27 FPC 449, 454.

[11] *Amerada Petroleum Corp., et al.*, Opinion No. 422-A, 31 FPC 1315, at pp. 1318, 1319; *The Superior Oil Co.*, Opinion No. 437, 32 FPC 241, at p. 243.

[12] *California Oil Co., Western Div.* v. *F.P.C.*, 315 F. 2d 652 (CA10-1963).

[13] *Medina Gathering Corp., et al.*, Docket No. CP62-194, *et al.*, Opinion No. 397, 30 FPC 227, 232.

up to the 17.9-cent contract rate and collect such rate, after expiration of the suspension period, subject to refund under Section 4 of the Act. Since a number of Carter-Knox sales have already escalated to 17.9 cents and are themselves being collected subject to refund, allowance of the increased rate in Laverty Field would have no triggering effect and would not establish a new price plateau in the general area. As the next contractually authorized escalation will not occur until July 1, 1968, by which time just and reasonable rates will probably have been determined for all sales in this proceeding, there is no necessity for the imposition in the certificates issued in these dockets of a moratorium condition on the filing of price increases. The duration of the suspension period will be determined when and as such rate increase applications are filed, at which time suitable consideration can be given to a reduction in the maxmium period.

Since neither Gulf nor Tidewater have made application for temporary authorizations and thus never have commenced deliveries in interstate commerce from the acreage involved, they are, of course, free to accept or reject the certificates tendered. As reported in the certificate applications, only one-half of the gas to be produced from Laverty has been contracted to Cities Service for interstate sale and transportation, the remainder being under contract for intrastate sale to Oklahoma Natural Gas Company. The terms of the sale allegedly are identical in regard to price to the contracts in this proceeding. Applicants have stated that the Oklahoma Natural contracts contain a provision that if no "acceptable" certificate is issued herein the entire quantity of gas will be sold and purchased for intrastate use. Whether applicants elect to accept the certificates offered them is, of course, their decision and their decision alone. What we have decided is that the interstate consumer, whom we are obligated to protect against excessive charges, does not need this gas at an initially certificated rate in excess of 15 cents per Mcf.

The examiner's decision would allow all remaining applicants to substitute any new rate resulting from revision of the Policy Statement area boundaries and conditions the take-or-pay requirements to the ultimate disposition of Docket No. R-199. Both provisions are in accord with similar conditions in the dockets previously settled and severed from this proceeding and these allowances will be continued in the order appended to this decision. The Btu price adjustment provisions,[14] which are allowed without restriction for the present but are made subject prospectively to the decision in Docket No. R-200, is likewise in accordance with the previous settlements, including downward adjustment for gas of less than 1,000 Btu's per cubic foot, and with our decisions in Opinions No. 350 and 353. This condition also will be continued unchanged from the initial decision.

A review of the various rate schedules reveals that in eleven of the dockets the total initial price provided in the contracts is 20.495 cents per Mcf. In the absence of a moratorium on the filing of price increases, these producers would be able to file for this rate immediately on permanent certification. Consistent with previous decisions [15] we conclude that a moratorium should be applied at the rate of 17.9 cents, which we consider to be the point above which increases would prompt a general escalation of prices in the area. For the period of the

[14] Although Gulf and Tidewater have no Btu adjustment in their contracts a number of the other dockets do contain this provision.

[15] *Placid Oil Co., et al.*, Opinion No. 398, 30 FPC 283; *Hassie Hunt Trust, Operator, et al.*, Docket No. G-19115, et al., orders issued February 24, 1964, 31 FPC 447, April 17, 1964, 31 FPC 946, September 29, 1964, 32 FPC 874; *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.*, Opinion No. 436-A, 32 FPC 952, at p. 956; *Sun Oil Co., et al.*, Docket No. G-8892, *et al.*, Opinion No. 445, 32 FPC 1183, at p. 1188.

moratorium, we believe that it would be inconsistent with the public convenience and necessity to certificate sales authorizing higher rates.

It is true that certain sales in the area are not subject to such a moratorium provision, a situation also present in previous cases where moratorium conditions were imposed. If the absence of prior moratoria were a bar, a new rule could never be imposed where experience indicated it was necessary.[16] Here, no sale in the area has escalated above 17.9 cents per Mcf. Moreover, there is no guarantee that any party without a moratorium will ever collect a rate in excess of 17.9 cents per Mcf during the moratorium period. As we have done in similar situations, we would immediately institute a 4(e) proceeding with respect to any filing above that level.

Consequently, those producers having an initial contract price of 20.495 cents will be allowed to file for increases only up to 17.9 cents per Mcf, inclusive of tax reimbursement, until July 1, 1967, or the issuance of the final decision in the Docket No. AR64–1 area rate proceeding, whichever is earlier.[17]

In all other respects the examiner's decision will be adopted and, together with this decision, shall constitute the decision of the Commission.

The Commission further finds:

(1) The following applicants:

	Docket Nos.
Edwin L. Cox	CI61–153
Robert A. Hefner, Jr., *et al*	CI61–393
Jerome M. Westheimer, *et al*	CI61–554
Roland S. Bond	CI61–804
Ray Ryan, *et al*	CI61–1087
Edwin L. Cox	CI61–1308
Tam Oil, Inc	CI62–27
Sam K. Viersen	CI62–90
Mack Oil Company (Operator), *et al*	CI62–273
Edwin L. Cox	CI62–471
J. I. Goins, *et al*	CI62–1392
The Hefner Company	CI62–1500
Global Oils, Inc. (Operator), *et al*	CI63–96
Forest Oil Corporation	CI63–265
Keener Oil Company	CI63–381
Sam K. Viersen, Jr	CI63–392
Calvert Exploration Company (Operator), *et al*	CI63–393
Gulf Oil Corporation (Operator), *et al*	CI63–417
C. L. McMahon, Jr., *et al*	CI63–690
Apache Corporation	CI63–787
Petroleum Incorporated (Operator), *et al*	CI63–797
Tidewater Oil Company	CI63–876
J. A. Chapman	CI63–936
Hall-Jones No. 4, *et al*	CI63–985
Cresent Oil & Corporation	CI63–1230
Eason Oil Company	CI63–1276

[16] *E.g.*, *Hassie Hunt Trust, Operator, et al.*, Docket No. G–19115, *et al.*, orders issued April 17, 31 FPC 946 and September 29, 1964, 32 FPC 874.

[17] While a similar moratorium on price increases was held invalid in *Callery Properties, Inc.* v. *F.P.C.*, 335 F. 2d 1004 (CA5–1964), we have already indicated that review of that decision will be sought on the basis of a conflict between the circuit courts and that, pending resolution thereof, we do not accept such decision as binding. See *Union Texas Petroleum, et al., supra*, p. 955.

The Commission further finds:—Continued

(1) The following applicants:—Continued

	Docket Nos.
Apache Corporation	CI63–1394
Forest Oil Corporation, *et al.*	CI63–1398
W. C. Pickens	CI63–1476
Joe A. Humphrey	CI63–1519
Edwin L. Cox	CI63–1574
W. Ray Wallace	CI63–1584
Robert P. Lammerts	CI64–28
Eason Oil Company	CI64–65
Global Oils, Inc	CI64–109
Roland S. Bond	CI64–121
Carl E. Gungoll & Henry H. Gungoll	CI64–181
Petroleum Inc. (Operator), *et al.*	CI64–361

are, have been, or upon commencement of the operations applied for will be engaged in the sale of natural gas in interstate commerce for ultimate public consumption and each is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sales of natural gas hereinbefore described, as more fully described in the applications, are or upon commencement of the sale will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Subject to the requirements of our order herein and conditions attached to the certificates herein issued, the applicants referred to in paragraph (1) are able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sales of natural gas by the independent producers referred to in the above paragraph (1), together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are and have been required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) The sales sought to be abandoned by Robert A. Hefner, Jr., *et al.*, in Docket No. CI61–393, and by Edwin L. Cox in Docket No. CI63–153, are subject to the jurisdiction of the Commission and abandonment of such sales is subject to the requirements of subsection (b) of Section 7 of the Natural Gas Act.

(7) Such abandonment by the two applicants as heretofore described is permitted by the public convenience and necessity, and an order authorizing and approving same should be issued as hereinafter ordered.

(8) The motions for settlement filed by the applicants specified in Appendix A attached to the initial decision should be granted upon the conditions set forth in the Commission's order in March 30, 1964, in this proceeding and the further condition set forth in paragraph (H) of the order herein.

(9) Except as herein granted, the exceptions to the examiner's decision should be denied.

The Commission orders:

(A) Certificates of public convenience and necessity are hereby issued to the applicants named in paragraph (1) above for the sale of gas in interstate commerce for resale as proposed in their applications, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, upon the terms and conditions of this order.

(B) Each certificate issued severally as provided in paragraph (A) above is hereby conditioned to prohibit any total initial price, including tax reimbursement, greater than 15 cents per Mcf at 14.65 psia, plus Btu adjustment where applicable, from the date of initial delivery and until such price may be lawfully changed in the manner provided by the Natural Gas Act.

(C) Within 30 days from the date of issuance of this order each of the applicants receiving certificates in paragraph (A) above shall file supplements to their presently filed rate schedules reflecting the conditioned price as the initial price in lieu of the initial price provided in the contract; provided that the notice provisions of Section 154.94(b) and the detailed submittal provisions of Section 154.94 (f) of the Commission's Regulations Under the Natural Gas Act are waived insofar as they apply to the reductions in rates hereby ordered.

(D) The certificates herein issued to Gulf Oil Corporation (Operator), *et al.*, in Docket No. CI63–417 and Tidewater Oil Company in Docket No. CI63–876 are conditioned upon their being accepted in writing and under oath by the applicants within 30 days of the issuance of this order; and the facilities authorized by said certificates shall be constructed and placed in actual operation within six months from the date of issuance of this order.

(E) In the event the Commission, by amendment of Policy Statement No. 61–1, adjusts the boundary between the Panhandle area and the "Other" Oklahoma area so as to increase the initial wellhead price level for new gas in the area of the sales herein certificated, the producer applicants accepting the certificates herein issued may thereupon substitute new rates reflecting the amount of such increase, and thereafter collect these new rates prospectively in lieu of the initial rates herein required.

(F) The certificates herein issued are granted upon the further express condition that the allowance of the take-or-pay for provisions in the applicants' contracts is subject to our ultimate disposition with respect to such provisions in the rule-making proceeding in Docket No. R–199. Upon the establishment, by regulation or policy statement, of a general policy governing such provisions in producer contracts, the applicants shall within 30 days file amended rate schedules in conformity therewith, acceptable to the Commission. The producers shall not be required to file take-or-pay provisions for less than 80 percent of the annual contract quantities. Any changes or modifications to be made in accordance with this paragraph shall be prospective only.

(G) The certificates herein issued are granted upon the further express condition that the allowance for any Btu adjustment provision in the related rate schedule is subject to the ultimate disposition with respect to such provision in the rule-making proceeding in Docket No. R–200; provided, however, as a further condition of the issuance of the certificates herein, that the rate schedules filed by the producer-applicants in Docket Nos. CI62–90, CI63–96, CI63–265, CI63–381, CI63–392, CI63–393, CI63–787, CI63–797, CI63–936, CI64–109, and CI64–121, shall also make provision for a full percentage downward adjustment in price for gas containing less than 1000 Btu's per cubic foot. The precedent processing agreements, where applicable, shall be similarly modified to provide reimbursement to Michigan Wisconsin on the same basis for Btu's below 1000 removed by the producers in processing the gas.

(H) Each certificate issued in paragraph (A) above is further conditioned to provide for a moratorium on the filing of all price increases in excess of a base price of 17.9 cents per Mcf, inclusive of tax reimbursement, pending the issuance of a final decision in the area rate proceeding in Docket No. AR64–1 or until July 1, 1967, whichever is earlier.

(I) The certificates herein issued are not transferable and shall be effective only so long as each of the applicants continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(J) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Regulations thereunder. Such grant is without prejudice to any findings or order which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants. Further, the action in this proceeding shall not foreclose nor prejudice any further proceedings or objections by the Commission relating to the operation of any price or related provision in the gas purchase contracts here involved.

(K) As a further condition to the issuance of permanent certificates in Docket Nos. CI62–1392, CI62–1500, and CI63–690, the respective applicants shall refund to Cimarron Transmission Company all amounts collected in excess of 15 cents per Mcf, plus interest at seven percent per annum, from the date of initial delivery until the date of issuance of this order.

(L) Permission for and approval of the abandonment of sales by Robert A. Hefner, Jr., *et al.*, in Docket No. CI61–393 and Edwin L. Cox in CI61–153, as and for the reasons described in their motions, is hereby granted; the certificates issued to these applicants are hereby terminated.

(M) The offers of settlement described in Appendix A to the initial decision in this proceeding are granted upon the same conditions specified in the Commission's order dated March 30, 1964, and the further condition set forth in paragraph (H) above.

(N) Except as herein granted, the exceptions to the examiner's decision are hereby denied.

(O) The examiner's decision is hereby adopted as part of this Opinion and Order.

Commissioners O'Connor and Black *dissenting in part.*

O'Connor, *Commissioner, dissenting in part:*

The imposition of moratoria in certificates is a practical method of meeting the Commission's statutory obligations with a measure of fairness to both the producers and the purchasers. However, by embarking upon a new course, the majority does not stay within this purpose, and I respectfully dissent from their failure to do so.

It must be conceded that the majority's moratorium price level of 17.9 cents will not prevent a triggering of price increases. Instead, it appears that most contractually authorized increases under price redetermination and most-favored-nation clauses have already occurred, and that there will be no further triggering until late in 1967. The majority selects the 17.9-cent level solely because it is the highest increased rate that has been permitted to be filed in the Oklahoma "Other" area. This solution, novel in its failure to consider the total pricing structure, is basically unsound.

In the first place, the 17.9-cent level is ineffective. Only eleven sales will be precluded from filing for their periodic escalations. On the other hand at least sixty contracts under permanent certificates can be escalated above the majority's

moratorium level. Certainly the majority's illusory effort cannot be considered as preventing an adverse impact on the pricing structure. Second, the 17.9-cent level is discriminatory. The majority has focused restraint on a few, isolated producers in the context of a great number of unconditioned certificates. This approach is devoid of fairness.

We have previously declared that the moratorium level is to be the maximum rate allowed by the public convenience and necessity. It must be a rate that allows a certain degree of flexibility to pricing developments in a particular area. A survey of the area pricing structure reveals that, of the contracts which can be escalated prior to July 1, 1967, three can escalate above 23.0 cents, thirty allow for increases up to 22.6 cents, twenty can go to 22.4 cents, and seven to 18.0 cents. Thus, considering these possible escalations, a moratorium level of 22.6 cents for the contracts consolidated in this docket is more reasonable than the majority's 17.9-cent level. However, none of the instant contracts can escalate above 20.5 cents during the precluded period. Consequently, I conclude that no useful purpose is served by the imposition of any moratorium, and I dissent from the majority's insistence on an appearance of restraint.

BLACK, *Commissioner, dissenting in part:*

For the reasons set forth in my dissent to the Commission's order approving the settlement offers of certain of the original parties to this proceeding, (Pan American Petroleum Corporation, *et al.*, Docket No. G–19417, *et al.*, issued March 30, 1964, 31 FPC 730 at 735), I dissent to that portion of the opinion which makes the Btu adjustment clauses subject only prospectively to our conclusions in the pending rulemaking proceeding in Docket No. R–200.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY UNDER SECTION 7 OF THE NATURAL GAS ACT INVOLVING PRODUCERS INITIAL PRICES

(Issued July 13, 1964)

LEVY, *Presiding Examiner:* This proceeding[1] is based upon an order issued by the Commission on December 12, 1963, consolidating approximately 82 applications for certificates of public convenience and necessity seeking authorization for sales to various pipelines under Section 7 of the Natural Gas Act, from numerous fields in the "Other" Oklahoma pricing area as defined in the Commission's Statement of General Policy No. 61–1, at initial prices in excess of the 15¢ price level for the "Other" Oklahoma area.

A prehearing conference was held on January 22, 1964, and a schedule adopted for the filing of prepared testimony and exhibits, prior to the cross-examination of witnesses to commence on April 21, 1964. In the interim, numerous motions for settlement and severance were filed by major producer applicants at the 15¢ per Mcf price level. On March 30, 1964, 31 FPC 730, the Commission issued an order severing proceedings, approving the proposed settlements, and issuing certificates of public convenience and necessity to approximately 37 of the original dockets which had been consolidated for hearing, including the original lead docket (No. G–19417, Pan American Petroleum Corp., *et al.*).

On April 1, 1964, the Presiding Examiner issued a Notice of Intention to Dispose of the Remaining Dockets, and called upon applicants who had not filed proposed testimony in support of higher than guideline contract prices and who did not

[1] Originally entitled "Pan American Petroleum Corp., *et al.*", Docket No. G–19417, *et al.*

join in the proposed settlement to show cause why their applications for permanent authorizations at contract prices in excess of the 15¢ price level for the "Other" Oklahoma area should not be denied. Hearing was held on April 21, 1964, and briefs have been filed by Gulf, Tidewater, and Staff.

The Application of Gulf Oil Corporation (Gulf)

The only applicant to present testimony in support of a higher than ceiling price was Gulf (joined by Tidewater Oil Corporation which also adopted Gulf's briefs).[2] The application filed by Gulf on October 1, 1962, in Docket No. CI63-417, requests authority to sell natural gas from the Laverty Field, Grady and Caddo Counties, Oklahoma to Cities Service Gas Corporation (Cities) at an initial price of 16.8¢ per Mcf with escalation to 17.9¢ on July 1, 1963. This escalation has already occurred, and the contract provides for further price escalation of 1.1¢ per Mcf for each five years, with no provision for price negotiation, price redetermination, or tax reimbursement. Gulf has declined temporary authorization to commence sales at the ceiling price and no deliveries are being made from Laverty Field. The discovery well was completed on March 19, 1961. Gulf is required to construct, operate, and maintain the gathering system, to dehydrate the gas, and to deliver it to Cities at a central field delivery point.

The Evidence

Gulf[3] presented the testimony of witnesses D. R. Johnson and Celia Star Gody in support of the unconditional certification of its proposed sale to Cities at the initial price of 17.9¢ per Mcf.

D. R. Johnson testified that the Oklahoma-Anadarko Basin area, in which Laverty Field is located, should be included in a single 17¢ pricing area along with the present Oklahoma-Panhandle area.

> If one were to assume that in general the Federal Power Commission's Policy Statement prices are to be applied in certificate cases, it seems logical and reasonable to me that the Oklahoma Anadarko Basin Area should be included in a single pricing area along with the present Oklahoma Panhandle Area. The Commission itself has this matter under consideration in the proposed revision of pricing areas. If the boundary was changed as mentioned, this would mean the initial price level for the Laverty Field sale, Caddo and Grady Counties, as well as sales from other surrounding counties would be 17¢ per Mcf, plus Btu adjustment. Over and above this, however, there are other factors which distinguish the Laverty Field sale from the other sales. These include the history of the negotiations surrounding the proposed sale, the depth of the wells, the cost of drilling and completing wells in the field, and a comparison of this sale with certificated sales from the Carter Knox and Elk City Fields. (Tr. p. 22)

He described Laverty Field and the factors that allegedly justify a price higher than the "Other" Oklahoma 15¢ level as follows:

> The Laverty Field is about 4 to 5 miles North Northwest of the Carter Knox Field. The wells in Laverty are similar to the Knox Field wells in that they are extremely deep, very expensive to drill, and require unusually high pressure surface equipment. Actually, the producing depth of the Laverty wells is about 400 to 450 feet deeper than the Knox wells, the completion depth of the Laverty wells being around 16,400 feet. Too, the cost of drilling and completing the wells in the Laverty and Knox Fields is com-

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[2] Gulf is the operator of the properties involved in Tidewater's application.

[3] Tidewater, applicant in Docket No. CI63-876, joined Gulf in the evidentiary presentation and adopted Gulf's position.

parable, such cost being approximately $800,000 to $1,000,000 per well. This can be compared to the Elk City Field wells which have an average depth of around 10,000 feet and cost approximately $226,000 each to drill and complete. Too, the Laverty wells are much deeper and more expensive to drill than the wells from which Gulf is making sales under conditioned temporary authorizations in its other dockets herein. In addition, and as distinguished from its other sales, Gulf is obligated to gather the gas in the Laverty Field, dehydrate the gas and deliver it to the purchasers at a central point rather than at the wellhead. These operations are comparable to those for the Knox and Elk City Field sales. At Docket No. G–18004 the Commission permanently certificated sales from the Carter Knox Field at an initial price of 16.8¢ per Mcf at 14.65 psia and the contract price has now escalated to 17.9¢. At Docket No. CI60–660 the Commission permanently certificated a sale by Shell Oil Company to Panhandle Eastern Pipe Line Company from the Elk City Field at 17.5¢ per Mcf plus a Btu adjustment. These prices are comparable to the initial price for Gulf's proposed Laverty Field sale, and all factors considered Gulf should be issued a permanent Certificate at the contract price of 17.9¢ per Mcf. (Tr. 25–26)

He concluded by observing that Gulf has a contract with Oklahoma Natural Gas Co. for the non-jurisdictional intrastate sale of the gas in the event an acceptable certificate is not issued to Gulf and the Cities' contract is canceled.

Mrs. Gody compared market prices for natural gas in the various parts of Oklahoma. She concluded that the proposed Laverty Field sales should be compared for pricing purposes with sales in the Oklahoma-Panhandle area, and Oklahoma-Anadarko area, as those areas are defined in the pending area rate proceeding for the Hugoton-Anadarko area (Docket No. AR64–1, *et al.*) rather than Oklahoma "Other" as defined in 61–1. Her analysis (Exhibit 1, Chart 1) shows Laverty Field in the higher priced Oklahoma-Anadarko area rather than the Oklahoma "Other" area. After comparing the quality specifications for the proposed sales with other recent Oklahoma contracts as to Btu content of the gas, sulphur content, dehydration, and delivery pressure, she concludes that the proposed contract prices are will within the dominant range of current market prices for the Panhandle-Anadarko area.

> The prices provided by the subject contracts are generally in accord with those under other contemporaneous comparable Oklahoma contracts. The contracts in this proceeding with but one exception are all dated 1960–1963, and the initial base prices range from 16.80 to 19.50 cents in the Anadarko Area and from 15.50 to 17.00 cents per Mcf in the "All Other Oklahoma" Area. During the 1960–1963 period, excluding the subject sales, 73 per cent of the volume in the Panhandle-Anadarko Area was at an initial base price of 17 cents or higher, and 24 per cent was at an initial base price of 18 cents or above. With respect to the "All Other Oklahoma" Area, 81 per cent of the volume (excluding the subject sales) is at an initial base price of 15 cents or higher and 28 per cent at an initial base price of 16.80 cents or above. (Tr. p. 78).

Staff witness Gerhardt testified that the "in-line" price in the Oklahoma "Other" area is 15¢ for the period from January 1, 1959, to December 15, 1963, and that the quality and delivery requirements of the proposed Laverty Field sales are comparable to those of certificated sales at the 15¢ initial price level in the Oklahoma "Other" area.

On motion by Staff Counsel, and after a full discussion, the Presiding Examiner struck the testimony of Mr. Johnson in its entirety on the ground that "* * * in

substance he is asking that a different pricing area be carved out of what is presently the 'other Oklahoma area' " as defined by the Commission in 61-1, and that the proposed change in the present boundaries of the Commission's pricing area in the State of Oklahoma is pending before the Commission in Docket No. R-218, a rule-making proceeding in which the Commission proposed to revise the areas set out in Statement of General Policy No. 61-1 by combining the Oklahoma-Panhandle and Carter-Knox areas with the northwestern Oklahoma counties into a single priced area (Tr. 34-36), and that the only issue in this Section 7 certificate proceeding is whether or not the contract price is in excess of the in-line price. Portions of Mrs. Gody's testimony dealing with geographic areas other than the "Other" Oklahoma area as specified in the Commission's Statement of General Policy No. 61-1, were struck for the same reason (Tr. 85).

Gulf's brief requests that the Examiner reconsider his ruling striking the testimony of Mr. Johnson and portions of the testimony of Mrs. Gody on the ground that this testimony was introduced not to change the area boundaries but rather to show the similarity between the Laverty Field and the Oklahoma-Panhandle area and the Carter-Knox Field in accordance with the language of the Court in *United Gas Improvement Company* v. *F.P.C.* 283 F. 2d 817 (9th Cir. 1960, cert. denied, 365 U.S. 879, (1961)), where the Court stated:

> Existing producer prices are relevant for comparative purposes only if they pertain to gas production in the same or an analogous area and if other principal features of the contracts are fairly comparable. Thus the contracts should be comparable from the standpoint of gas reserves and future potentials. The significance of any disparties existing as to these conditions should be explained by Commission findings based upon substantial evidence. Substantial variation in the quality of gas sold should be similarly treated * * *. (p. 823)

Since an analysis of Gulf's position requires consideration of the stricken testimony of Mr. Johnson and Mrs. Gody, and since the Commission should have before it the evidentiary support for the position of Gulf and Tidewater, the Examiner has reconsidered his ruling and, upon further reflection, the testimony of Mr. Johnson and Mrs. Gody is admitted in its entirety, and given full weight and consideration in this initial decision.

Discussion

The Commission's Statement of General Policy No. 61-1 issued September 28, 1960, 24 FPC 818, divides the State of Oklahoma into three geographic pricing areas: Panhandle area 17¢, "Other" Oklahoma area, 15¢, Carter-Knox area 16.8¢. Caddo and Grady Counties, in which Laverty Field is located, lie within the 15¢ "Other" Oklahoma initial price level area. Gulf contends that the proposed Laverty Field sales are similar to and comparable with gas produced and sold in the Oklahoma-Panhandle and Carter-Knox Fields rather than the "Other" Oklahoma area. Consequently, the proposed initial contract price[4] for Laverty Field is in line with prices in the same or analogous areas.

> The purpose of the testimony of Witness D. R. Johnson and Witness Mrs. Gody is *not* to change the area boundaries as defined in the Commission's Policy Statement. It is the position of Gulf Oil Corporation that these boundaries should be changed and that other portions of Oklahoma should be included within the Oklahoma Panhandle Area, but Gulf recognizes

[4] Gulf contends that the 17.9¢ per Mcf initial price for Laverty gas does not exceed the Panhandle area price because upward adjustment for Btu content from a 17¢ base price for 1000 Btu gas is equivalent to 18.105¢ for 1065 Btu Laverty gas (Tr. 25).

that there is a pending proceeding in which the Commission is considering changing area boundaries and that such evidence is appropriate to that proceeding and not to an application for certificate. Accordingly, Gulf has not introduced any evidence for the purpose of changing area boundaries. Gulf has introduced evidence of prices "in the same or analogous area" as authorized by the 9th Circuit in *United Gas Improvement Company* v. *Federal Power Commission*, 283 F. 2d 817 (9th Cir. 1960), cert. denied 365 U.S. 879 (1961). The testimony of Gulf's witnesses shows the similarity between the Laverty Field and the Oklahoma Panhandle Area and the Carter Knox Field. This is the purpose of such testimony. (Gulf's reply brief pp. 2, 3).

Gulf also contends that an initial price in excess of the 15 guideline price for the "Other" Oklahoma area is justified because of certain premium features of the contracts and the proposed sale. These include dehydration, gathering and compressing, and the depth and cost of drilling the Laverty Field wells. In this connection Gulf relies on the Commission's decisions in the Elk City and Carter Knox Field cases.

Staff argues that Gulf is essentially asking the Examiner and the Commission to redefine the present boundaries of the Commission's Oklahoma pricing area so as to include the Laverty Field in the higher priced Oklahoma-Panhandle or Carter-Knox area rather than the Oklahoma "Other" area, and that this certificate proceeding is not the appropriate vehicle for changing the boundaries of existing pricing areas. Gulf and Tidewater will be protected by the inclusion in any certificate of the proviso which appears in the Commission's order of March 30, 1964, to the effect that applicants may substitute any rates consistent with their contracts in the event the Commission amends its Policy Statement by adjusting the area pricing boundaries so as to increase the initial wellhead price. The Staff maintains that comparative sales support an in-line price of 15¢ per Mcf for the proposed sales from Laverty Field because the only appropriate and relevant pricing area is the "Other" Oklahoma, as presently delineated in Policy Statement No. 61–1, rather than the Oklahoma-Panhandle area or the Oklahoma-Anadarko area. The Elk City and Carter-Knox decisions are distinguished on their facts and are not comparable. Staff concludes that no premium above the base price is justified by the evidence presented.

Two basic issues are presented: the appropriate pricing area for determining the in-line price for sales from Laverty Field, and the justification, if any, for the certification of an initial contract price in excess of the current 15¢ area price level.

The appropriate pricing area for determining the in-line price for sales from Laverty Field in this proceeding is the "Other" Oklahoma area, as defined in the Commission's Statement of General Policy No. 61–1, the geographic area in which, concededly, Laverty Field is presently located. Applicants argue that Laverty Field is comparable to the Carter-Knox and Oklahoma-Panhandle pricing area; consequently these areas, rather than Oklahoma "Other" should be used for comparative pricing purposes to determine the in-line price for Laverty Field. A similar contention was rejected by the Commission in the Elk City decision cited by applicants, Opinion No. 350 issued January 15, 1962. Applicants submitted evidence to show that, from the point of view of geology, geography, marketing, and operating, the gas producing fields in the Anadarko Basin section of the "Other" Oklahoma area are similar to fields in the Panhandle area, and consequently that an in-line price of 17¢ rather than 15¢ is justified. The Commission indicated that the appropriate procedure for effecting changes in either area boundaries or prices is not through piecemeal determinations in individual

certificate proceedings but rather in a rule-making or area rate proceeding in which all relevant factors and interest could be evaluated.

The area price levels, as set forth in the Policy Statement and its amendments, are "for the purpose of guidance and initial action by the Commission," and do not constitute determinations of just and reasonable prices. The Policy Statement contemplates changes in both area boundaries and area price levels from time to time as such facts as come before us compel such adjustments.*

The Policy Statement, however, should not be construed as suggesting that changes in either area boundaries or prices will readily be made in individual proceedings. It would defeat our purpose of simplifying and clarifying producer regulation, if every individual proceeding were to become a forum for attacking the area standards and we were to begin varying those standards from case to case. Adjustments in the area price structure can best be made upon a general review of all relevant factors. At the least, it would take a very compelling showing to warrant any change on an *ad hoc* basis

In the present proceeding, the producers have adduced evidence attempting to show that from the point of view of geology, geography, marketing, and operating, the gas producing fields in the "Other" Oklahoma counties here involved are similar to fields in the Panhandle area where we have fixed an initial wellhead price of 17 cents per Mcf. The evidence however, does not show that there is not a like similarity with other fields in the "Other" Oklahoma area which lie to the east and which are also in the Anadarko Basin. It is possible as producers contend, that the present division of Oklahoma counties into the Panhandle and "Other" areas is inequitable and should be changed; but the present record does not permit us to so find, and there is insufficient evidence to show that any boundary other than the present one is proper.

There is no evidence in the record now before us which compels the conclusion that a wellhead price of 17 cents per Mcf for the proposed sales in the "Other" Oklahoma area is required in the public interest. The applicants rely on comparative evidence to show that the conditions of developing, producing and marketing gas in the fields here involved are similar to conditions in the Laverne and other fields in the Panhandle area where the Commission has certificated wellhead sales at 17 cents. This evidence is not sufficient to justify a wellhead price for the proposed sales in excess of the "Other" Oklahoma ceiling level. The record shows that the highest certificated price for gas now being sold in that part of the "Other" Oklahoma area which is located within the Anadarko Basin is 15 cents per Mcf.* Eight sales at this price level are being made for gas from the West Cement field in Caddo County and the South Rainey field in Washita County just to the east of Elk City.* In Beckham County, where Elk City is located, and in Woods and Alfalfa Counties, where some of the en route gas is located, the record shows initial prices certificated at 12 cents per Mcf. Elsewhere in "Other" Oklahoma, and within the Anadarko Basin, the record shows sales certificated at 11 and 12 cents per Mcf in Grant and Garfield Counties. This pattern of presently certificated sales in the area establishes the line for the proposed sales and shows a reasonable relationship between the Policy Statement area ceiling and existing sales. There is no compelling evidence in this proceeding to justify an initial wellhead price in excess of

*Footnote omitted.

the area ceiling. We shall, therefore, condition the certificates for sales in "Other" Oklahoma at an initial wellhead price of 15 cents per Mcf. *

This approach was reaffirmed by the Commission in Opinion No. 353, issued March 7, 1962, 27 FPC 449, in which the applicant producers again sought a higher initial service rate level for gas produced in the "Other" Oklahoma area. The Commission stated:

Our Opinion No. 350, 27 FPC 35, in the *Panhandle* case is controlling with respect to our determination of the price and area questions in this proceeding. * * *.

Although the parties have gone to great lengths to justify the proposed initial price on the basis of comparative cost evidence and evidence to show the geological, operating and marketing characteristics of the Woodward area in relation to the Laverne area,* this evidence is not of such compelling nature as to convince us that we should depart from the pricing pattern established in the Policy Statement by ordering either an adjustment in price or in area boundaries on the basis of the record in this individual certificate proceeding. The existing area ceilings in the Panhandle and "Other" Oklahoma areas are based upon and are reasonably related to prevailing prices for wellhead sales as heretofore certificated by this Commission. Until such time as the Woodward area has developed to the extent that an area hearing can be fruitfully utilized to determine area prices, or unless evidence of the necessity of an *ad hoc* adjustment more compelling than that contained in the present record is presented, we shall adhere to the ceiling levels set forth in the Policy Statement. We shall therefore condition the certificates herein issued at an initial wellhead price of 17 cents per Mcf for sales in the Panhandle area, and at 15 cents per Mcf for sales in the "Other" Oklahoma area. Inasmuch as the ceilings in these areas are prices which include tax reimbursement, if any, the prices so allowed shall include all taxes, and no additional amounts for tax reimbursement shall be allowed.

Gulf's brief refers to the pending proceeding (R–218) [1] in which the Commission proposed changing area boundaries, and agrees that evidence relating to boundary changes is appropriate to that proceeding and not to individual certificate application (Gulf reply brief p. 2). Laverty Field is included in the Oklahoma-Anadarko production area in Docket No. AR64–1, *et al.*, the pending Hugoton-Anadarko area rate proceeding instituted by the Commission on November 27, 1963, 30 FPC 1354, in which proceeding just and reasonable natural-gas rates will be fixed for Laverty Field as well as the larger pricing area in which it is included.

Laverty Field represents a new gas supply in the "Other" Oklahoma pricing area not yet dedicated to the interstate market. "This Commission, under the doctrine of the *CATCO* case, has an obligation to scrutinize with great care the initial cost of a new gas supply before permitting it to be attached to an interstate pipeline for transportation and sale under the Act." (*Tennessee Gas Transmission Co.*, Opinion No. 413 issued December 12, 1963, 30 FPC 1477 at 1480 (footnotes omitted)). The record in this proceeding does not support a determination that Laverty Field's gas is entitled to a higher initial price than gas in the "Other" Oklahoma pricing area, because it is more comparable to the Oklahoma-Panhandle area and the Carter-Knox Field. The record is barren of any comparison between the Laverty Field and other fields in the Anadarko Basin of the "Other" Oklahoma

*Footnotes omitted.

[1] The Commission subsequently issued on November 11, 1963, an order deferring further consideration of the proposed changes in pricing areas (28 F.R. 2945).

area in respect of area costs, depth of wells, costs of drilling, geology, gas quality, and contract provisions. Moreover, the alleged similarity between Laverty Field and the Elk City Field is not sustained upon closer examination. In the *Panhandle* case (27 FPC 35) the Commission allowed the Elk City Field producer, Shell Oil Co., 2.5¢ above the ceiling price for gathering, compression, and dehydration of the gas before delivery to Panhandle. For a number of years prior to the sale of this gas-well gas the producer had operated a gathering system, extracted the liquid hydrocarbons from the gas, and reinjected the residue gas into the reservoir to procure additional liquid hydrocarbons. The 2.5¢ premium over the 15¢ wellhead price was allowed for the additional services furnished by Shell in delivering "an unusually desirable supply of gas" needed to support the feasibility of Panhandle's proposed lateral. Staff witness Gerhardt testified that taking into account the mileage of gathering system involved, the expenditures for such a gathering system, and the volumes of gas involved, the Elk City sale is not comparable to the proposed sale by Gulf in this proceeding. The contrary conclusion of Gulf witness Johnson is not supported by any detailed analysis of the Elk City operation.

The pending Hugoton-Anadarko area rate proceeding is a more appropriate vehicle for determining comparative costs, geology, and gas quality than an *ad hoc* certificate proceeding in which many parties vitally interested in the price determinations for adjacent fields and areas are not represented. Further, as noted by the Court in *California Oil Co.* v. *F.P.C.*, 315 F. 2d 652 (CA10–1963), the in-line price is determined by comparing the proposed price with existing producer prices in the area and not by examining relative exploration and drilling costs.

> We do not think that the Commission was required in this case to consider the exploration and drilling costs or the cost of delivery services in arriving at the "in line" price in a certification proceeding. The consideration of these matters may properly be left to a Section 4 proceeding. (p. 660)

The Carter-Knox Field certificate was issued September 18, 1959, 22 FPC 528, prior to the development of the present concept of initial price regulation following the Supreme Court's *Catco* decision (360 U.S. 378 (1959)). It was not based on comparing the proposed price (16.8¢ per Mcf) with other authorized sales and should not be used as a precedent for determining the in-line price for the "Other" Oklahoma pricing area, whose boundaries and price level were established by the Commission subsequent to the issuance of the Carter-Knox certificate.

If the appropriate pricing area is "Other" Oklahoma as defined in Statement of General Policy No. 61–1, 15¢ is clearly the in-line price (Exhibit 1, chart 9; Exhibit 3, p. 2). Nor has Gulf established that it is entitled to a premium above the wellhead price for extra services rendered by it in dehydrating and gathering the gas. Field deliveries to Cities Service by Gulf and other producers without additional compensation above the initial base price are not uncommon in the "Other" Oklahoma area (Exhibit 3, sheets 9–12). Moreover, under the Laverty Field gas purchase contract (Item A, Exhibit B), Gulf reserves the right to use the gas for repressuring or cycling operations and to process the gas for the recovery of liquid hydrocarbons. Under these provisions, gathering and delivery to a central point in the field would be equally beneficial to the seller's reinjection or extraction operations. The Commission recently noted that . . . "Compression of the gas where necessary to enable its entry into the pipeline and dehydration for removal of excess water content are normal requirements imposed on producers and cannot be considered a premium feature of exceptional benefit to either the pipeline or the consumer." (Op. No. 422–A, *Amerada Petroleum Corp., et al*, 31 FPC 1315 at 1318). In the *Panhandle* case, the recycling

process was scheduled to stop at the end of 1963, or sooner should Panhandle takes so require.

Moreover, no evidence has been presented by which Gulf's so-called extra services may be objectively measured. The fact that an increment of 2.5¢ was allowed in the *Elk City* case does not support a similar allowance here where the difference between the fields and operations are substantial. (See Op. No. 350, 27 FPC 35 at 40–42.)

The record is also silent as to the purchaser's need for the gas, an important element in the *Panhandle* decision.

Finally, Gulf insists that the public interest requires that its initial contract price be certified now. The public interest requires more than an *ad hoc* consideration of Gulf's 17.9¢ initial sales price. Unconditional certification now would have repercussions far beyond Laverty Field and could trigger a general price rise in the entire "Other" Oklahoma pricing area. Acceptance by Gulf now of a conditioned certificate does not prevent it from filing a rate increase up to the applicable contract price, and collecting such price after the expiration of the statutory five months' suspension period under Section 4 of the Act until a final rate decision in the Oklahoma-Anadarko area rate proceeding or a change in area boundaries. Any loss to Gulf in revenue during the suspension period must be balanced against the loss to the public which may result from the collection of excess charges pending final determination of Laverty Field rates. To cast this interim risk on the public rather than the producer is not in the public interest, and is not consistent with the Supreme Court's admonition in *Catco* that the Natural Gas Act "was so framed as to afford customers a complete, permanent and effective bond of protection from excessive rates and charges." (*Atlantic Refining Co.* v. *P.S.C.*, 360 U.S. 378–388 (1959)).

PENDING MOTIONS FOR SEVERANCE, ABANDONMENT, OR SETTLEMENT

On April 2, 1964, Edwin L. Cox filed a motion for severance of Docket Nos. CI61–1308, CI62–471, and CI63–1574. In Docket No. CI61–153, Edwin L. Cox states that sales of gas from the unit involved have ceased, the property has been abandoned because the reserves have been depleted, and Applicant requests that the Commission authorize abandonment of service and cancellation of Applicant's related FPC Gas Rate Schedule No. 31. Staff does not oppose the motion. With respect to Docket Nos. CI61–1308, CI62–471, and CI63–1574, the Applicant agrees to accept permanent certificates at an initial price of 15¢ per Mcf subject to the same conditions contained in subparagraphs (b), (c), and (d) of paragraph (E) of the Commission's order of March 30, 1964.

In Docket No. CI61–393 Robert A. Hefner, Jr., *et al.*, and in Docket No. CI62–1500, The Hefner Company, filed motions for severance on April 1, 1964. Robert A. Hefner, Jr., *et al.*, request permission to abandon their sale under Docket No. CI61–393. The Hefner Company requests that a permanent certificate be issued in Docket No. CI62–1500. The Hefner Company indicates that it is willing to accept a permanent certificate in Docket No. CI62–1500 at an initial price not to exceed 15¢ per Mcf plus adjustment upward or downward for Btu content as provided in the applicable rate schedule. The Hefner Company in CI62–1500 also agrees to refund to Cimarron the difference between 15¢ and 15½¢ on amounts collected for deliveries from the date of initial delivery, with interest at 7% per annum. It should be noted that the temporary certificate issued to The Hefner Company requires the refund of all amounts over 15¢ including any amounts derived from upward Btu adjustment. Staff does not oppose the request for abandonment of service.

Staff has no objection to the granting of motions for severance and settlement filed since March 30, 1964. A list of such motions is attached to the proposed findings and conclusions as Appendix A.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding including the pleadings, the evidence adduced, and the briefs filed, it has been found and concluded, in addition to the findings and conclusions heretofore stated, that:

(1) Each Applicant is a "natural-gas company" within the meaning of the Natural Gas Act and is engaged in the sale and delivery of natural gas in interstate commerce for resale for ultimate public consumption subject to the jurisdiction of the Commission.

(2) The proposed sales of natural gas are subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, Rules, and Regulations of the Commission thereunder.

(4) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(5) The sales sought to be abandoned by Robert A. Hefner, Jr., *et al.*, in Docket No. CI61-393, and by Edwin L. Cox in Docket No. CI63-153, are subject to the jurisdiction of the Commission and abandonment of such sales is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(6) Such abandonment by the two Applicants as heretofore described is permitted by the public convenience and necessity, and an order authorizing and approving same should be issued as hereinafter ordered.

(7) The motions for severance and proposed settlement filed by the Applicants identified in Appendix A attached hereto are in the public interest and are granted upon the same uniform conditions as specified in the Commission's order of March 30, 1964.

ORDER

WHEREFORE, *It is ordered*, subject to review by the Commission on appeal or upon its own motion, as provided by its Rules of Practice and Procedure, that:

(A) The certificates of public convenience and necessity are hereby issued to the above-named Applicants, on the conditions set forth herein, authorizing the sale of natural gas in interstate commerce for resale for ultimate public consumption, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as more fully described in the applications and settlement proposals herein.

(B) The certificates granted in paragraph (A) above are not transferable and shall be effective only so long as Applicants continue the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable Rules, Regulations, and orders of the Commission.

(C) The grant of the certificates issued in paragraph (B) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Applicant. Further, our action in this proceeding shall not

foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. Nor shall the grant of the certificates aforesaid for service to the particular customer involved imply approval of all of the terms of the contract, particularly as to the cessation of service upon termination of said contracts, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificates aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificates.

(D) The authorizations issued herein are subject to the following conditions:

(a) The initial price, including tax reimbursement, shall not exceed 15¢ per Mcf at 14.65 psia.

(b) In the event that the Commission amends its Policy Statement No. 61-1 by adjusting the boundary between the Panhandle area and the "Other" Oklahoma area so as to increase the initial wellhead price for new gas in the areas involved herein, Applicants thereupon may substitute the new rates consistent with their contracts reflecting the amount of such increase, and thereafter collect these new rates prospectively in lieu of the initial rates herein required.

(c) The allowances for take-or-pay provisions in the related rate schedules are subject to the ultimate disposition with respect to such provisions in the rule-making proceeding in Docket No. R-199; however, Applicants will not be required to file take-or-pay provisions for less than 80% of the annual quantity.

(d) The allowance for any Btu adjustment provision in the related rate schedule is subject to the ultimate disposition with respect to such provision in the rule-making proceeding in Docket No. R-200; provided, however, as a further condition of the issuance of the certificates herein, that the rate schedules filed by the producer-applicants in Docket Nos. CI63-265, CI64-121, CI62-90, CI63-96, CI64-109, CI63-381, CI63-392, CI63-393, CI63-787, CI63-797, CI63-936, CI63-797, CI64-361, CI64-10, CI63-96, CI64-121, CI61-1308, CI62-471, CI63-1574, CI61-1024, CI61-1244, CI61-1281, and CI63-615, shall also make provision for a full percentage downward adjustment in price for gas containing less than 1000 Btu's per cubic foot. The precedent processing agreements, where applicable shall be similarly modified to provide reimbursement to Michigan Wisconsin on the same basis for Btu's below 1000 removed by the producers in processing the gas.

(E) As a further condition to the issuance of permanent certificates in Docket Nos. CI62-1392, CI62-1500, and CI63-690, J. I. Goins, *et al.*, The Hefner Company, and C. L. McMahon, Jr., shall refund, respectively to Cimarron Transmission Company any amounts collected (plus interest at 7% per annum) in excess of 15¢ per Mcf from the date of first delivery up to the date of issuance of the order herein.

(F) Permission for, and approval of, the abandonment of sales by Robert A. Hefner, Jr., *et al.*, and Edwin L. Cox as hereinbefore described, all as more fully described in their motions, be and the same are hereby granted.

WILLIAM C. LEVY,
Presiding Examiner.

APPENDIX A

Mar. 30, 1964	Socony Mobil, Docket Nos. CI61–1024, CI61–1244, CI61–1281, CI63–615 in its overall rate proceeding, Docket No. G–12401.	Offer of settlement.
Apr. 2, 1964	Edwin L. Cox, Docket Nos. CI61–1308, CI62–471, and CI63–1574.	Motion for severance.
Apr. 14, 1964	Robert P. Lammerts, Docket No. CI64–28.	Motion for severance and offer of settlement.
Apr. 15, 1964	Petroleum Inc. (Operator), *et al.*, Docket Nos. CI63–797 and CI64–361.	Motion for severance and for issuance of certificates under abridged hearing procedure.
Apr. 16, 1964	Carl E. and Henry Gungoll, Docket No. CI64–181.	Motion for severance and offer of settlement.
Apr. 16, 1964	W. C. Pickens, Docket No. CI63–1476.	Motion for severance and offer of settlement.
Apr. 17, 1964	Eason Oil Company, Docket Nos. CI64–65, CI63–1276.	Motion for severance and offer of settlement.
Apr. 17, 1964	Hall-Jones No. 4, Docket No. CI63–985.	Motion for severance and offer of settlement.
Apr. 18, 1964	Forest Oil Corporation, Docket No. CI61–584.	Motion for abandonment
Apr. 20, 1964	Sinclair Oil & Gas Co., Docket No. CI62–27.	Motion for substitution for Tam Oil and motion for severance and offer of settlement.
Apr. 20, 1964	C. L. McMahon, Jr., Docket No. CI63–690.	Motion for severance and offer of settlement.
Apr. 21, 1964	Global Oils, Inc, Docket Nos. CI64–109, CI63–96.	Motion for severance and offer of settlement.
Apr. 22, 1964	Roland S. Bond, Docket Nos. CI64–121, CI61–804.	Motion to sever and offer of settlement.
Apr. 22, 1964	Joe A. Humphrey, Docket No. CI63–1519.	Motion to sever and offer of settlement.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NORTHERN UTILITIES, INC., DOCKET NO. CP64–313; KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. CP64–315

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT AND ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 17, 1964)

Northern Utilities, Inc. (Northern) filed in Docket No. CP64–313 an application on June 30, 1964, and supplements thereto on August 19 and August 20, 1964, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for, (a) permission to abandon certain natural gas facilities, (b) authorization to install,

construct and operate certain other natural gas facilities subject to the jurisdiction of the Commission to increase the capacity of its interstate transmission line and (c) authorization to transport for and redeliver to Kansas-Nebraska Natural Gas Company, Inc. (Kansas-Nebraska) at the inlet side of Kansas-Nebraska's Casper Compressor Station a maximum volume of 51,000 Mcf daily of natural gas, all as more fully set forth in the application and supplements.

Kansas-Nebraska Natural Gas Company, Inc. (Kansas-Nebraska) filed in Docket No. CP64–315 on June 30, 1964, as amended on August 14, 1964, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the transportation of natural gas in interstate commerce, all as more fully set forth in the application and amendment thereto. The proposed facilities will enable Kansas-Nebraska tc receive increased volumes of natural gas from Northern Utilities, Inc., in central Wyoming.

Northern proposes in Docket No. CP64–313 to, (1) abandon by transfer from its interstate operations to intrastate operations approximately 44.9 miles of 10-inch pipeline and 52.62 miles of 12-inch pipeline between mileposts 0.0 and 97.5, (2) operate a 20-mile segment and a 14.4 mile segment of 16-inch existing pipeline between mileposts 0.0 and 20.0 and 55.0 and 69.4, respectively, by transferring the said pipeline segments from intrastate to said interstate service, (3) construct and operate 20 miles of 16-inch pipeline between mileposts 35.0 and 55.0, 5 miles of 16-inch pipeline between mileposts 69 and 74, and 15 miles of 20-inch pipeline between mileposts 84 and 99 and (4) install and operate a 500 Hp field compressor station.

The proposed transfers by Northern of pipeline from interstate to intrastate use, from intrastate to interstate use, and the construction and operation of pipeline as described above will provide Northern with a pipeline consisting of a 16-inch line from milepost 0 to 84, a 20-inch line from milepost 84 to 98, and a 12-inch line from milepost 98 to 106.5 for use as an interstate pipeline providing service for Kansas-Nebraska; and will in addition thereto provide Northern with two separate lines for intrastate service from San Draw to Casper.

The certificated volumes of gas to be transported for Kansas-Nebraska will be increased from 9,000,000 to 14,000,000 Mcf annually and from 26,000 to 51,000 Mcf for peak day service. The rate to be charged by Northern for the transportation service will be the currently effective rate of 7¢ per Mcf for the first 6,000,000 Mcf in each yearly period and 4.5¢ per Mcf for all volumes in excess thereof.

The estimated cost of facilities to be constructed and transferred by Northern is $1,494,047, which will be defrayed out of cash on hand or from that generated by operations.

Kansas-Nebraska proposes in Docket No. CP64–315 (1) to install and operate a 2,000 Hp compressor addition to its Casper, Wyoming, station and a 1,000 Hp compressor addition to its Northport, Nebraska, station and (2) to construct and operate approximately 66 miles of 16-inch pipeline between Douglas and Lingle, Wyoming, as a replacement of 41.5 miles of 12-inch and 24.5 miles of 10-inch Dresser coupled pipeline.

The estimated cost of facilities to be constructed by Kansas-Nebraska is $2,352,000, which will be financed from current working funds and interim bank loans.

The Commission issued temporary certificates for the proposed facilities to Kansas-Nebraska and Northern on August 21 and September 3, 1964, respectively.

After due notice, no petition to intervene, notice of intervention or protest to the granting of either of the applications, as supplemented and amended, has been filed.

At a hearing held on November 10, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications, supplements and amendment submitted in support of the authorizations sought herein, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Northern Utilities, Inc., a Wyoming corporation having its principal place of business in Casper, Wyoming, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 20, 1962, in Docket No. CP63-74 (28 FPC 1082).

(2) Applicant, Kansas-Nebraska Natural Gas Company, Inc., a Kansas corporation having its principal place of business in Phillipsburg, Kansas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-259 (3 FPC 966).

(3) The facilities proposed to be abandoned by Northern, as hereinbefore described and as more fully described in the application and supplements filed in Docket No. CP64-313 are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(4) The proposed abandonment of the aforesaid facilities by Northern is permitted by the public convenience and necessity and permission and approval therefor should be granted as hereinafter ordered.

(5) The proposed construction and operation of facilities, and the transportation of natural gas in interstate commerce by Northern and Kansas-Nebraska as hereinbefore described and as more fully described in the applications, supplements and amendment thereto filed in Docket Nos. CP64-313 and CP64-315 are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(6) The aforesaid proposed construction and operation of facilities, and the transportation of natural gas in interstate commerce are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(7) Northern and Kansas-Nebraska are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(8) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Northern's and Kansas-Nebraska's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Permission for and approval of the abandonment by Northern of the facilities hereinbefore described, as more fully described in the application and supplements in Docket No. CP64-313 are hereby granted.

(B) Certificates of public convenience and necessity be and the same are hereby issued (1) to Northern in Docket No. CP64-313 authorizing the construction and operation of facilities and the transportation of natural gas for Kansas-Nebraska Natural Gas Company, Inc., as hereinbefore described, all as more

fully described in the application and supplements thereto filed in said Docket No. CP64-313, and (2) to Kansas-Nebraska Natural Gas Company, Inc., in Docket No. CP64-315 authorizing the construction and operation of facilities and the transportation of natural gas, all as more fully described in the application and amendment thereto filed in said Docket No. CP64-315.

(C) The certificates issued by paragraph (B) above and the rights granted thereunder are hereby conditioned upon Northern's and Kansas-Nebraska's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(D) Northern shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

(E) The facilities hereby authorized in Docket Nos. CP64-313 and CP64-315 shall be completed and placed in actual operation, and the transportation of gas authorized in paragraph (B) above shall commence, as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months of the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITY OF TACOMA, WASHINGTON, PROJECT NO. 2016

ORDER FURTHER AMENDING LICENSE (MAJOR)

(Issued November 17, 1964)

Application was filed on April 13, 1964, under Section 6 of the Federal Power Act (Act) by City of Tacoma, Washington, for further amendment of its license for major Project No. 2016 situated on the Cowlitz River in Lewis County, Washington, and affecting lands of the United States within the Gifford Pinchot National Forest and other lands of the United States.

The Licensee seeks the amendment to authorize the following specifically-described changes and in additions to the project works of the unconstructed Mossyrock Development of the project as shown on certain revised exhibits filed as part of the application, the approval of which is also sought:

(1) an increase in the maximum normal elevation for Mossyrock Reservoir (Ira S. Davidson Lake) from elevation 750 to elevation 770 feet; (2) provision for the operation of Mossyrock Reservoir between elevation 770 and elevation 600 feet to permit a maximum drawdown of 170 feet for power purposes in lieu of the previously authorized operation between elevations 750 and 650 feet; (3) an increase in the presently authorized capacity of the Mossyrock power plant from an ultimate of four units having a total capacity of 412,000 horsepower to an initial installation of two units having a total of 412,000 horsepower, with provision for a future unit of 206,000 horsepower; (4) revision of Article 34 of the license to conform to the reservoir operation at the higher elevations; (5) approval of the changed project structures and layout in accordance with the revised Exhibit J and L filed with the application; (6) approval of revised Exhibits H, I, M and N filed with the application insofar as they pertain to the Mossyrock project; and (7) provision for a delay in the filing of Exhibit R, a recreational use plan, until one year after completion of the project.

According to the application, the changes sought are necessary and desirable for the following reasons: (1) further economic studies indicate that an increase in the maximum Mossyrock reservoir elevation from 750 to 770 feet and operations with a maximum 170 foot drawdown will result in obtaining the maximum annual benefits available at the project site; (2) the installation of two 150 MW generators instead of four 75 MW generators will result in lower costs for powerhouse facilities, switching, bus, relaying and control facilities, and lower costs per kva of installed capacity; and (3) the installation in the future of a third 150 MW generator will provide a source of relatively low cost power.

Commission staff studies and analyses of the proposed changes to the Mossyrock project show that the annual net benefits resulting from raising the pool as proposed is about $177,000.

The Department of the Army and the Chief of Engineers have reported that the proposed revision of Article 34 of the license, as sought in the application, is satisfactory, provided it is understood that the intention of the revised article is that the specified surcharge storage will be used without reservation whenever flood regulation requires its use.

The Department of Health, Education, and Welfare, in reporting on the application, advises of its concurrence in the comment made by the Washington State Pollution Control Commission which the Department quotes as follows: "The proposed amendment to increase the reservoir storage capacity will tend to improve the efficiency of river flow regulation and corresponding benefits to water quality will occur downstream". However, the Department adds that there is some possibility that the proposed modification may result in man-made habitats favorable for the production of mosquitoes, of public health importance.

The Department of the Interior, in reporting on the application, recommended for inclusion in any amendment of the license, certain conditions in the interests of fish and wildlife resources, recreation, public free access to project lands and waters, of minimizing soil erosion, and archeological surveys and salvage operations.

The Department of Agriculture, in reporting on the application, recommended for inclusion in any amendment of the license, certain conditions in the interests of the harvesting and preservation of forest products on national forest land within the project area and recreation. According to the Department, the Forest Service wishes to be included as a party to the studies affecting fish facilities and devices contemplated under Article 30 of the license. However, the studies were completed prior to the stated interest of the Forest Service.

As recited above, the application for amendment requests a delay of one year in filing a recreational use plan designated as Exhibit R. Where such an exhibit has not been filed with an application for license, we usually require in the license the filing of such within one year from the issuance date of the license. Completion of the Mossyrock project is currently scheduled for December 31, 1968. In view of the possibility of changes in recreational requirements during this period of time, we are herein requiring that a recreational use plan be filed no later than November 1, 1965.

The Commission finds:

(1) Public notice of the application has been given. No formal protests or petitions to intervene have been received.

(2) The authorized installed capacity of the project under this amendment is 560,000 horsepower, and the increased annual charges for reimbursing the United States for the costs of administration of Part I of the Act, based on such capacity, as hereinafter provided is reasonable.

(3) The following-described revised exhibits filed as part of the application or as supplement thereof, conform to the Commission's rules and regulations and should be approved as part of the license as amended:

Exhibit J: (FPC No. 2016–78 and –79);

Exhibit L: (FPC No. 2016–80, –81, and –84 through –89); and

Exhibit M: filed with the Commission on April 8, 1964.

(4) The following-described exhibits now part of the license and which have been superseded should be eliminated from the license:

Exhibit J: (FPC No. 2016–1 and –4);

Exhibit L: (FPC No. 2016–13 through –18); and

Exhibit M: filed June 20, 1949, insofar as it relates to the Mossyrock project.

The Commission orders:

(A) The revised exhibits described in finding (3) above are hereby approved as part of the license for Project No. 2016, and the exhibits described in finding (4) above are hereby eliminated from the license for the project.

(B) The license for Project No. 2016 is hereby further amended, effective as of November 1, 1964: (1) to authorize and include thereunder the changes to the Mossyrock project specifically described in the second paragraph of this order; (2) to include in the license the following revised subparagraphs (a), (d) and (e) of finding (63) of the license issued November 28, 1951, 10 FPC 432, for Project No. 2016; and (3) to include in the license the following revised and/or additional articles and to exclude from the license certain superseded articles; all of which are set forth as follows:

PARAGRAPH I. Subparagraphs (a), (d) and (e) of finding (63) of the license to read as follows:

(a) The Mossyrock Development will be located on the Cowlitz River at river mile 66 at the head of the Mayfield Reservoir, and will consist of a double curvature concrete arch dam founded on basalt bedrock with concrete thrust blocks near the top of each end; maximum dam height to the crest elevation of 785 feet MSL, (approximately 585 feet above bedrocks) has a crest length of 1,300 feet; spillway with sill elevation at 728.5 feet is surmounted by four 42.5 x 50 foot tainter gates. Normal reservoir water surface will be at elevation 770 feet providing a usable storage capacity of 1,297,000 acre-feet with a drawdown of 170 feet. A conventional indoor-type powerhouse located at toe of dam containing two 150,000 kilowatts generating units (412,000 horsepower); a third blocked-out unit monolith, provides for the addition of a third 150,000 KW unit; short penstocks from intakes on upstream face of dam to powerhouse; transformer station; switchyard designed for two initial and one future 230 KV circuits; single 230 KV transmission line 11.65 miles long to Mayfield and a 50.45 mile 230 KV line to Tacoma.

(d) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license or amendment thereof, and which are designated and described as follows:

Exhibit J: Drawings in two sheets, signed by Al A. Bradley, Chairman, Public Utilities Board, April 8, 1964, and approved by C. A. Erdahl, Director of Public Utilities, and comprising:

Sheet 1 (FPC No. 2016–78) "Location Map," and

Sheet 2 (FPC No. 2016–79) "General Project Map."

(e) The principal structures referred to above, the location, nature and character of which are more specifically shown by the exhibits hereinbefore cited and and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L	FPC Number	Title
Sheet 1	(2016-2)	Mayfield Dam, General Plan.
Sheet 3	(2016-76)	Arch and Thrust Blocks—Plan and Sections.
Sheet 4	(2016-77)	Cross Sections Thru Spillway.
Sheet 5	(2016-7)	Mayfield Powerhouse, Plans and Sections.
Sheet 6	(2016-8)	Mayfield Powerhouse and Intake, Typical Sections.
Sheet 7	(2016-9)	Mayfield. One Line Diagram.
Sheet 8	(2016-10)	Mayfield Switchyard, General Plan.
Sheet 15	(2016-71)	Mayfield Fish Facilities, General Plan—Functional Layout.
Sheet 16	(2016-72)	Mayfield Fish Facilities—Upstream Migrant System—Functional Layout.
Sheet 17	(2016-73)	Mayfield Fish Facilities-Upstream Migrant System-Functional Layout.
Sheet 18	(2016-74)	Mayfield Fish Facilities-Upstream Migrant System-Functional Layout.
Sheet 19	(2016-75)	Mayfield Fish Facilities-Downstream Migrant System-Functional Layout.
Sheet 1	(2016-80)	Mossyrock Dam, General Plan.
Sheet 2	(2016-81)	Mossyrock Dam, General Sections.
Sheet 5	(2016-84)	Mossyrock Powerhouse Plan Elevation 400.00.
Sheet 6	(2016-85)	Mossyrock Powerhouse Plan Elevation 433.00.
Sheet 7	(2016-86)	Mossyrock Powerhouse Plan Elevation 451.00.
Sheet 8	(2016-87)	Mossyrock Powerhouse Plan Elevation 470.00.
Sheet 9	(2016-88)	Mossyrock Powerhouse Transverse Section.
Sheet 10	(2016-89)	Mossyrock Powerhouse Longitudinal Section.

Exhibit M: A statement in four sheets entitled "General Description and General Specifications of Proposed Mechanical, Electrical and Transmission Equipment for the Project" and filed June 20, 1944 only insofar as it pertains to the Mayfield Development.

Exhibit M: A statement in three sheets entitled "General Description of Mechanical, Electrical and Transmission Equipment" dated April 8, 1964, and signed by C. A. Erdahl, Director, Department of Public Utilities, superseding Exhibit M filed June 20, 1949, insofar as it pertains to the Mossyrock Development.

PARAGRAPH II. Articles 4, 7, 13 and 14 of the license are hereby eliminated from the license.

PARAGRAPH III. Articles 32 and 34 of the license are hereby revised to read as follows:

Article 32. The Licensee shall pay to the United States the following annual charges:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part II of the Commission's regulations as in effect from time to time. The authorized installed capacity, for such purpose is 560,000 horsepower.

(ii) The Licensee shall also pay to the United States such charges as may be specified hereafter for the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands, including transmission line right-of-way.

Article 34. Licensee shall reserve adequate storage space in Mossyrock Reservoir for regulating Cowlitz River floods equal to or less than the magnitude of that of the 1933 flood to 70,000 cfs or less at Castle Rock, Washington. This storage space will be provided between elevation 778.5 and elevation 745.5. Storage space between elevation 778.5 and elevation 770 (normal full pool) amounting to 100,000 acre-feet, will be available the year round for flood regulation and will be used exclusively for that purpose and will be used without reservation whenever flood regulation requires its use. Below elevation 770 an additional 260,000 acre-feet of storage space will be reserved for flood regulation as follows:

(1) Beginning on October 17 the Mossyrock pool will be lowered from elevation 770 on a gradual uniform drawdown to elevation 745.5 on or before December 1;

(2) The maximum flood control storage reservation below elevation 770, 260,000 acre-feet will be held until February 1, except as use of storage space may be required for flood regulation; and

(3) After February 1 the reservoir may be gradually filled to elevation 770 on April 1.

Surcharge and/or flood control storage provided at Mayfield Reservoir, a storage project below Mossyrock Reservoir, may be substituted for an equal amount of storage at Mossyrock Reservoir so long as the two projects are coordinated to regulate floods at Castle Rock to 70,000 cfs or less.

Water stored in surcharge storage will be evacuated as fast as downstream channel conditions permit, preferably not to exceed a regulated flow of 50,000 cfs at Castle Rock. Should a 50,000 cfs flow at Castle Rock jeopardize the evacuation of the surcharge storage space, the Castle Rock regulated flow may be increased to the maximum of 70,000 cfs. When there is at least 100,000 acre-feet of storage space available for flood regulation which is the amount to be reserved as surcharge storage, further evacuation can be limited to releases through the power units so long as maximum use is made of this means of drawing the reservoirs down to their scheduled storage reservations as of that date for control of floods.

PARAGRAPH IV. The following articles, some of which are in lieu of the eliminated articles mentioned in PARAGRAPH II above and some of which are additional articles, are hereby included in the license for the project.

Article 37. The Licensee shall, for the conservation, and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 38. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation

as may be prescribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 39. The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such recreational facilities including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal and State agencies, after notice and opportunity for hearing and upon findings based upon substantial evidence that such facilities are necessary and desirable, and reasonably consistent with the primary purpose of the project.

Article 40. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fish and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: *Provided*, that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property; and *Provided further*, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 41. The Licensee shall be responsible for and shall minimize soil erosion and siltation on lands adjacent to the stream resulting from construction and operation of the project. The Commission upon request, or upon its own motion, may order the Licensee to construct and maintain such preventive works to accomplish this purpose and to revegetate exposed soil surface as the Commission may find to be necessary after notice and opportunity for, hearing.

Article 42. The Licensee shall notify the Department of Anthropology, University of Washington, of the construction which will inundate the land beneath Mossyrock Reservoir (Ira S. Davidson Lake), in order that the University may negotiate with the Licensee for the purpose of undertaking archeological surveys and salvage excavations to be financed by the Licensee in an amount not to exceed $10,000.

Article 43. In the interest of recreation, the Licensee shall maintain the Mossyrock Reservoir at such operating levels during the period June 1 to September 30 each year as the Commission may prescribe, after notice and opportunity for hearing, reasonably consistent with the primary purpose of the project. The Licensee's proposal with respect to operating levels of the Mossyrock Reservoir during such recreational season shall be submitted by the Licensee with its recreational use plan required by *Article 51* herein.

Article 44. The Licensee shall consult with the United States Army, Corps of Engineers District Office, within which district the project is located, for the purpose of complying with Federal regulations for transmission and other lines crossing navigable waters of the United States or for bridges, breakwaters,

causeways and other obstructions affecting navigation and shall submit to the Commission for approval, plans for all such crossings and obstructions affecting navigation and recreational use of project waters. These plans will show data pertinent to engineering features which are of public interest, including location and elevations of all such obstructions, and the length of span, minimum vertical clearance in feet and voltage, if applicable, of transmission or other lines.

Article 45. The Licensee shall, after consulting with the Department of Health, Education, and Welfare and the Washington State Department of Health to determine measures that may be necessary for the control of mosquito production, take such reasonable protective measures as may be required.

Article 46. The Licensee shall employ a board of consultants to review and report on the designs and specifications of the dam, suitability and treatment of rock foundation and abutments, treatment of reservoir to minimize leakage, design of a suitable spillway and associated means for preventing foundation and abutment erosion, and the design of the powerhouse structure and associated works.

Article 47. The Licensee shall submit a report based on model studies and analysis, demonstrating the suitability of the overflow spillway of the Mossyrock dam to spill 276,000 cfs without endangering the dam abutments or foundation, or the powerhouse, and to spill flows below 50,000 cfs with a minimum adverse effect on the operation of the powerhouse.

Article 48. The Licensee shall submit with its revised Exhibit L drawings, and prior to commencing construction of the Mossyrock dam, a report approved by its Board of Consultants for the Mossyrock Project covering the following items:

(1) Final criteria used in the design of the arch dam;

(2) Final stress analysis for the dam assuming: (a) maximum flood water conditions, and (b) normal water surface and maximum earthquake load conditions;

(3) The result of testing of the structural model of the dam;

(4) A review of the suitability of the rock abutments to carry the resulting loads imposed on them by the dam and thrust blocks employing rock mechanics and giving consideration to any faults or fractures found in the abutments; and

(5) A review of the proposed treatment of the reservoir in order to minimize leakage.

Article 49. The Licensee shall submit in accordance with the Commission's rules and regulations revised Exhibit L showing final designs of the project works and the Licensee shall not begin construction of the project structures until the Commission has approved such exhibits.

Article 50. The project, including its operation and maintenance and any work incident to additions or alterations authorized by the Commission whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and of any such alteration thereof, and shall notify him of the date upon which work with respect to any alteration will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. Licensee shall submit to said representative a detailed program of inspection by

the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 51. The Licensee shall, no later than November 1, 1965, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 52. The Licensee shall pay for timber on lands of the United States cut, used and destroyed in the construction and maintenance of the project works, or in the clearing of said lands, and the resulting slash and debris disposed of in accordance with the requirement of the agency of the United States having jurisdiction over said lands. Payment for merchantable timber will be at current stumpage rates, and payment for young growth timber below merchantable size will be at current damage appraisal value. However, the agency of the United States having jurisdiction may sell or dispose of the merchantable timber to others than the licensee, with the provision that timber so sold or disposed of will be cut and removed from the area prior to or without interference with clearing operations of the licensee and in coordination with the project construction schedules. Such sale or disposal to others will not relieve the licensee of the responsibility for the clearing and disposing of all slash and debris from project lands.

Article 53. The Licensee shall do everything reasonably within its power and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon the request of officers of the agency concerned to prevent, make advance preparations for suppression, and suppress fires on the lands to be occupied or used under the license. The licensee shall be liable for and pay the costs incurred by the United States in suppressing fires caused from the construction, operation, or maintenance of the project works or of the work appurtenant or accessory thereto under the license.

Article 54. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner as the Commission may direct in the interest of power navigation, flood control, recreation and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

(C) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313 (a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

GULF OIL CORPORATION, ET AL., DOCKET NO. CI64-25, ET AL.; GRAHAM B. MORRISON AND GLEN W. PRYOR, TRUSTEES, DOCKET NO. G-18884

ORDER DENYING MOTION FOR SEVERANCE AND REJECTING OFFER OF SETTLEMENT

(Issued November 18, 1964)*

On June 29, 1959, Mountain States Drilling Company (Mountain States) filed in Docket No. G-18884 an application for a certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act, for authority to sell and deliver natural gas to Pacific Northwest Pipeline Corporation (now El Paso Natural Gas Company) and to construct any facilities necessary therefor, from acreage located in Sublette County, Wyoming at a proposed initial price of 18.5¢ per Mcf at 15.025 psia.

Temporary authorization to commence this sale was granted to Mountain States by letter dated August 12, 1959, containing a condition, among others, that Mountain States should refund any amount in excess of the amount resulting from the rate finally determined to be proper in Docket No. G-18884.

Two assignments of the property were executed by Mountain States to Graham B. Morrison and Glen W. Pryor, Trustees for Richard Stoll Shannon III, *et al.* (applicants) and the transfer became effective on January 1, 1964.

Accordingly, on February 19, 1964, applicants amended the application by filing a motion to be substituted for the predecessor, Mountain States.

Temporary authority to continue the sale was granted to applicants by letter dated April 24, 1964, containing the same refund condition. By letter dated April 24, 1964, the Commission advised Mountain States of their responsibility for any refunds for sales prior to the date of transfer of the property.

By order issued July 29, 1964, the above-docketed proceedings were consolidated and a hearing thereon was held on October 5, 1964, terminating on October 8, 1964.

In the interim, on September 29, 1964, applicants filed a motion for severance of Docket No. G-18884 from Docket No. CI64-25, *et al.*, and an offer of settlement. The applicants agreed therein to accept a certificate of public convenience and necessity containing a condition that the initial rate should not exceed 15.384¢ per Mcf at 15.025 psia. The offer further stated that applicants agreed to accept this condition assuming that refunds would be required to be made for any amounts collected in excess of 15.384¢ per Mcf during the period subsequent to December 1, 1962.

Applicants' determination of the period for which refunds should be made is predicated on a refund period found proper in the disposition of a proceeding involving Section 4(e) of the Act (Docket No. G-16710), whereas we are here concerned with an application for a certificate of public convenience and necessity filed pursuant to Section 7(c) of the Act, and a refund-conditioned temporary authorization.

Acceptance of the offer of settlement as proposed would leave unresolved not only the matter of refunds prior to December 1, 1962, but also the question of refunds prior to the date of acquisition. The applicants have not indicated that they are assuming the refund obligation of Mountain States for the period

*Reconsideration denied by order issued January 26, 1965, 33 FPC 106.

of December 1, 1962, to January 1, 1964, nor do they state that their predecessor in interest is willing to make such refunds.

The Commission finds:

The public interest would not be served by acceptance of the offer of settlement as proposed.

The Commission orders:

The motion for severance filed by applicants in Docket No. G–18884 is hereby denied and the offer of settlement filed therewith is hereby rejected.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

UNION OIL COMPANY OF CALIFORNIA, DOCKET NOS. G–16602, G–17673, G–17682, G–17705, G–19609, G–20287, RI61–80, RI62–43, RI63–117 AND RI64–238

ORDER CONDITIONALLY APPROVING OFFER OF SETTLEMENT, SEVERING AND TERMINATING PROCEEDINGS, AND PRESCRIBING REFUNDS

(Issued November 18, 1964)

On September 23, 1964, Union Oil Company of California (Union) submitted an offer of settlement[1] in the above-captioned proceedings seeking to resolve the dispute with its pipeline purchaser[2] as to the amount of Louisiana gas severance tax reimbursement contractually authorized for the jurisdictional sale involved. Each of the suspension proceedings involve the question of the amount of tax reimbursement to which Union is entitled under its contracts. In the offer of settlement, Union proposes to refund the amount of money collected in excess of the amount considered contractually authorized by the purchaser, together with interest at the rate of 6 percent per annum.

The pertinent aspects of Union's offers of settlement are as follows:

Docket No.	Rate Sch.	Supp. No.	Questionable Tax Reimb.	Settlement Tax Reimb.	Settlement Refund Per.	Approx. Refund Excl. of Int.
			Cents	*Cents*		
G–17673	7	5	1.75	1.5	1/30/59 to 4/1/63	$6,850
G–17682 *et al*	12	4	1.75	1.5	12/1/58 to date [3]	30,600
G–17705 [4]	13	4	1.875	1.75	12/1/58 to date [3]	166,550
G–20287	40	1	2.05	1.8	12/29/59 to date [3]	72,400

[1] The offer of settlement is contained in separate motions in Docket Nos. G–17673, G–17682, G–17705 and G–20287 seeking approval of refunds, termination of the proceeding and other relief, together with an agreement with the purchaser setting the proper amount of tax reimbursement.

[2] The purchasers are as follows: Tennessee Gas Transmission Company in Docket No. G–17673; United Fuel Gas Company in Docket No. G–17682; Texas Gas Transmission Corporation in Docket No. G–17705; and Trunkline Gas Company in Docket No. G–20287.

[3] Date of issuance of this order.

[4] Docket No. G–17705 has been consolidated in the South Louisiana Area Rate Proceeding, Docket No. AR61–2, *et al.*

Under its FPC Gas Rate Schedule No. 12, Union has also filed for increased rates which reflect increases in the base rate and include the questionable 1.75 cents per Mcf tax reimbursement. These rates have been placed in effect subject to refund in Docket Nos. G–16602, G–19609, RI61–80, RI62–43, RI63–117 and RI64–238. Union is now proposing to reduce only the tax reimbursement component of these increased rates. Accordingly, we desire to make it clear that our approval of the instant settlement and the refunds relating thereto is without prejudice to the Commission's determination of the justness and reasonableness of the increased rates involved in these proceedings, together with any refund obligations relating thereto.

By order of the Commission issued December 23, 1959 in Docket No. G–20287, Union's FPC Gas Rate Schedule No. 40 and Supplement No. 1 thereto were conditionally accepted for filing subject to rejection thereof if it were determined after hearing that the tax reimbursement component was inconsistent with the contract tax reimbursement provisions. In view of our approval of the settlement proposal, we shall terminate the condition to the acceptance of Supplement No. 1 to Union's FPC Gas Rate Schedule No. 40 imposed in Docket No. G–20287.

In accordance with our action in the recent Humble Oil & Refining Company settlement[5] proceedings we shall require Union to retain the amounts of refund ordered herein until further order directing the nature of their disposition and also to submit within 45 days of this order to the Commission and each customer a detailed report setting out, by purchasers the amount of refund related to each rate schedule, the volume of gas sold thereunder and the period covered. We shall also by separate action direct each of the pipeline purchasers within ten days from the receipt of such report to submit a report of their own setting forth whether they intend to pass on all or part of such refund amounts to their customers and the names of such customers and amounts of refund each would receive, or, if they claim the right to retain any portion of the refunds, a brief statement as to the legal or equitable basis for such claim. In the event such reports indicate that the refunds will flow through to ultimate consumers or distribution companies not subject to the Commission's jurisdiction, the Commission will authorize the release of such refund sums by Union, (unless a state regulatory authority after notification of the sum to be made available to a company subject to its regulatory jurisdiction asks us to defer releasing the funds until it can determine their ultimate disposition). In the event a pipeline purchaser from Union (or a pipeline customer of such a pipeline) indicates that it is asserting a claim to retain substantial refund sums the Commission will by further order prescribe the procedure for determining the relative rights to such funds of such pipeline or its customers.

Union may elect at its option to either use these funds in its business and pay 6 percent interest thereon or to deposit such funds in a special escrow account.

Our action herein should not be construed as constituting approval of any future rate increases that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Union's rates and rate schedules.

The Commission finds:

The proposed settlement of the above-captioned proceedings on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Union on September 23, 1964, is in the public interest and ap-

[5] Order issued July 8, 1964 in Docket No. G–9287, *et al.*, 32 FPC 49.

propriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The settlement of these proceedings on the basis of the settlement proposal as herein conditioned filed by Union on September 23, 1964, is approved and made effective subject to the terms and conditions herein.

(B) Union shall file within 30 days of the issuance of this order a notice of change in rate to its Rate Schedule No. 7 reflecting a tax reimbursement rate of 1.5 cents per Mcf for the period from January 30, 1959 to April 1, 1963.

(C) Union shall file within 30 days of the issuance of this order a notice of change in rate to its Rate Schedule No. 12 reflecting a tax reimbursement rate of 1.5 cents per Mcf. Such notice of change shall be effective as of the date of this order, subject to further refund in Docket No. RI64–238.

(D) Union shall file notices of change in rates to its Rate Schedule Nos. 13 and 40 reflecting tax reimbursement rates of 1.75 cents per Mcf and 1.8 cents per Mcf, respectively, to be effective as of the date of this order.

(E) Union shall compute the difference between the rates collected subject to refund in the above entitled proceedings and the related settlement rates in the above-entitled proceedings, together with interest at 6 percent per annum. Union shall within 45 days from the date of this order submit a report to the Commission, and serve a copy on each of the purchasers involved, setting out by purchasers the amount of refunds related to each rate schedule (showing separately the principal and applicable interest), and the bases used for such determination and the periods covered.

(F) Union shall retain the amounts shown in the report required under paragraph (E) above, subject to further order of the Commission directing the disposition of those amounts.

(G) If Union elects to commingle these retained refunds with its general assets and use them for its corporate purposes, it shall pay interest thereon at the rate of 6% per annum on all funds thus available from the date of this order, to the date on which they are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission.

(H) If Union elects to deposit the retained refunds in a special escrow account, Union shall tender for filing within 45 days from the date of issuance of this order, an executed Escrow Agreement, conditioned as set out below accompanied by certificate showing service of a copy thereof upon each of its jurisdictional customers involved. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Union and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(1) Union, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such Agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any

form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable only for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the trust account for the quarterly period.

(I) Upon full compliance by Union with all the terms and provisions of this order, the proceeding in Docket No. G–17705 shall be severed from the consolidated proceedings in Docket No. AR61–2, *et al.*, and the proceedings in Docket Nos. G–17673, G–17682, G–17705 and G–20287 shall terminate.

(J) The acceptance by the Commission of Union's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Union, including area rate or other similar proceedings. The Commission's action herein is also without prejudice to the determination of the justness and reasonableness of the increased rates involved in Docket Nos. G–16602, G–19609, RI61–80, RI62–43, RI63–117, and RI64–238 and any further refund obligations relating thereto.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

DORCHESTER GAS PRODUCING COMPANY, DOCKET NOS. RI64–749, G–18671 AND RI60–11

ORDER DENYING REQUEST FOR INVESTIGATION UNDER SECTION 5(a) OF THE NATURAL GAS ACT

(Issued November 19, 1964)*

Dorchester Gas Producing Company (Dorchester) on May 20, 1964, filed a petition requesting the Commission to issue on its own motion pursuant to Section 5(a) of the Natural Gas Act an order instituting an investigation to determine the justness and reasonableness of all of Dorchester's jurisdictional rates, including those involved in suspension proceedings in Docket Nos. G–18671 and RI60–11.

Dorchester sells approximately 28 million Mcf annually under seven rate schedules on file with this Commission. Of these seven rate schedules, Dorchester's sales under its Rate Schedule Nos. 1 (RR. Dist. No. 10) and 2 (Oklahoma Panhandle) to Northern Natural and Natural Gas Pipeline, respectively, are the most important. Dorchester sells approximately 12 million Mcf of gas annually under each of these two rate schedules. A 17.598¢ per Mcf rate under Rate Schedule No. 1 is in effect subject to refund in Docket No. G–18671. The underlying rate in that docket is 8¢. The rate increase involves about $1 mil-

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*Order issued January 19, 1965 denying reconsideration, 33 FPC 88. Affirmed, *Dorchester Gas Producing Co. v F.P.C.*, 353 F. 2d 162 (1965); cert denied, 383 U.S. 969 (1966).

lion per year. The sale under Rate Schedule No. 2 is being made at the contract rate of 7.1463¢ per Mcf, the rate provided for the remaining term of the contract, which is for the life of the field. All of Dorchester's rate schedules are involved in area rate proceedings with the exception of Rate Schedule No. 5. Rate Schedule Nos. 1, 2, 4, 6 and 7 are in Docket No. AR64–1, the Hugoton-Anadarko proceeding. Rate Schedule No. 3 is in Docket No. AR61–1, the Permian proceeding.

In support of its petition, Dorchester states that its average unit revenues for all of its jurisdictional sales in 1963 was 12.3113¢ per Mcf, inclusive of revenues collected subject to refund in Docket Nos. G–18671 and RI60–11. Dorchester claims that its cost of service for all of its jurisdictional sales approximated 18¢ per Mcf, including 10 percent return, utilizing cost principles announced by the Commission in decided producer cases.

The principal fact contributing to the alleged deficiency in revenues, according to Dorchester, is the claimed unreasonably low contract rate of 7.1463¢ per Mcf which is presently in effect for Dorchester's sale to Natural Gas Pipeline Company of America (Natural) under its FPC Gas Rate Schedule No. 2. Dorchester indicates that the pipeline purchaser under the above contract has declined to increase the contract price, and that under the *Mobile* decision[1] Dorchester is barred from unilaterally filing for a rate increase.

Dorchester further states that it is able to continue operation of the properties relating to its FPC Gas Rate Schedule Nos. 1, 2 and 3 only because of the forebearance of the holders of its mortgage debt on such properties. The leases relating to gas production from these rate schedules were acquired in 1954, subject to a retained production payment of $35 million payable from 96.5% of the production from such properties. The mortgage debt is in arrears as of January 1, 1964, as to principal payments in the aggregate amount of $12,116,668.30 and as to interest in the aggregate amount of $521,170.99.

In addition to the claimed unreasonably low rate of 7.1463¢ per Mcf for the sale to Natural Gas Pipeline, Dorchester blames its financial difficulties on the fact that it cannot use those amounts collected subject to refund in Docket Nos. G–18671 and RI60–11 because it is required to place those amounts in a trust fund pursuant to Commission order. As of May 1, 1964, the amount in trust totals $5,130,470.01 in Docket No. G–18671 and $163,044.20 in Docket No. RI60–11. Dorchester also states that its financial burden is becoming more acute because of increasing costs related to their need to fracture wells in certain areas, the necessity for heavy capital expenditures for field compression starting not later than mid-1966, and maintenance of their existing gathering system.

In summary, Dorchester claims it is essential for it to obtain promptly a determination from this Commission concerning the justness and reasonableness of the rates under its FPC Gas Rate Schedule Nos. 1, 2 and 3. Dorchester cites the U.S. Supreme Court decision in *F.P.C.* v. *Sierra Pacific Power Co.*, 350 U.S. 348 in support of its position that the Commission has the necessary power under Section 5(a) of the Act to grant it relief. Dorchester asserts that it cannot wait for a determination of the justness and reasonableness of its rates in an area proceeding.

We do not reach the question posed here by Dorchester as to whether or not Dorchester comes within the test laid down by the Court in *Sierra* for relief under Section 5(a) for the reasons set forth below.

As previously indicated, the suspension proceedings in Docket Nos. G–18671 and RI60–11 are involved in the Hugoton-Anadarko area proceeding in Docket

[1] *United Gas Pipe Line Company* v. *Mobile Gas Service Corporation*, 350 U.S. 332.

No. AR64–1. Similarly, Dorchester's Rate Schedule No. 2 is also involved in the Section 5(a) aspects of that area proceeding. Dorchester's two important sales (Rate Schedule Nos. 1 and 2) are thus involved in Docket No. AR64–1. Even if the Commission were to institute a separate investigation under Section 5(a) into Dorchester's sale to Natural, Dorchester would not receive any relief until the Section 5(a) investigation was completed and a Commission order issued. Moreover, any action taken by the Commission under Section 5(a) in a separate investigation would be applicable only until such time as the Commission renders a decision in Docket No. AR64–1.

We think, however, that because of the peculiar facts of this case we should attempt to give Dorchester some relief in connection with its suspension proceedings. One of Dorchester's problems with respect to its suspended rates is that it needs the use of the substantial sums now held in trust. Since the mortgage companies will be the primary beneficiaries if the monies now held in trust are released, we would be willing to accept an agreement and undertaking from the mortgage companies (two New York insurance companies) assuring the refund of any excess charges in these proceedings in lieu of the presently required trust agreement.

In the alternative, we shall permit Dorchester to file an agreement and undertaking to assure refund of excess charges in place of the present trust arrangement for those amounts collected in Docket No. G–18671 between 8¢ and 11¢ per Mcf, for sales under its Rate Schedule No. 1. The effect of this would be that the undertaking would cover for both the past period and the future those amounts collected from 8¢ to 11¢ per Mcf, but Dorchester would continue to use the trust arrangement for those amounts collected from 11¢ to 17.598¢ per Mcf. In this way, Dorchester would be permitted to remove some $1.5 million from the present trust fund, and in the future would be able to use in its business an additional $360,000 per year.

The Commission orders:

For the reasons set forth above, Dorchester's petition for an investigation under Section 5(a) of the Act is hereby denied.

[LETTER REJECTING APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND RELATED RATE SCHEDULE]

NOVEMBER 19, 1964.*

Docket No. CI65–427
Sun Oil Company

SUN OIL COMPANY
1608 Walnut St., Philadelphia, Penn., 19103.

Attention: C. E. Webber, Director of Natural Gas Administration

GENTLEMEN: Your filing of an application for certificate of public convenience and necessity in the above-captioned docket, together with the proposed related rate schedule, is hereby rejected in accordance with Sections 154.93, 154.100 and 157.25 of the Commission's regulations, because the contract dated April 30, 1964, between Magna Management Company and Lone Star Gas Company ratified by your company contains pricing provisions in conflict with Section 154.93 of the

*Rehearing denied by order issued January 18, 1965, 33 FPC 84. Affirmed, *Sun Oil Co. v F.P.C.*, 353 F. 2d 86 (1965).

regulations. More specifically, the provisions of Article XVIII of the contract are in conflict with subsection 154.93(c) of said regulations. One copy of the submittal is returned herewith. The other copies are being retained in the Commission's files for informational purposes.

This rejection is without prejudice to the submittal, in conformity with the Commission's rules and regulations, of three copies of a proposed rate schedule which does not contain the prohibited pricing provisions and an original and seven copies of a related certificate applications.

Very truly yours,

Secretary.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

AREA RATE PROCEEDING, DOCKET NO. AR61-1; CLAUDE E. AIKMAN, ET AL., DOCKET NO. G-18466, ET AL.; NORTH CENTRAL OIL CORPORATION (OPERATOR), ET AL., DOCKET NO. CI60-435, ET AL.

ORDER DENYING APPLICATION FOR REHEARING AND MOTION FOR RECONSIDERATION

(Issued November 20, 1964)

The initial decision and proposed order of the presiding examiner in this proceeding was issued September 17, 1964. By order issued September 25, 1964, the Commission on its own motion extended to November 23, 1964, the time for filing exceptions to said initial decision and proposed order, extended to December 24, 1964, the time for filing replies to exceptions, and set the opening date for oral argument at January 12, 1965. By order issued October 20, 1964, 32 FPC 1143, the Commission on motion by a number of producers further extended the time for filing replies to exceptions to January 15, 1965, and delayed oral argument until February 8,1965. By order issued October 26, 1964, 32 FPC 1181, the Commission denied motions by a number of producers that the presiding examiner be directed to clarify his initial decision, and that further proceedings before the Commission be deferred until after this had been done.

On November 6, 1964, ten producers filed an application for rehearing and motion for reconsideration of our October 26 order. On November 9, four more producers joined the application and motion. Their request is threefold. First, they urge us to declare effective the errata and clarification notices issued *sua sponte* by the presiding examiner on October 23, 26, and 29. The errata and clarification notices are obviously lawful. Second, petitioners repeat the requests of October 13 and 14 that we direct the presiding examiner to clarify his opinion. Applicants' request was fully considered prior to our order of October 26. For this reason, plus the additional one that the *sua sponte* orders have clarified several of the asserted ambiguities, their request is denied. Third, applicants urge that we extend the due date for the filing of briefs on exceptions to thirty days after the issuance of either an examiner's clarification order or the instant order. No good cause has been shown for granting this request, and, accordingly, it will be denied.

The Commission finds:

No new facts or principles of law have been presented by applicants in their application for rehearing and motion for reconsideration which either were not

fully considered by the Commission prior to its order issued October 26, 1964, or, having now been considered, warrant further hearing, modification, reconsideration or revocation of said order except as hereinafter stated.

The Commission orders:

The application for rehearing and motion for reconsideration, and for additional relief, filed herein by Humble Oil & Refining Company, Continental Oil Company, Gulf Oil Corporation, Warren Petroleum Company, Pan American Petroleum Corporation, Phillips Petroleum Company, The Pure Oil Company, Shell Oil Company, Socony Mobil Oil Company, Inc., and Texaco Inc. November 6, 1964, and joined in by The Atlantic Refining Company, The British-American Oil Producing Company, Southland Royalty Company and Westates Petroleum Company November 9, 1964, be, and the same hereby is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITY OF CRAWFORDVILLE, GEORGIA, DOCKET NO. CP65-44

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued November 20, 1964)

On August 11, 1964, the City of Crawfordville, Georgia (Applicant) filed in Docket No. CP65-44 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Transcontinental Gas Pipe Line Corporation (Transco) to sell and deliver to the Applicant up to 356 Mcf of natural gas per day, on peak days and 28,752 Mcf on an annual basis during and after the third year of service. Delivery of the natural gas by Transco is to be made through the existing interconnection of its facilities with those of Union Point and Greensboro, Georgia, at a point north of Colbert, Georgia, Union Point and Greensboro will transport such gas for the account of Applicant from the above interconnection southward approximately 36 miles through their existing facilities and deliver said gas to Applicant at its proposed point of receipt just north of Union Point.

Applicant proposes to construct and operate approximately 12 miles of 2.5-inch pipeline extending from the point of connection with the Union Point-Greensboro lateral to Crawfordville and to construct a gas distribution system in the City of Crawfordville at an estimated cost of $170,000, which is to be financed by the sale of 30 year revenue bonds. A qualified purchaser has expressed a willingness to purchase said bonds.

Applicant states that it has made legal arrangements with the owners of the transmission lateral line for a stated annual consideration to receive the natural gas from Transco for Applicant's account and to transport it to the point of connection of their respective facilities near Union Point.

On September 17, 1964, Transco filed its answer to the application herein stating that it has no objection to the order requested for the rendition of service to Applicant.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on October 30, 1964, (29 F.R. 14804). No protest or petition to intervene in opposition to the granting of the application has been filed in this proceeding.

The Commission finds:

(1) Transcontinental Gas Pipe Line Corporation, a Delaware corporation with its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 23, 1948, in Docket No. G–1143 (7 FPC 145).

(2) Applicant, City of Crawfordville, is a municipality organized under the laws of the State of Georgia and authorized to construct and to operate the distribution system proposed.

(3) It is necessary and desirable in the public interest to direct Transcontinental Gas Pipe Line Corporation to sell and deliver natural gas through the facilities of the Cities of Greensboro and Union Point, as hereinbefore described, to the Applicant to supply its daily and annual requirements as hereinbefore set forth and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant's being prepared to receive gas from Transco, as proposed, within one year from the date of this order.

(5) The requirement that Transco serve the Applicant, as proposed, will not place any undue burden upon Transco nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Transcontinental Gas Pipe Line Corporation be and hereby is directed to use the established physical connection of its transmission facilities with the facilities of the Cities of Union Point and Greensboro, Georgia, for sale and delivery of natural gas to the Applicant for resale to consumers by Applicant through facilities proposed to be constructed and operated as hereinbefore described. The volume of gas to be sold and delivered as aforesaid not to exceed the daily and annual amount heretofore stated.

(B) Applicant shall execute a service agreement with Transco in accordance with the rules and regulations of the Commission and Applicant shall also be prepared to receive natural gas from Transco within one year from the date of this order.

(C) Transco shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ROY M. HUFFINGTON, INC., ET AL., DOCKET NO. RI63–478

ORDER DENYING OFFER OF SETTLEMENT, AND DENYING MOTION TO TERMINATE PROCEEDINGS

(Issued November 20, 1964)

On September 28, 1964, Roy M. Huffington, Inc., *et al.* (Huffington) filed an offer of settlement and motion to terminate the above-docketed proceeding. The offer and motion relates to a proposed increased rate of 22.8¢ per Mcf for natural gas sold to United Gas Pipe Line Company (United) from the Hayes Field, Calcasieu Parish, Louisiana, which was suspended in Docket No. RI63-478 and thereafter placed in effect subject to refund as of December 26, 1963. Huffington proposes to amend its contract with United to provide for a rate of 20.625¢ per Mcf for the period ending on July 1, 1967, or the date of the conclusion of the South Louisiana Area Rate Proceeding, AR61–2, whichever is earlier. For the first five years after such period, Huffington proposes to charge whatever

applicable rate may be determined to be proper by the Commission in said Area Rate Proceeding. Thereafter, the proposed amendment would provide for 1¢ per Mcf escalation at five year intervals for the remaining term of its contract with United. Additionally, Huffington proposes to amend its contract to eliminate a price redetermination clause effective as of January 1, 1968.

Oppositions to Huffington's proposal were timely filed by United, Long Island Lighting Company and the Philadelphia Gas Works.

We recognize that we have approved producer settlements at the same rate Huffington proposes herein prior to the issuance of our Opinion No. 436,[1] when such settlements were proposed by other parties to those consolidated proceedings. However, in Opinion No. 436[1] we granted Huffington a certificate at an initial rate of 18.8¢ per Mcf, the contractually authorized initial rate. In no instance have we approved a settlement rate of 20.625¢ per Mcf proposed by any producer in the *Union Texas* proceedings where the proposed initial rate did not exceed that amount. Moreover, we have never approved a proposed settlement rate in excess of the initial rate or the applicable increased rate ceiling except under special or unusual circumstances surrounding the particular sale. No such circumstances are set forth by Huffington herein. Consequently, we cannot approve the instant proposal.

The Commission finds:

It is necessary and proper in carrying out the provisions of the Natural Gas Act and the Regulations thereunder to deny the offer of settlement and to deny the motion to terminate filed by Huffington with the Commission on September 28, 1964.

The Commission orders:

The offer of settlement and the motion to terminate filed by Huffington in this proceeding on September 28, 1964, are hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-17

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued November 20, 1964)

On July 15, 1964, as supplemented on August 3, 1964, Northern Natural Gas Company (Applicant) filed in Docket No. CP65-17 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain facilities and for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities, all in Cherokee County, Iowa, as more fully set forth in the application, as supplemented.

Specifically, Applicant seeks permission and approval to abandon two separate sections of its 8-inch Storm Lake, Iowa, line totaling approximately 0.3 mile. A total of 80 feet of the abandoned line will be removed for tie-in purposes; the remainder will be abandoned in place.

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[1] Opinion and Order issued July 23, 1964, in *Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.*, 32 FPC 254.

Applicant further seeks authorization to construct and operate two separate sections of 8-inch pipeline totaling approximately 0.54 mile, replacing the portions removed. The abandonment and replacement are required by the location of a sewage treatment plant over and across portions of the Storm Lake line.

Applicant further seeks authorization to construct and operate a measuring and regulating station for the establishment of a new delivery point in Cherokee County, Iowa, for Iowa Electric Light & Power Company (Iowa Electric) to deliver firm and interruptible volumes of gas to Iowa Electric for resale to Wilson and Company, Inc. (Wilson) for their proposed hog and beef slaughter plant. Applicant proposes to deliver 50 Mcf per day on a firm basis, and 360,000 Mcf annually on an interruptible basis. The interruptible gas is subject to curtailment in accordance with the provisions of Applicant's Rate Schedule R–2 of its FPC Gas Tariff Revised Volume No. 1.

The City of Cherokee, Iowa (Cherokee) and Applicant have entered into an agreement, dated July 29, 1964, whereby Cherokee will reimburse Applicant for the entire cost of abandonment and relocation, which cost is estimated to be $18,570.

Iowa Electric will reimburse Applicant the entire cost of installing the measuring and regulating station and appurtenances, which cost is estimated to be $17,850.

A temporary certificate was issued to Applicant by Commission letter dated September 15, 1964, authorizing relocation of the portions of the 8-inch Storm Lake, Iowa, line hereinbefore described.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on November 19, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support thereof, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–280 (3 FPC 967).

(2) The facilities proposed to be constructed as hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) Firm deliveries of natural gas by Applicant made through Iowa Electric Light & Power Company for resale to Wilson and Company, Inc. should be allowed up to 50 Mcf per day.

(7) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission and the abandonment thereof by Applicant is subject to the provisions of Subsection (b) of Section 7 of the Natural Gas Act.

(8) The proposed abandonment by Applicant is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct and operate facilities and to deliver natural gas in interstate commerce as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 4 months from the date on which this order issues.

(D) Firm deliveries of natural gas by Applicant made through Iowa Electric Light & Power Company for resale to Wilson and Company, Inc. shall be allowed up to 50 Mcf per day.

(E) Permission for and approval of the abandonment by Applicant, Northern Natural Gas Company, of the facilities hereinbefore described be and the same are hereby granted.

(F) Applicant shall advise the Commission of the date of abandonment of said facilities within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ST. JOSEPH LIGHT & POWER COMPANY, DOCKET NO. CP65-50

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued November 20, 1964)

On August 19, 1964, as supplemented on October 12, 1964, St. Joseph Light & Power Company (Applicant) filed in Docket No. CP65-50 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver natural gas to Applicant for distribution and resale in the City of Graham, Missouri, all as more fully set forth in the application.

Applicant proposes to construct and operate a natural gas distribution system in the City of Graham, Missouri, and approximately .29 miles of 3-inch transmission pipeline extending from the proposed interconnection with the facilities of Michigan Wisconsin to the corporate limits of the city. The estimated cost of the project is $47,100, and is to be financed with internal funds.

The application shows the estimated annual and peak day requirements of natural gas in Mcf to Applicant are as follows:

	First year	Second year	Third year
Annual (Mcf)	9,300	14,100	15,300
Peak day (Mcf)	124	155	162

On September 10, 1964, Michigan Wisconsin answered the application stating it had no objection to the entry of an order granting St. Joseph's application.

Due notice of the filing of the application and opportunity for hearing thereon have been given by publication in the Federal Register on October 29, 1964 (29 F.R. 14763). No protest or petition to intervene in opposition to the granting of the application has been filed.

The Commission finds:

(1) Michigan Wisconsin Pipe Line Company, a Delaware couporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 14, 1950, in Docket No. G-1302 (9 FPC 167).

(2) Applicant, St. Joseph Light & Power company, a Missouri corporation having its principal place of business in St. Joseph, Missouri, is a corporation legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest that Michigan Wisconsin Pipe Line Company be directed to establish physical connection of its natural gas transmission facilities with the facilities proposed by the Applicant and to sell and deliver through such connecting facility the required volume of natural gas to Applicant, as set forth in the application and as hereinafter ordered.

(4) The requirement that Michigan Wisconsin serve Applicant, as proposed, will not place any undue burden upon Michigan Wisconsin nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Michigan Wisconsin Pipe Line Company be and is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant, St. Joseph Light & Power Company, and to sell and deliver up to 162 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully set forth in the application in this proceeding.

(B) Applicant shall be prepared to receive natural gas from Michigan Wisconsin within 6 months from the date of issuance of this order.

(C) Michigan Wisconsin shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED FUEL GAS COMPANY AND KENTUCKY GAS TRANSMISSION CORPORATION, DOCKET NO. CP64-16

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 20, 1964)

On September 21, 1964, United Fuel Gas Company (United) and Kentucky Gas Transmission Corporation (Kentucky), referred to herein as Applicants, filed in Docket No. CP64-16, separate applications to amend a joint order of the Commission issued January 21, 1964, 31 FPC 157, in Docket No. CP64-16, authorizing among other things the installation and operation of additional compressor capacity by United, and the construction and operation of transmission facilities by Kentucky.

United requests that the ordering Paragraph (C) of the Commission's said order of January 21, 1964, be modified so as to extend the time for completion of the additional compressor capacity at its Ceredo and Lanham Compressor Station to not later than April 21, 1965, and Kentucky requests (1) modification, of Paragraph (C) to extend the time for completion of 16 miles of 30-inch loop pipeline to a date not later than October 21, 1965 and (2) it be permitted to withdraw a request for cancellation of the certificate of public convenience and necessity authorizing the construction and operation of the said 16 miles of 30-inch pipeline, all as more fully set forth in the applications to amend.

United states it began construction at its Ceredo Station on September 8, 1964, proposed to begin construction at its Lanham Station about September 21, 1964, and therefore requests an additional six months in which to complete construction previously delayed.

The application of Kentucky seeks (1) the withdrawal of its request made on August 6, 1964[1], to delete from the certificate issued January 21, 1964, authorization covering the construction and operation of approximately 16 miles of 30-inch loop pipeline in Montgomery County, Kentucky (13 miles extending north from its Means Compressor Station and 3 miles extending south from said Station) and (2) additional time for the completion of its proposed facilities to allow desired flexibility in its construction schedule and, if possible to obtain a lower bid therefor. Kentucky now needs the proposed facilities to meet the combined requirements of Cincinnati and Union Light, thus necessitating withdrawal of the request referred to above.

Due notice of the subject application to amend and opportunity for hearing has been given by publication in the Federal Register on October 27, 1964, (29 F.R. 14353). No protest, petition to intervene or request for hearing has been filed concerning this amendment.

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[1] Notice of application to amend filed by Kentucky to delete authorized facilities published in Federal Register on September 24, 1964, (29 F.R. 13287).

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require (1) that the Commission's order issued January 21, 1964, in Docket No. CP64–16, granting authorization for among other things the installation and operation of additional compressor capacity by United, and the construction and operation of transmission facilities by Kentucky, be amended as hereinafter ordered, and (2) Kentucky be permitted to withdraw its application to amend filed on August 6, 1964, in this proceeding as requested.

The Commission orders:

(A) The Commission's order issued January 21, 1964, in Docket No. CP64–16 be and the same is hereby amended by modifying Paragraph (C) thereof so as to extend the time for completion of the additional compressor facilities at United's Cerdo and Lanham Compressor Stations to not later than April 21, 1965, and to extend the time for completion by Kentucky of 16 miles of 30-inch loop pipeline to a date not later than October 21, 1965, all as hereinbefore described in the applications to amend of United and Kentucky filed herein.

(B) Kentucky be permitted to withdraw its application to amend the Commission's order issued January 21, 1964, filed herein on August 6, 1964, requesting deletion of Commission authorized facilities (16 miles of 30-inch loop pipeline in Montgomery County, Kentucky).

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

WHEELER GAS COMPANY, DOCKET NO. CP65–42

FINDINGS AND ORDER DIRECTING SALE AND DELIVERY OF NATURAL GAS

(Issued November 20, 1964)

On August 10, 1964, Wheeler Gas Company (Applicant) filed in Docket No. CP65–42 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Natural Gas Pipeline Company of America (Natural) to sell and deliver up to 1,500 Mcf of natural gas daily to Applicant for distribution and resale in the towns of Briscoe and Allison, Texas, and Reydon, Oklahoma, all as more fully set forth in the application.

Applicant owns and operates distribution systems in the said towns under franchises granted to Applicant, and has been providing natural gas to customers in the said communities from its production in nearby gas areas.

Applicant was unable to meet the peak day demands of its customers during the winter of 1963–64, and estimates it will need 636 Mcf from Natural and 560 Mcf from its own production on a 1964–65 peak day. Customer requirements are being met in a part from a supply obtained from Natural under temporary authorizations granted Natural in Docket Nos. CP64–140 and CP64–191.

On August 28, 1964, Natural filed an answer to Applicant's request stating it is willing to enter into a new service agreement providing for service to Applicant and to sell natural gas to Applicant on the condition that the provisions of Paragraph 6.1 of the General Terms and Conditions of Natural's tariff be waived since Wheeler now owns adequate measuring and regulating facilities at the proposed delivery point. Facilities needed by Natural to effectuate the proposed

service have been constructed by Natural at a cost of $854 from funds on hand pursuant to the above-described temporary authorizations.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on October 14, 1964 (29 F.R. 14133). No protest, petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 7, 1958, in Docket No. G–9966 (20 FPC 694).

(2) Applicant, Wheeler Gas Company, a partnership existing under the laws of Texas, having its principal place of business in Wheeler, Texas, is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act, and has received the necessary local franchises to render the service proposed.

(3) It is necessary and desirable in the public interest to direct Natural to sell and deliver natural gas to Applicant through existing facilities up to 1,500 Mcf per day for ultimate distribution and sale by Applicant in Briscoe and Allison, Texas, and Reydon, Oklahoma, under its appropriate rate schedule and a service agreement to be executed by Applicant with Natural Gas Pipeline Company of America in accordance with the Commission's Regulations.

(4) The requirement that Natural serve Applicant, as hereinafter ordered, will not (a) place an undue burden upon Natural, (b) require Natural to enlarge its transportation facilities or (c) impair Natural's ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive the requested volumes of natural gas from Natural for distribution in Briscoe and Allison, Texas, and Reydon, Oklahoma, within 6 months from the date of the issuance of this order.

(6) Good cause has been shown for waiving the requirements of Paragraph 6.1 of the General Terms and Conditions of Natural's rate schedule applicable to Wheeler Gas Company in this proceeding and permitting Natural to make an exception with respect thereto.

The Commission orders:

(A) Natural Gas Pipeline Co. of America be and is hereby directed to sell and deliver up to 1,500 Mcf of natural gas daily to Applicant under a service agreement to be executed by Applicant with Natural in accordance with the Commission's Regulations, for the transportation, distribution and resale as hereinbefore described. Such service shall be rendered pursuant to Natural's presently filed appropriate rate schedule with the exception that compliance with paragraph 6.1 of the General Terms and Conditions thereof may be waived.

(B) Natural shall report to the Commission the date of commencement of the requested service within 15 days after such service begins.

(C) Applicant shall be prepared to receive the requested service from Natural as directed herein within 6 months from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EASTERN SHORE NATURAL GAS COMPANY, DOCKET NO. CP65-64; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP64-96

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, AND AMENDING AN ORDER ISSUING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 23, 1964)

Eastern Shore Natural Gas Company (Eastern Shore), filed in Docket No. CP65-64 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity on September 4, 1964, and amendments and first and second supplements on September 18 and November 3, 1964, respectively, authorizing (1) the construction and operation of a total of 30.25 miles of 4 and 6-inch pipeline from Bridgeville, Delaware, to Cambridge, Maryland, and the sale and delivery of 550 Mcf of natural gas daily on a firm basis to the Cambridge Gas Company for resale in Cambridge and (2) the construction and operation of a total of 2.89 miles of 3 and 4-inch pipeline laterals from the proposed transmission line in (1) above to (a) the Continental Can Company, Inc., Hurlock, Maryland, (b) Eastern Shore Rendering Company, East New Market, Maryland and (c) Carolina Poultry Farms, Inc., Federalsburg, Maryland, all as more fully set forth in the application.

On September 29, 1964, Transcontinental Gas Pipe Line Corporation (Transco), 3100 Travis Street, Houston, Texas, filed in Docket No. CP64-96, an application to amend an order of the Commission issued April 17, 1964, 31 FPC 957, in Docket No. CP64-96, authorizing among other things the sale and delivery of natural gas to Eastern Shore. The application to amend requests authorization to increase Transco's deliveries to Eastern Shore from 14,225 Mcf daily to 14,695 Mcf daily, an increase of 470 Mcf daily, all as more fully set forth in the application to amend.

Eastern Shore proposes to sell and deliver (1) on a firm basis, 20 Mcf daily of natural gas to Continental Can, and, on an interruptible basis, 150,000 Mcf annually to Eastern Shore Rendering and 70,000 Mcf annually to Carolina Poultry Farms and (2) 550 Mcf daily, on a firm basis, to Cambridge Gas Company. To render the proposed new services Eastern Shore proposes to increase its present contract demand with Transco by 470 Mcf.

Eastern Shore estimates the total cost of the proposed facilities will be $568,000, which will be financed by the issuance of First Mortgage Pipeline Bonds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on November 19, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, amendments and supplements in Docket No. CP65-64 and application to amend in Docket No. CP64-96 submitted in support of the authorizations sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Eastern Shore Natural Gas Company, a Delaware corporation having its principal place of business in Salisbury, Maryland, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found

by the Commission in its order of November 29, 1957, in Docket No. G–12059, *et al.* (18 FPC 710).

(2) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation with its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 28, 1950, in Docket No. G–1277 (9 FPC 32).

(3) The proposed construction and operation of facilities, the transportation of natural gas and sale thereof by Applicant in Docket No. CP65–64 as hereinbefore described, and as more fully described in the application, amendments and supplements thereto in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid construction and operation of facilities, the transportation of natural gas and sale thereof are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued April 17, 1964, in Docket No. CP64–96 be amended as hereinafter ordered.

(6) Applicant, Eastern Shore is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder in Docket No. CP65–64 to Eastern Shore be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant in Docket No. CP65–64, authorizing the construction and operation of facilities, the transportation of natural gas and the sale thereof, as more fully described in the application, amendments and supplements filed in the proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized in Docket No. CP65–64 shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months of the date on which this order issues.

(D) The certificate issued hereby shall not entitle Continental Can, the industrial customer to whom firm deliveries are authorized herein, to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(E) The facilities authorized by the certificate issued by paragraph (A) above shall not be utilized to transport natural gas on an interruptible basis in excess

of 150,000 Mcf annually to Eastern Shore Rendering Company and 70,000 Mcf annually to Carolina Poultry Farms, Inc.

(F) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Eastern Shore Natural Gas Company for firm service to its customers.

(G) The Commission's order issued April 17, 1964, in Docket No. CP64-96 be and the same is hereby amended so as to grant authorization to Transco to increase the sale and deliveries of natural gas to Eastern Shore from 14,225 Mcf daily to 14,695 Mcf daily.

(H) Transco and Eastern Shore shall execute a superseding service agreement in accordance with the Commission's Regulations reflecting the increase in Eastern Shore's contract demand and file the same with the Commission within 30 days after the issuance of this order

(I) Eastern Shore shall file within 30 days after the issuance of this order its service agreement executed in accordance with the Commission's Regulations reflecting the terms and conditions of the sale and delivery of 550 Mcf of natural gas on a firm basis to Cambridge Gas Company.

(J) In all other respects the order of the Commission amended by paragraph (G) hereof shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP61-96

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 23, 1964)

On September 30, 1960, as amended on October 7 and 17, 1960, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP61-96 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 50 miles of 20-inch and 4.5 miles of 6-inch lateral supply line extending from the terminus of Applicant's existing 26-inch transmission pipeline in Jim Wells County, Texas, to the Thompsonville and Taquachie Creek Areas in Zapata, Jim Hogg and Webb Counties, Texas, together with two meter stations at centrally located points in the above-mentioned areas, all as more fully set forth in the application and supplements.

These facilities are used to enable Applicant to take natural gas purchased from various producers thereof in the subject area. The estimated total cost of the proposed facilities is $3,233,000, which is financed from funds on hand. Temporary authorization to construct and operate the subject facilities was issued to Applicant on November 25, 1960, and, according to required filing subsequently made on April 10, 1961, said facilities were completed and placed in operation on March 30, 1961.

This application was originally noticed and consolidated with six producer applications for hearing. A number of petitions to intervene in the consolidated proceeding were filed. Subsequently, by order issued May 28, 1964, in Docket

No. G–17960, *et al.*, the aforesaid producer applications were severed from subject Docket No. CP61–96.

Notice of this application was reissued on October 5, 1964, and was published in the Federal Register on October 22, 1964, (29 F.R. 14511). On October 21, 1964, counsel for Blanco Oil Co. and Killam & Hurd filed a letter termed an "informal protest", stating that the protestants did not desire a formal hearing or oppose the granting of the requested authority but merely desired to preserve the protestants' rights. No other protest, petition to intervene or notice of intervention has been received.

At a hearing held on November 19, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and amendments, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G–235 (3 FPC 830).

(2) The facilities hereinbefore described, as more fully described in the application and amendments in this proceeding, are used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services involved and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the subject facilities are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued to Applicant and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Natural Gas Pipeline Company of America authorizing the construction and operation of facilities to take natural gas purchased from producers thereof as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. RI65-123

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued November 23, 1964)

On October 19, 1964, Pan American Petroleum Corporation (Pan American) filed a motion for reconsideration of the Commission's order issued August 5, 1964, in the above-designated proceeding, which suspended for one day a proposed increase in rate from 12.2309¢ per Mcf at 15.025 psia to 13.0¢ per Mcf, designated as Supplement No. 5 to Pan American's FPC Gas Rate Schedule No. 93, involving the jurisdictional sale of natural gas to El Paso Natural Gas Company (El Paso) from the Blanco Mesa Verde Field, San Juan and Rio Arriba Counties, New Mexico (San Juan Basin Area). By its motion, Pan American requests that the Commission reconsider and vacate its order of August 5, 1964, and terminate the proceeding in Docket No. RI65-123.

The proposed favored-nation increase is exclusive of tax reimbursement. Pan American, however, retains the right to file at a later date for the tax reimbursement permitted under the contract. The proposed rate, being lower than the contractually authorized rate, is considered to be a "fractured" rate increase, and was suspended for one day, even though not in excess of the applicable area rate ceiling set forth in the Commission's Statement of General Policy No. 61-1, as amended [18 CFR, Chapter I, Part 2, Section 2.56], because Pan American did not waive the right to file for tax reimbursement prior to its next contractually authorized rate filing.

In support of its motion, Pan American contends, *inter alia*, that the rights of Pan American under the Mobile case [1] have been abrogated in that Pan American has been denied the right to file for only a part of its contractually-authorized rate. Such contention is without merit. The *Mobile* case held that contract rates may be made in the first instance by the parties to the contract, subject to review by the Commission. Pan American is free to file for a part of its contractually-authorized rate, as it has done in the instant case; when it does, however, the Commission has discretionary power under Section 4(e) to suspend the proposed increase.

Pan American further argues that the Commission's action is contrary to the "filed rate" doctrine enunciated in the *Montana-Dakota* case.[2] In the *Montana-Dakota* case the court held that the regulated company had no right to claim a rate other than the filed rate. That case is inapposite here where the only question involved is the Commission's suspension powers under Section 4(e).

Pan American also contends that the action of the Commission in suspending its proposed increased rate is "arbitrary and discriminatory." Pan American cites one instance in which an increased rate similar to the one involved here was accepted.[3] It has been our policy for some time to suspend fractured rates even though such rates might not be in excess of the applicable increased rate ceiling if the contractually authorized rate is in excess of the ceiling. The acceptance of

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[1] *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332.

[2] *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246.

[3] The other cited by Pan American is not in point here. Supplement No. 1 to Featherstone's Rate Schedule No. 1, providing for a periodic increase from 12¢ to 13¢ per Mcf, did not constitute a "fractured rate" because Featherstone at the time of filing (November 24, 1961) was not entitled to any tax reimbursement under the contract.

the rate increase proposed to Bert Fields' Estate Rate Schedule No. 1 referred to by Pan American did not represent a change in policy but was merely the result of inadvertence.

The Commission orders:

In view of the foregoing, the motion for reconsideration of the Commission's order of August 5, 1964, is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP65-29

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 23, 1964)

On August 4, 1964, as supplemented on August 10, September 14 and October 12, 1964, Tennessee Gas Transmission Company (Applicant) filed in Docket No. CP65-29 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities, replacing certain existing facilities, all as more fully set forth in the application, as supplemented.

The Sabine River Authorities of the States of Texas and Louisiana (Authorities) are in the process of constructing the Toledo Bend Dam and Reservoir on the Sabine River. Such construction is pursuant to a license issued by this Commission in Project No. 2305. Applicant states that it maintains and operates two 30-inch and one 24-inch transmission lines in the area to be inundated by the Reservoir and, in addition, has two 24-inch lines crossing the Sabine River by means of an aerial suspension bridge and one 30-inch submerged river crossing. Following conferences between Applicant and Authorities, it was determined that a total of approximately 108,744 feet of Applicant's pipeline facilities must have certain alterations in order to protect such facilities and to insure continuity of service to Applicant's customers.

Applicant requests authority to remove those segments of pipe which will be inundated by the Reservoir and to replace the same with pipe of a greater wall thickness and properly weighted with concrete. The aerial suspension bridge must be removed since it is deemed to be a navigational hazard. The two lines on the bridge will be removed and replaced with two 30-inch submerged river crossings.

The estimated cost of the proposed project is $4,155,500. Applicant will receive from Authorities a sum of $3,894,252. The salvage value of the pipe removed is approximately $246,048. Therefore, the total direct cost to Applicant will be approximately $15,200.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, as supplemented, has been filed.

At a hearing held on November 19, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplements and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas com-

pany" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 12, 1947, in Docket No. G-910 (6 FPC 777).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Tennessee Gas Transmission Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G-13221, ET AL.

ORDER DENYING APPLICATIONS FOR REHEARING

(Issued November 23, 1964)

On July 23, 1964, the Commission issued Opinion No. 436, 32 FPC 254, in the above-entitled proceeding. Thereafter, rehearing was granted by order issued August 27, 1964, 32 FPC 666, for the purpose of reconsideration, and on October 8, 1964, the Commission issued Opinion No. 436-A, 32 FPC 952, with accompanying order modifying Opinion No. 436 and granting certain stays. Applications for rehearing with respect to Opinion No. 436-A and the accompanying order were filed on November 5, 1964, by Placid Oil Company (Docket Nos. G-18021, G-18076, G-18502, CI61-511, CI61-1362 and CI63-305), Hassie Hunt Trust (Docket Nos. G-18897, G-19249 and CI61-645), H. L. Hunt (Docket No. G-19460) and Hunt Oil Company (Docket No. G-18596); on November 6, 1964, by

Pan American Petroleum Corporation (Docket No. G–16946); and November 9, 1964, by John W. Mecom (Docket No. CI61–236), E. Cockrell, Jr. (Docket No. CI62–400), E. Cockrell, Jr. (Operator), *et al.* (Docket No. CI63–326), Freeport Oil Company (Operator), *et al.* (Docket No. CI62–720) and U.S. Oil of Louisiana Inc. (Operator), *et al.* (Docket Nos. CI60–607, CI61–144 and CI61–173).

The applications for rehearing present no new argument or citation of authority beyond that which was presented, and carefully considered by the Commission in its deliberations which culminated in Opinion Nos. 436 and 436–A and the accompanying orders. Upon full reconsideration we believe the aforesaid Opinion No. 436–A and accompanying order were correct, and should be adhered to.

The Commission finds:

No new facts or principles of law have been presented by the applicants in their applications for rehearing which either were not fully considered by the Commission prior to the order as to which rehearing is sought, or, having now been considered, warrant further hearing, modification or revocation of said order.

The Commission orders:

The applications for rehearing filed herein by Placid Oil Company, Hassie Hunt Trust, H. L. Hunt, Hunt Oil Company, Pan American Petroleum Corporation, John W. Mecom, E. Cockrell, Jr., E. Cockrell, Jr. (Operator), *et al.*, Freeport Oil Company (Operator), *et al.*, and U.S. Oil of Louisiana Inc. (Operator), *et al.*, be and the same hereby are denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNION TEXAS PETROLEUM, ET AL., DOCKET NO. G–13221, ET AL.

ORDER AMENDING OPINION NO. 436

(Issued November 23, 1964)

Commission Opinion No. 436 was issued July 23, 1964, 32 FPC 254, in the above-entitled proceeding.[1] Pursuant to this opinion, Docket No. CI61–1280, General Crude Oil Company (Operator), *et al.* (General Crude) was remanded to the presiding examiner for determination of whether part of certain gas-producing acreage was previously dedicated to interstate commerce. General Crude had contended in its exceptions to the initial decision of the presiding examiner that no previous dedication had occurred. By letter of October 29, 1964 to the Secretary of the Commission, counsel for General Crude stated that its contention that the acreage in question had never been dedicated to interstate commerce was in error, and added:

> The facts are that the lease acreage covered by the General Crude contract filed in connection with its application for certificate of public convenience and necessity in Docket No. CI61–1280 had previously been included under the contract filed with the Federal Power Commission by Pan American Petroleum Corporation in its Docket No. G–3216.

[1] With respect to the matter with which we are here concerned, Opinion No. 436 was left unchanged by Opinion No. 436–A, issued October 8, 1964, 32 FPC 952, which modified other portions of Opinion No. 436 and its accompanying order.

In view of the foregoing and the application of Pan American Petroleum Corporation to amend its certificate of public convenience and necessity in Docket No. G–3216 and Docket No. CI61–1280 dated October 22, 1964 and the Exhibits attached to said application, it is suggested that the issues raised by the General Crude contentions have been rendered moot and there is no necessity of remanding these contentions to the presiding examiner. * * *

We agree with counsel for General Crude that, as no factual issue remains, there is nothing for the presiding examiner to determine. Accordingly, a final order should now issue in accordance with the views expressed at pages 267 and 268 of Opinion No. 436.

The Commission finds:

No factual issue remains for determination in Docket No. CI61–1280.

The Commission orders:

(A) Appendix C to the order accompanying Opinion No. 436 is hereby amended by the addition of the following:

CI61–1280	General Crude Oil Company (Operator), *et al.*	20.4¢	18.0¢[1]	9

(B) Paragraph (E) of the order accompanying Opinion No. 436 is hereby amended to read as follows:

The permanent certificate issued in Docket No. CI61–1280 to General Crude Oil Company (Operator), *et al.*, pursuant to Paragraph (A) hereof, shall contain a condition that General Crude Oil Company (Operator), *et al.*, shall be responsible for, and agree to make, refund of the difference between the rates collected by General Crude Oil Company (Operator), *et al.*, for the period prior to January 1, 1962, under the applicable temporary certificate, and the applicable rate or rates ultimately fixed by final order no longer subject to judicial review in the Area Rate Proceeding, Docket No. AR61–2, *et al.*, or such applicable proceeding in lieu thereof as the Commission may order.

(C) The proceedings before the presiding examiner as a result of the remand ordered by Paragraph (E) of the order accompanying Opinion No. 436 shall be, and the same hereby are, terminated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED FUEL GAS COMPANY, DOCKET NO. G–20270; ATLANTIC SEABOARD CORPORATION, DOCKET NO. G–20272

ORDER DENYING REHEARING AND MOTION

(Issued November 23, 1964)

On October 29, 1964, Washington Gas Light Company (Washington Gas) filed an application for rehearing of our Opinion No. 430–A and accompanying order issued October 14, 1964, 32 FPC 1106. Opinion No. 430–A was issued upon rehearing of Opinion No. 430, issued June 2, 1964, 31 FPC 1342, and modified Opinion No. 430 in a manner described hereinbelow.

United Fuel Gas Company and Atlantic Seaboard Corporation (respondents) filed a motion on November 6, 1964, requesting that Washington Gas' said application be rejected for filing on the grounds, *inter alia*, that rehearing of an order

issued on rehearing is without warrant in the Natural Gas Act and our Regulations, and that Washington Gas has been fully heard on all the matters and issues it now seeks to argue.

Respondents are correct that the basic arguments advanced by Washington Gas in its present application were fully considered and disposed of by Opinion No. 430–A. However, since that Opinion did modify Opinion No. 430, we shall permit the filing of Washington Gas' application and shall consider the arguments it makes with respect to the modification.

Washington Gas contends that Opinion No. 430–A errs in modifying Opinion No. 430 to provide that supplier rate reductions and refunds shall be reflected in the demand and commodity charges of respondents' rates on the same basis, in the distribution between demand and commodity, as received from the suppliers. Opinion No. 430 had provided that such rate reductions and refunds should be reflected all in the demand charges of respondents' rates.

Washington Gas says that the basic reason given in Opinion No. 430–A for changing to the "as received" method of reflecting supplier rate reductions and refunds, was that such rate reductions and refunds are considerably larger and would have a considerably greater impact in reducing respondents' demand charges, than appeared when Opinion No. 430 was issued. However, Washington Gas argues that we should have known of their size and impact when Opinion No. 430 was issued. It further argues that regardless of size and impact, our logic in following the "all in demand" method was based upon fixing commodity charges that would permit industrial sales, and then adhering to such charges by reflecting supplier rate reductions and refunds exclusively in the demand charges. And it says that this logic is still sound and should still be followed.

In our view, these arguments of Washington Gas are fully disposed of by Opinion Nos. 430 and 430–A. As we there stated, data respecting the bulk of the supplier rate reductions and refunds simply were not available until after the hearing in this case was closed. Of necessity, therefore, Opinion No. 430 could not and did not approve any specific rates for respondents, but required respondents "to file rates satisfactory to the Commission" (pp. 1359, 1361) for the period prior to the date of issuance of the opinion, reflecting the "all in demand" treatment of supplier rate reductions and refunds. Correspondingly, Opinion No. 430 found merely that the "all in demand" procedure was not subject to any material objection on the basis of what appeared to be the "resulting *indicated* rates" (p. 1359, emphasis supplied). However, when the actual rates thus required to be filed revealed the full magnitude of the supplier rate reductions and refunds and the heavy impact of the "all in demand" approach, it became clear to us that that approach was seriously objectionable and that the "indicated" rates based thereon were not "satisfactory," as required by Opinion No. 430.

Washington Gas is not on sound ground in arguing that we are bound by the "logic" of Opinion No. 430 to adhere to the commodity charges there stated. As we make clear in that opinion, those were but the "indicated" commodity charges of respondents' demand-commodity rates, to be adhered to "to the extent practicable" (p. 1358), and were, moreover, subject to the requirement of that opinion that the actual filed rates must be satisfactory to us. Additionally, Opinion No. 430 contemplated that the indicated commodity charges would be accompanied by demand charges that, while "relatively low" in the language of Opinion No. 430 would still be sufficiently high to recognize and encourage the operation and development of storage and peak shaving facilities, particularly on United Fuel's system (pp. 1349, 1350). However, it became evident when respondents computed their actual rates that the "all to demand" treatment of

supplier rate reductions and refunds would excessively depress respondents' demand charges in relation to their commodity charges, and thus run counter to the objectives of Opinion No. 430.

Clearly, therefore, it was necessary that in the exercise of our judgment, we consider what would be satisfactory rates for respondents, on the basis of the rate design principles discussed at length in Opinion No. 430, and make the modification prescribed by Opinion No. 430–A.

The other arguments advanced by Washington Gas are sufficiently answered by the foregoing, or by Opinion Nos. 430 and 430–A.

The design of rates is, of course, a matter of judgment involving a weighing of the numerous factors and oftentimes conflicting considerations presented in the record relative to the operations and needs of the pipeline and its several customers. *Cf., American Louisiana Pipe Line Company,* 29 FPC 932, 954. Judgments will frequently differ respecting the relative weight of the factors and considerations presented. This is attested by the fact that Washington Gas recommends relatively low demand and high commodity rates, while respondents and most of their other customers recommend the opposite, with no party, it may be added, recommending the rates we consider most satisfactory. However, the responsibility for decision is ours, and after a full consideration of this case, we are convinced that rates for respondent reflecting the modification prescribed by Opinion No. 430–A will meet the rate design objectives of this case and satisfy the competing interests here involved better than any other rates. Contrary to Washington Gas' contention, these rates do consider the equities of the low load factor customers. As we said in Opinion No. 430–A (p. 1110), "* * * such rates will effect as fair an accommodation of the competing interests of respondents and of their high and low load factor customers as is reasonably practicable under the circumstances."

The Commission further finds:

The assignments of error and grounds for rehearing set forth in Washington Gas' application present no new facts or principles of law which were not considered by Opinion No. 430–A and accompanying order issued October 14, 1964, or which having now been considered, warrant any change or modification of the said opinion and order.

The Commission orders:

(A) The application for rehearing filed herein by Washington Gas on October 29, 1964, is hereby denied.

(B) Respondents' motion filed herein on November 6, 1964, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

FIRST TRANSPORTATION GAS CORPORATION, INC., DOCKET NO. CI61–985

ORDER DENYING MOTION REQUESTING ISSUANCE OF PERMANENT CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 24, 1964)

The First Transportation Corporation, Inc. (First Transportation) on October 15, 1964, filed a motion requesting the issuance of a permanent certificate of public convenience and necessity in Docket No. CI61–985 authorizing the

sale of natural gas to Transwestern Pipeline Company (Transwestern) from certain leases in Lipscomb and Ochiltree Counties, Texas, and Beaver, Harper, Ellis and Woodward Counties, Oklahoma. By letter dated February 2, 1961, the Commission granted a conditioned temporary authorization to First Transportation, which was accepted, to make the requested sale at a price of 17.0¢ per Mcf at 14.65 psia. On October 26, 1964, Transwestern filed a reply in opposition to the motion of First Transportation.

In essence, First Transportation contends that it has satisfied the conditions imposed and should be granted a permanent certificate. However, most of the Transwestern facilities which receive and transport the First Transportation gas are pending permanent certification in the consolidated proceedings in Docket No. G–20464, *et al.* As pointed out in E. E. Fogelson, 31 FPC 476, Docket No. G–19013, *et al.*, Order of March 4, 1964, p. 478, to grant the producers permanent certificates before the pipeline facilities are permanently certificated would be prejudging the proceedings in Docket No. G–20464, *et al.* First Transportation can continue to make the sale as temporarily authorized but any action on the permanent certificate must await the outcome in Docket No. G–20464, *et al.*

The Commission orders:

For the foregoing reasons the request of First Transportation for the immediate issuance of a permanent certificate of public convenience and necessity is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP65–60

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 24, 1964)

On September 1, 1964, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP65–60 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of an additional daily contract quantity of 15,000 Mcf of natural gas to Northern Illinois Gas Company (Northern), an existing customer of Applicant, all as more fully set forth in the application.

Applicant states that Northern has requested an additional daily contract quantity of 15,000 Mcf in order to meet larger than previously anticipated increases in firm service demands for the 1964–65 winter season. No additional facilities will be required for the proposed service since the additional volumes of gas will be delivered at the existing Joliet or Eola Road meter station.

Applicant has 22,557 Mcf per day of unallocated capacity from which to render the proposed additional service.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on November 19, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G–235 (3 FPC 830).

(2) The proposed transportation and sale of natural gas by Applicant hereinbefore described, as more fully described in the application in this proceeding, will be in interstate commerce, subject to the jurisdiction of the Commission, and such proposed transportation and sale are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Natural Gas Pipeline Company of America, to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(C) The sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 3 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NIAGARA MOHAWK POWER CORPORATION, DOCKET NOS. IT–6078 AND IT–6079

ORDER AUTHORIZING TRANSMISSION OF INCREASED AMOUNT OF ELECTRIC ENERGY TO CANADA AND AMENDING PRESIDENTIAL PERMIT FOR FACILITIES AT INTERNATIONAL BOUNDARY

(Issued November 24, 1964)

On October 2, 1964, Niagara Mohawk Power Corporation (Applicant), filed its supplemental application for (1) authority pursuant to Section 202(e) of the Federal Power Act to increase the amount of electric energy and rate of trans-

mission now authorized to be transmitted to Shawinigan Water and Power Company for use in resale to the St. Regis Indian Reservation and surrounding area in the Province of Quebec, Dominion of Canada, from 500,000 kwh per annum at a rate not in excess of 150 kw by order issued May 8, 1952, 11 FPC 981, in Docket No. IT–6078, to 750,000 kwh per annum at a rate not to exceed 200 kw and (2) an amendment of the Presidential Permit issued in Docket No. IT–6079 to provide for the conversion of the existing line at the United States-Canadian Boundary from single-phase operation at 2300 volts to three-phase operation at 4800 volts.

Applicant states that the consumers of electric energy in the St. Regis Indian Reservation area have increased their consumption substantially beyond expectation. During the 12 month period ending September 17, 1964, exports of electric energy amounted to 490,624 kwh at a maximum rate of 144 kw, and further that the Canadian Department of Indian Affairs has requested 20 horsepower of three-phase power from the Shawinigan Water Power Company to operate a new water pumping station. Applicant is of the opinion that the requested increase in the amount of electric energy to be exported to 750,000 kwh per year at a rate not in excess of 200 kw will be sufficient for it to continue to serve the Shawinigan system without exceeding the authorized amount.

Notice of the filing of the application was given to the interested State officials and was also published October 16, 1964 in the Federal Register (29 F.R. 14246), stating that any person desiring to be heard or to make any protest with reference to the supplemental application should file a petition or protest on or before October 26, 1964. No protest or petition or request to be heard in opposition to the granting of said application has been received.

The Commission finds:

(1) The transmission of electric energy from the United States to Canada as herein limited and as hereinafter authorized will not impair the sufficiency of supply of electric energy within the United States and will not impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission.

(2) Amendment of the Presidential Permit, referred to above, to reflect the proposed change in facilities at the International Boundary will not be inconsistent with the terms of the Permit.

(3) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) Applicant be and it hereby is authorized to transmit electric energy from the United States to Canada in accordance with the terms and conditions and for the purpose specified in the supplemental application filed October 2, 1964, and subject to the provisions of this order.

(B) The electric energy which Applicant is hereby authorized to transmit from the United States to Canada shall be in an amount not in excess of 750,000 kilowatt-hours per annum at a rate not to exceed 200 kilowatts.

(C) The authorization herein granted may be modified from time to time or terminated upon further order of the Commission, but in no event shall such authorization extend beyond the date of termination or expiration of the Presidential Permit signed by the President of the United States on January 31, 1948, and referred to above.

(D) Applicant shall conduct all operations pursuant to the authorization herein granted in accordance with the provisions of the Federal Power Act and pertinent rules, regulations or orders issued by the Commission.

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(E) Applicant shall install and maintain adequate metering equipment to measure the flow of all electric energy transmitted from the United States to Canada pursuant to the authority herein granted; shall make, keep and preserve full and complete records with respect to the movement of such energy; and shall furnish to the Commission with respect to such transmission of energy, on or before February 15 of each year, reports in triplicate showing the kilowatthours delivered at each of the points herein authorized, the maximum kilowatts of transmission, and the consideration received therefor during each month of the preceding calendar year.

(F) This authorization to transmit electric energy from the United States to Canada shall not be transferable or assignable, but shall continue in effect temporarily for a reasonable time thereafter, in the event of the involuntary transfer of facilities used thereunder by operation of law (including such transfers to receivers, trustees, or purchasers under foreclosure or judicial sale) pending the making of an application for permanent authorization and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the physical facts relating to sufficiency of supply, rates, and nature of use remain substantially the same as before the transfer.

(G) This authorization shall be without prejudice to the authority of any State, or State regulatory commission for the exercise of the lawful authority vested in the State, or State regulatory commission over Applicant.

(H) This authorization is without prejudice to the authority of this Commission or any other regulatory body, with respect to rates, service, accounts, valuation, estimate or determination of cost, or any other matter whatsoever now pending or which may come before this Commission, or other regulatory body, and nothing herein shall be construed as an acquiescence by this Commission in any property claimed or asserted.

(I) This order shall supersede the order issued May 8, 1952 in Docket No. IT-6078.

(J) The Presidential Permit signed by the President of the United States on January 31, 1948 in Docket No. IT-6079 and subsequently amended shall be further amended to modify Article 2 of the Permit by changing the description of the facilities to read as follows:

> One three-phase line operating nominally at 4,800 volts, located at the International Boundary between the United States and Canada, at or near Hogansburg, New York, and within the boundaries of the St. Regis Indian Reservation.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP65-49

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 24, 1964)

On August 17, 1964, Tennessee Gas Transmission Company (Applicant) filed in Docket No. CP65-49 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to sell and deliver an additional 6,557 Mcf of natural gas per day to seven existing General Service Customers and 4,080 Mcf per day to two existing Contract Demand Customers and, further, to construct and operate a meter station

near Institute, West Virginia, in order to sell and deliver the proposed additional volumes of gas to one of its Contract Demand Customers, the Cabot Corporation, all as more fully set forth in the application in this proceeding.

The additional natural gas service proposed herein by Applicant is:

Type of service	Proposed additional service (Mcf at 14.73 psia)
General service customers:	
Dickson, Tennessee (Town of)	861
Longhorn Gas, Inc.	72
Lowell Gas Co.	1,326
Pennsylvania and Southern Gas Co.	2,936
Ripley, Mississippi (City of)	608
Robeline, Louisiana (Village of)	88
Springfield, Tennessee (Town of)	666
Contract demand customers:	
Cabot Corporation	2,040
Inland Gas Corporation	2,040
Total proposed service	10,637

The proposed meter station for Cabot Corporation will be constructed on Applicant's Southerly 20-inch line at an estimated cost of $22,860.

Applicant states that the proposed additional service is required to enable Applicant's customers to meet their estimated natural gas requirements commencing with the 1964-65 heating season. Further, Applicant states that previously authorized unallocated capacity will be utilized to render the subject service.

By letter dated October 2, 1964, Applicant was issued a temporary certificate authorizing the subject proposal.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on November 19, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 12, 1947, in Docket No. G-910 (6 FPC 777).

(2) The facilities herein before described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and sales of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sales of natural gas by Applicant are required by the public

convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Tennessee Gas Transmission Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sales and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 2 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

GEORGIA POWER COMPANY, DOCKET NOS. E–7099 AND E–7193

ORDER ACCEPTING RATE SCHEDULES FOR FILING AND PROVIDING FOR HEARING, SUSPENSION OF OTHER RATE SCHEDULES AND CONSOLIDATION OF PROCEEDINGS

(Issued November 25, 1964)

By this order the Commission accepts for filing four rate schedule submittals of Georgia Power Company (Georgia), suspends for one day two other rate schedule submittals of Georgia, orders a hearing on the lawfulness of the suspended rate schedules, and consolidates with that docket, for hearing purposes, an earlier rate investigation which the Commission initiated by its order to show cause issued May 27, 1963, 29 FPC 1049, Docket No. E–7099. That order requires Georgia to justify certain dual rates and other restrictive service provisions in the Company's wholesale power contracts with municipally or cooperatively owned electric distribution systems which contracts are embodied in rate schedules of Georgia, on file with this Commission pursuant to Section 205 of the Federal Power Act.

The rate schedule provisions herein suspended and set for hearing embody dual rate and restrictive service provisions similar to those questioned in the Commission's earlier order. Our purpose there and here is to determine the lawfulness of dual rates and restrictive service provisions which may inhibit Georgia's wholesale electric customers in the development of their respective electric utility operations. We do not question whether Georgia's schedules of filed rates and charges for service to municipal and cooperatively owned electric systems are unjust, unreasonable and unlawful for reasons for rate level.

The proffered rate schedule submitted here before the Commission were tendered for filing by Georgia on October 28, 1964, pursuant to Section 205 of the Federal Power Act, and comprise a primary service agreement and supplements thereto for wholesale electric service to the City of Cairo, Georgia at two delivery points. The agreement and supplements are identified in the files of the Commission as follows:*

Georgia Power Company Rate Schedule F.P.C. No. 671.
Supplement No. 1 to Rate Schedule F.P.C. No. 671.
Supplement No. 2 to Rate Schedule F.P.C. No. 671.
Supplement No. 3 to Rate Schedule F.P.C. No. 671.
Supplement No. 1 to Supplement No. 3 to Rate Schedule F.P.C. No. 671.
Supplement No. 2 to Supplement No. 3 to Rate Schedule F.P.C. No. 671.

Supplement Nos. 1 and 2 to Rate Schedule F.P.C. No. 671 and Supplement Nos. 1 and 2 to Supplement No. 3 to Rate Schedule F.P.C. No. 671 consist of contracts and amendments thereto whereby Georgia agrees to supplement the energy the City of Cairo receives from the Southeastern Power Administration (SEPA) and to supply to the City of Cairo energy to make up any deficiency in the energy the City of Cairo is entitled to receive as a preference customer from SEPA in the event SEPA is unable to supply the specified amount.

Under the proposed Rate Schedule F.P.C. No. 671 and Supplement No. 3, Georgia would substitute rates and charges reflected in its WR–4 rates for those set forth in the company's M–4 rate. The latter rate, an inherited rate from a predecessor corporation, Georgia Power & Light Company, was applied by Georgia at one of its delivery points to the City of Cairo prior to March 1, 1960. Data submitted in connection with the subject rate schedule filings indicate that Georgia commenced billing to Cairo at that point on and after March 1, 1960 at Rate W–4 although having on file with this Commission its Rate M–4. Under the proposed rate filings, Rate WR–4 would be applied to the second delivery point also. Available data indicates that Georgia Power commenced service at the additional delivery point effective during July 1962, without completing a rate schedule filing prior thereto.

Georgia's Rate M–4 is a straight net energy charge of 7.75 mills per kilowatt hour. The Company's Rate WR–4 is a blocked energy rate ranging from 15 mills per kilowatt hour for the first 150 kwh per kw of demand per month to 5 mills per kilowatt hour for all kwh in excess of 30,000 per month. A blocked resale credit ranging from 5 mills to 1 mill per kilowatt hour is made applicable to service rendered by the customer to utility customers purchasing small amounts of electric service. As applied to the City of Cairo, the application of Rate WR–4 instead of M–4 would result in a rate reduction of approximately $14,000 for the 12 month period ending December 31, 1963, at the two delivery points.

Included in the proffered filings is the following provision:

> And provided further, as to future extension of the limits of the City of Cairo, any new industrial customer who uses in excess of 100 kilowatts demand located in said extended city limits shall make the decision as to whether or not the City of Cairo or Georgia Power Company shall serve it electrical energy. All other customers located in said extended city limits shall be served by the City of Cairo unless Georgia Power Company is specifically requested by the City of Cairo to serve said customer; however, in the event of a new industrial customer, as defined above, which was caused to

* The various supplemental rate schedule designations to Georgia's Rate Schedule FPC No. 671 are for identification purposes only and do not assume prior effectiveness of Rate Schedule FPC No. 671 as a condition of operability of any supplements.

be located in said extended city limits by the efforts of Georgia Power Company, then Georgia Power Company shall have the right to serve said new industrial customer. An industrial customer is defined as any customer who is engaged in the manufacture of a finished product, the extraction, fabrication or processing of a raw material, or the transportation or preservation of a raw material, or a finished product, for use as motive power, or for other legitimate power requirements in the operation of his industrial plant. Incidental lighting necessary for proper operation of plant machinery or for office use on same premises may be included. No service may be resold, nor transmitted to other premises nor used in related commercial enterprise.

As indicated above, the Commission by order issued May 27, 1963, Docket No. E–7099, directed Georgia to justify the retention of certain restrictive provisions in its filed rate schedules for service to municipally-owned and cooperatively-owned utility systems. Among other things, that order questions the just and reasonableness of Georgia's Rate WR–4 and directs the Company to justify its restrictive provisions determining the type of loads which the Company's municipal and cooperatively-owned resale purchasers might undertake to serve, chiefly larger loads. To date, several settlement conferences have been convened in Docket No. E–7099 at the initiative of the Commission's staff as contemplated in our order of May 27, 1963, but no hearings have been held.

During those conferences, representatives of Georgia, the American Public Power Association, the Power Section of the Georgia Municipal Association and various municipal and cooperatively-owned wholesale customers of the Company stated their views and comments concerning dual rates and restrictive provisions. Their views have been reported to the Commission.

Although Georgia has proposed, informally, certain compromise arrangements for the dual rate and restrictive provisions challenged by our earlier order, agreement has not been reached among the Company and all of its affected customers. Georgia has stated its willingness to enlarge in some measure the areas within which it will afford unrestricted service to municipal and cooperatively owned customers.

A considerable number of its customers have indicated a willingness to agree to the new terms tentatively offered by way of settlement. However a substantial number of the municipal customers, together with a somewhat lesser number of the cooperatives have not agreed to these offers either because they believe that there should be no such dual rate or restrictive service agreements required as a condition of service (there are no service conditions in some of the municipal contracts) or because they believe the proposed increased ceilings are still too restrictive under the circumstances prevailing.

Under the circumstances, the Commission believes an opportunity for hearing on the questions raised by its order to show cause issued May 27, 1963, will facilitate a clarification of currently unresolved matters in Docket No. E–7099. This order consolidates for hearing purposes that docket with the order for hearing and suspension respecting Georgia's subject rate schedule submittals for service to the City of Cairo, Georgia.

The Commission further finds:

(1) It is necessary and appropriate for the purposes of the Federal Power Act, particularly Section 205, that the following rate schedules of Georgia be accepted for filing as that Company's rate schedules effective November 28, 1964 without hearing and suspension:

Supplement No. 1 to Rate Schedule F.P.C. No. 671.

Supplement No. 2 to Rate Schedule F.P.C. No. 671.
Supplement No. 1 to Supplement No. 3 to Rate Schedule F.P.C. No. 671.
Supplement No. 2 to Supplement No. 3 to Rate Schedule F.P.C. No. 671.

(2) As applied to Georgia's total rates or charges for service to the City of Cairo, Georgia, the resale credit provisions of Rate WR–4 and the above quoted restrictive service provisions may have the effect of restricting municipally-owned wholesale customers of Georgia from reselling to certain classes of customers power purchased from Georgia under rate schedules filed pursuant to the Federal Power Act. They constitute rates, charges or classifications, rules, regulations, practices or contracts affecting rates, charges, classifications and services subject to the jurisdiction of this Commission within the meaning of Sections 205 and 206 of the Federal Power Act which may be unjust, unreasonable, unduly discriminatory, preferential or otherwise unlawful.

(3) In view of the foregoing it is necessary and appropriate for the purpose of the Federal Power Act that the Commission pursuant to the authority of that Act, particularly Sections 205, 206, 308 and 309 thereof, enter upon a hearing concerning the lawfulness of Georgia's rate schedule FPC No. 671 and Supplement No. 3 thereto, and that the operation of that rate schedule and supplement be suspended and the use thereof be deferred as hereinafter provided. Unless suspended by order of the Commission, Georgia's Rate Schedule F.P.C. No. 671 and Supplement No. 3 thereto will become effective as a rate schedule pursuant to the provisions of the Federal Power Act on November 28, 1964.

(4) Consolidation of the hearing ordered herein in Docket No. E–7193 and the hearing in Docket No. E–7099 for hearing purposes is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 205, 206, 308 and 309 thereof.

The Commission orders:

(A) Georgia's Rate Schedules as referred to in finding (1) above are hereby accepted for filing to become effective November 28, 1964: *Provided, however:* Acceptance for filing does not constitute approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service provided for in the Rate Schedules; nor shall acceptance be deemed as recognition of any claimed contractual right or obligation affecting or relating to such rate or service; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereinafter instituted by or against Georgia Power Company.

(B) A public hearing shall be held concerning the lawfulness of Georgia's Rate Schedules FPC No. 671 and Supplement No. 3 thereto, and the rate schedule provisions cited by the Commission's order to show cause issued May 27, 1963; that hearing to be convened on February 15, 1965 at 10:00 a.m. (EST) in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington D.C. 20426.

(C) For purposes of the hearing ordered in paragraph (B) above, Docket Nos. E–7099 and E–7193 are hereby consolidated.

(D) Pursuant to the provisions of Section 205 of the Federal Power Act, the operation of Georgia's proposed Rate Schedule FPC No. 671 and Supplement No. 3 thereto are hereby suspended and the use thereof deferred until November 29, 1964. On that date the proposed rate schedules shall go into effect in the manner prescribed by Section 205 of the Federal Power Act, subject to further order of the Commission.

(E) During the period of suspension Georgia's currently filed Rate Schedule for service to the City of Cairo, Georgia shall remain and continue in effect.

(F) Unless otherwise ordered by the Commission, Georgia shall not change the terms or provisions of its proposed Rate Schedule FPC No. 671 and Supplement No. 3 thereto, or its currently filed rate schedules to be superseded thereby until this proceeding has been disposed of or until the period of suspension has expired.

(G) Notice of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.37) on or before December 31, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP65-97

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 25, 1964)

On October 12, 1964, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP65-97 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of an additional daily contract quantity of 2000 Mcf of natural gas to Interstate Power Company (Interstate), an existing customer of Applicant, all as more fully set forth in the application.

Interstate has requested an additional daily contract quantity of 2000 Mcf of gas commencing as soon as possible for resale by Interstate to Hawkeye Chemical Company, Interstate's largest firm industrial customer. Hawkeye now uses natural gas and will use the increased quantity as a raw material in the manufacture of agricultural fertilizers.

Applicant has unallocated system capacity sufficient to furnish the additional quantity of gas required.

No additional facilities will be required to make the proposed additional delivery.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on November 24, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G-235 (3 FPC 830).

(2) The proposed sale and delivery of natural gas by Applicant to Interstate Power Company, as hereinbefore described, and as more fully described in the application in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Natural Gas Pipeline Company of America, authorizing the sale and delivery of natural gas to Interstate Power Company, as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

AREA RATE PROCEEDING, ET AL. (HUGOTON-ANADARKO AREA), DOCKET NO. AR64-1, ET AL.; AREA RATE PROCEEDING, ET AL. (TEXAS GULF COAST AREA), DOCKET NO. AR64-2, ET AL.

ORDER PRESCRIBING PROCEDURE

(Issued November 27, 1964)*

With the issuance of the presiding examiner's report on September 18, 1964, of the prehearing conference held July 28, 1964, in Docket No. AR64-1, *et al.* (Hugoton-Anadarko Area), and Docket No. AR64-2, *et al.* (Texas Gulf Coast Area), we have before us the question of the next steps that should be appropriately taken in these proceedings and of the method of conducting the two proceedings so as to avoid the needless repetition of the same evidence presented in Docket Nos. AR61-1 (Permian Basin Area) and AR61-2 (Southern Louisiana Area).

In his report the examiner stated that the producers generally took the position that further action in the present dockets should be deferred until the Commission had issued a decision in AR61-1 or AR61-2, that none indicated clearly a willingness to participate in group presentations, and that they were opposed to any consolidation whatsoever of the two proceedings. Nevertheless, the examiner was of the opinion that the Commission should proceed with these cases and provide for the compilation concurrently of separate records in such a way as to avoid the necessity to duplicate cross-examination or rebuttal.

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*Reconsideration denied by order issued January 22, 1965, 33 FPC 99.

In addition, the examiner would have the Commission authorize the Chief Hearing Examiner and the hearing examiner designated in each of the two proceedings to coordinate and expedite the procedures. He contemplated that the hearing sessions in the two proceedings would be held separately, but where the evidence was identical in each proceeding, the separate hearings should be convened concurrently for the receipt of this evidence.

The examiner also recommended that each order setting these matters for hearing provide for the distribution and service in advance of the evidence to be presented and fix a date before which requests for data collection should be filed. The examiner noted that The Superior Oil Company requested that the staff undertake the collection of data on a broad survey basis from pipeline purchasers and gas distribution companies, but that the staff opposed this request.

The examiner added that his report was purely advisory and did not constitute a ruling or order within the purview of Section 1.18(d) of the Commission's rules.

A vigorous protest to the examiner's report was filed on October 5, 1964, by Continental Oil Company, Humble Oil & Refining Company, and Texaco Inc. They contend that the report does come within Section 1.18(d) of the rules and should have been circulated in advance. They argue at some length that, in view of the lengthy records already compiled in AR61–1 and AR61–2, it would be wasteful to proceed with the present proceedings until the earlier proceedings are determined. In any case, scheduling of steps in the present proceedings should not be carried out without further conference with counsel for the various parties. Placid Oil Company joins in this protest, emphasizing the burdens placed on small producers by several area proceedings progressing at the same time.

In our opinion, the examiner's report of the prehearing conference was not required by Section 1.18(d) of our rules to be submitted to the other parties. The examiner did not order the participants to do anything. He described what had taken place at the conference and made certain procedural recommendations. There was no requirement in our rules for submission of such a memorandum to the parties in advance.

We do not agree with the protesting parties that these proceedings should be halted until after we issue our decision in AR61–1 (Permian). The fact that the Commission expects shortly to decide the first of the area proceedings is a good reason for moving forward with the remaining proceedings. To proceed with the area proceedings on a seriatim basis would insure the additional delay that we are all trying to avoid. It is unrealistic and contrary to the public interest to delay these proceedings on the basis of an illusion that somehow a proceeding can be expedited by delaying the hearing. Our experience has been that postponements of hearings rarely dispose of cases and that the only sure road to progress is to proceed with the decision-making process. This we are determined to do.

The examiner's recommendations would be advantageous in eliminating duplicative presentations in these two proceedings, and some of his recommendations can be given effect. Moreover, we think it reasonable to go further and to try to avoid, to the extent possible, the *de novo* presentation of evidence that has already been presented in AR61–1 and AR61–2.

In the first two pending area rate proceedings, comprehensive evidentiary presentations were made on matters of nationwide significance. The presentations included voluminous case-in-chief and rebuttal testimony and exhibits and lengthy cross-examination of numerous witnesses. The character of the presentations was such that in many instances it is unlikely that their quality

and effectiveness could be improved upon in any substantial way by a retrial of such matters in the new area proceedings, which are presently being scheduled for hearing. In addition, the Commission expects to make any necessary findings on such matters in its final decisions in AR61–1 and AR61–2 on the basis of the comprehensive records developed.

Under the circumstances, it would be completely contrary to the efficient administration of the Natural Gas Act and to the concept of area proceedings, as designed, among other things, to save time and money, if the parties were to present the same evidence *de novo* in each proceeding, even with small additions and improvements, and to repeat the cross-examination. Accordingly, by this order we are instructing the hearing examiners appointed in the present proceedings to hold joint prehearing conferences before the presentation of evidence and to use every effort at those conferences and at other times to induce the parties to stipulate to evidence or to incorporate evidence by reference from the record in AR61–2 (or from AR61–1, if necessary). Of particular importance in this connection would be matters of nationwide significance relating to the natural-gas industry and not related to the operating characteristics of any particular geographical area. Some examples, listed here by way of illustration, include the following: (1) economic trend data on a nationwide basis (*i.e.*, the national supply picture, the national demand picture, the trend toward deeper drilling, the contention that deeper drilling is more costly, and the like); (2) the controversy whether there is effective competition in the natural-gas production industry; (3) industry institutional practices and characteristics; (4) rate of return studies applicable to the industry on a nationwide basis.

The Commission is reluctant at this stage to take action which will force incorporation by reference. It is our hope that this will not be necessary, but that the parties will develop procedures for using the material from the previous records where it is feasible to do so. We are instructing the examiners in the proceedings to report back to us if they do not obtain the cooperation of the parties in this respect.

In those cases where there is evidence, particularly of a nationwide character, which is not incorporated by reference from AR61–1 or AR61–2, but is to be presented in both AR64–1 and AR64–2, techniques should be employed as suggested by the July 28, 1964, conference examiner in order to avoid duplicative trials of such matters in each of the two proceedings. Thus, while we shall appoint a separate examiner in each proceeding and provide for the compilation of separate records, we shall instruct the examiners to consider the problem of duplicative presentations at the joint prehearing conferences and to hold joint hearing sessions where this is appropriate. At such initial or at succeeding conferences, the examiners should determine which evidence proposed to be presented is susceptible of presentation in joint hearing sessions and should schedule such sessions for this purpose.

Except where convened jointly, the hearing sessions in the two proceedings should be held separately with the examiner assuming his normal role. Where hearings are convened jointly, the two examiners would rule upon the evidence offered with respect to each proceeding. The records in AR64–1 and AR64–2, however, would be separate records but would each contain the identical transcript of the joint sessions and the exhibits received jointly. These provisions should in no way prevent the examiners in each proceeding from scheduling other separate conferences, where needed, to delineate the issues, to consider the order of presenting the evidence, to provide for group presentations, and to do everything necessary to complete the proceedings as expeditiously as possible.

With respect to The Superior Oil Company's request that the staff undertake the collection of data from pipeline purchasers and gas distributors, we shall leave this matter for rulings by the examiner in each of the proceedings as to relevance and practicality.

Coming to the matter of scheduling the actual hearings, we are met with the difficulty that the cost evidence derived from questionnaires circulated to the producers will probably not be ready before June of 1965. This is true because the collection of the data must be completed; it must be compiled on computer tape; and finally, after appraisal of its significance, it must be presented as exhibits ready for inclusion in the record. The presentation of appropriate rate design evidence would accompany the completion of the parties' direct case. However, all other evidence should be ready at an earlier date. We shall therefore require that proposed evidence on all matters other than cost evidence based on the Commission's questionnaire and rate design evidence in both AR64–1 and AR64–2 be submitted to the examiners and served on the parties by May 15, 1965, and rebuttal evidence by August 2, 1965, and that the first session in each hearing be held on September 14, 1965, with the parties ready to go forward with cross-examination. Whether the first session or any following sessions will be held jointly in the two proceedings shall be directed by the examiners.

With respect to cost evidence derived from the questionnaires and rate design evidence constituting the second phase of these hearings, we shall leave scheduling of prehearing conferences, submittals, and hearing sessions to the examiners.

The Commission orders:

(A) Mr. Max L. Kane and Mr. Dyer J. Taylor duly qualified and appointed hearing examiners, or their successors legally qualified, appointed and designated, are designated to preside at the hearings in Docket Nos. AR64–1 and AR64–2, respectively, including prehearing conferences, and are authorized and directed, in so doing, to exercise all of the functions and authority prescribed by the Adminstrative Procedure Act and this Commission's Rules of Practice and Procedure.

(B) The hearing examiners appointed in (A) above are instructed to use every effort to induce the parties to stipulate to evidence or to incorporate evidence by reference, including direct evidence, rebuttal and cross-examination, from the records in AR61–1 and AR61–2 instead of making a *de novo* presentation of the same or similar evidence. On their part, the parties are expected to cooperate in this objective. If they do not do so and progress is not made in incorporating such evidence where it is otherwise feasible, the examiners are directed to report this situation to the Commission with their recommendations.

(C) Separate records shall be compiled in AR64–1 and AR64–2, but in connection with matters not incorporated by reference but proposed for presentation in both AR64–1 and AR64–2, the examiners in both proceedings shall work out procedures under which there will be avoided, to the extent possible, the separate and duplicative trial in both such proceedings of substantially identical evidentiary presentations on such matters. In order to accomplish this objective, the examiners in AR64–1 and AR64–2 may direct under such circumstances that one set of witnesses and one set of testimony and exhibits should be used for such a presentation in both hearings, and that the cross-examination of such witnesses shall take place at some appropriate stage in a joint hearing session involving all parties in both cases, held before the two examiners sitting *en banc*, who shall rule on any questions that may arise. The record thus made in any such joint hearing session shall become a part of the record in each of the two separate proceedings.

(D) The examiners in each proceeding shall call joint prehearing conferences at an appropriate time before the presentation of evidence to consider the incor-

poration of evidence by reference as provided in (B) above, and the holding of joint hearing sessions as provided in (C) above. The examiners in each proceeding are authorized to hold such other conferences as they deem desirable and shall consider and rule upon proposals for the required submission of additional data and questionnaires, proposals for the utilization in evidence of published data, and such other matters as will simplify the issues, will expedite the proceedings, and carry out the objectives of Section 1.18(b) of our Rules.

(E) Proposed evidence, other than cost evidence derived from the questionnaires circulated to the producers, and rate design evidence shall be submitted to the examiners in AR64–1 and AR64–2 on or before May 15, 1965, and rebuttal evidence by August 2, 1965. The first session in each hearing shall be held on September 14, 1965, and the parties at that time should be ready to go forward with cross-examination.

(F) The examiners in each proceeding are instructed to determine dates for the receipt of evidence derived from the cost questionnaires and evidence on rate design, for the submission of rebuttal evidence on these matters, and for the convening of hearing conferences and hearing sessions.

(G) In all respects other than those set forth herein the examiner in each proceeding shall have complete control of the conduct of the proceedings, the scheduling of hearing conferences and hearing sessions separate or concurrent, and the presentation of evidence.

Commissioner Ross *dissenting.*

Ross, *Commissioner, dissenting:*

Almost a year ago to the day, the majority instituted these proceedings.[1] At that time, based on the Commission's "experience in the pending area rate proceedings", the Commission felt such institution "propitious", despite arguments to the contrary, because "the advance planning" resulting therefrom would be "of immeasurable value in disposing of attendant procedural questions arising in connection with proceedings of this scope". The very difficulties experienced herein thus far demonstrate the undesirability of insisting on the submission of evidence by May 15, 1965. One of the causes might well be the industry's lack of enthusiasm to help the Commission solve the problem. This, under the circumstances, is understandable though regrettable. However, we should not let this lack of cooperation, if such is the case, obscure the principal reason for the lack of progress. The real basic problem is the lack of standards, a matter which the courts and F.P.C. practitioners have emphasized.[2] This lack of standards makes group presentations extremely difficult if not impossible. In addition, incorporating *Southern Louisiana* data by reference which the majority envisions would be precluded in large measure because much of the evidence in that case will not have been cross-examined in time for incorporation here. Moreover, many of the parties—staff, producers and intervenors—are common to one or more area proceedings. The Commission has properly determined to expedite *Permian*. Its order here however, will detract from the ability of these parties to devote their attention to the remaining procedural steps in both the *Permian* and *Southern Louisiana* cases.

A relatively short postponement of the procedural steps would obviate these problems. With every likelihood of a Commission decision in *Permian* in the near future, all interested parties for the first time will know what their job is.

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[1] See order issued November 27, 1963 and my dissent thereto, 30 FPC 1354 at 1358.

[2] *Margaret Hunt Hill* v. *F.P.C.*, 335 F. 2d 355.

They will know the basis upon which the Commission made its decision and will be in a position to introduce appropriate evidence in support of or in opposition to the various aspects of that decision. They will be spared futile months of compiling statistics and argument respecting what is relevant and what is not.

If the Commission adopts the nationwide approach employed by the Examiner in *Permian*, the Commission might then be willing to extend this proceeding to include all remaining producing areas, at least respecting nationwide issues. By this action however, the majority seems intent on freezing itself into an endless and frustrating duplication of area proceedings which, in principal part, are nationwide in scope.

For these reasons, a postponement of the procedural steps should have been granted. Actually, in my opinion, the majority is mistaken if it thinks this order will produce any expedition because these dates will in all probability be extended when the Permian decision is issued, if not before.

A sensible relaxation of the procedural dates in these cases is no confession of error by this Commission that producer regulation is unworkable. Rather, it would be characteristic of a quasi judicial agency that is realistic, determined to be administratively and procedurally fair to all parties, and cognizant of its principal most important task, *i.e.*, of establishing the standards needed to make progress in producer regulation.

The majority say, "the only sure road to progress is to proceed with the decision making process". Where have I heard that refrain before?[1] This attempt by the majority to make a show of progress without a true appreciation of the facts of life, in my opinion, tends to destroy the public's confidence, already weakened by earlier miscalculations, that we are making headway (which we are in *Permian* and *Southern Louisiana*) in producer regulation.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, COLUMBIA GULF TRANSMISSION COMPANY, UNITED FUEL GAS COMPANY, DOCKET NO. CP65-76

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 27, 1964)

On September 17, 1964, Transcontinental Gas Pipe Line Corporation (Transco), Columbia Gulf Transmission Company (Columbia Gulf) and United Fuel Gas Company (United Fuel), hereinafter referred to as Applicants, filed in Docket No. CP65-76, a joint application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of an emergency interconnection at the crossing of Transco's 30-inch main line and the westernmost part of Columbia Gulf's two 30-inch lines in Section 15, T-5-S, R-2-E, in Evangeline Parish, Louisiana, all as more fully set forth in the joint application.

The proposed emergency interconnection and the proposed emergency exchange of gas (contract dated August 14, 1964) provides for utilization of the proposed interconnection when either Transco or Columbia Gulf is confronted with an

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[1] See *Hill* v. *F.P.C.*, *supra*, where in its eagerness to make haste without appropriate standards, the Commission "peedalled" backward.

emergency which can be alleviated by deliveries of natural gas from the other, repayment in kind to be made within 60 days unless a longer period is agreed upon. All receipts and deliveries by Columbia Gulf will be made for the account of United Fuel.

The estimated total cost of required facilities is $38,800, which will be defrayed from current funds of Transco and Columbia Gulf. The joint cost of interchange facilities is $27,000. United Fuel will not construct any facilities.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on November 24, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of May 29, 1948, in Docket No. G–704 (7 FPC 24).

(2) Applicant, Columbia Gulf Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 5, 1958, in Docket No. G–15524 (20 FPC 681).

(3) Applicant, United Fuel Gas Company, a West Virginia corporation having its principal place of business in Charleston, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of September 9, 1958, in Docket No. G–13372 (20 FPC 347).

(4) The proposed emergency exchange of natural gas between the Applicants, and the construction and operation of the proposed facilities for the transportation and sale of natural gas in interstate commerce, as hereinbefore described and as more fully described in the joint application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The aforesaid proposed exchange and delivery of natural gas on an emergency basis, and the construction and operation of facilities are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that Transco, Columbia Gulf and United Fuel, shall file their letter agreement dated August 14, 1964, covering the proposed emergency interconnection and service as a special rate schedule to their respective FPC Gas Tariffs' within 30 days after the date of issuance of this order.

(8) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicants in this proceeding, jointly, authorizing the exchange and delivery of natural gas as hereinbefore described, and the construction and operation of facilities for the transporation and sale of natural gas in interstate commerce, as more fully described in the joint application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 3 months of the date on which this order issues.

(D) Transco, Columbia Gulf and United Fuel shall file within 30 days after the issuance of this order their letter agreement dated August 14, 1964, as a special rate schedule to their respective FPC Gas Tariffs'.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP65-73

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 27, 1964)

On September 15, 1964, United Gas Pipe Line Company (Applicant) filed in Docket No. CP65-73 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1965 and the operation of routine field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the facilities covered by this application will not exceed a maximum of $2,000,000, with no single project to exceed a cost of $500,000, which costs are proposed to be financed from current working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on November 24, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company"

within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 20, 1942, in Docket No. G–216 (3 FPC 3).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(b) (3) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $2,000,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, United Gas Pipe Line Company, to construct during the calendar year 1965, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b) (3) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1965, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $2,000,000, with no single project to exceed a cost of $500,000.

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Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

AREA RATE PROCEEDING, DOCKET NO. AR61-1; CLAUDE E. AIKMAN, ET AL., DOCKET NO. G-18466, ET AL.; NORTH CENTRAL OIL CORPORATION (OPERATOR), ET AL., DOCKET NO. CI60-435, ET AL.

ORDER DENYING RECONSIDERATION OF DENIAL OF INTERVENTION AND GRANTING LEAVE TO FILE BRIEFS

(Issued December 1, 1964)

On November 19, 1964, Oklahoma Independent Petroleum Association (OIPA), stating that it represents approximately one thousand small producers of oil and gas in Oklahoma and Texas, and specifically in the Permian Basin, filed a motion for reconsideration of the denial by the Commission in 1961 of OIPA's petition for leave to intervene in this proceeding. In the alternative, OIPA moved for leave to file a brief on exceptions as amicus curiae. On November 23, 1964, motions were filed by Philadelphia Electric Company and by Associated Gas Distributors, a group of seventy public utilities distributing natural gas in some fifteen States, for leave to file briefs on exceptions as amici curiae. The movants urge that the precedents to be established in this leading case, if applied in other area rate proceedings to which the movants are parties, will affect them (or those whom they represent) both economically and in their legal rights.

Nothing has been advanced by OIPA in support of its motion for reconsideration which would cause us to grant its petition for leave to intervene at this late stage. We think, however, in view of the far-reaching effects of the precedents which may be established in this proceeding, that all the movants should be permitted to present their views as amici curiae, and the motions in this respect will be granted.

The Commission finds:

(1) The grounds for reconsideration set forth in the motion by Oklahoma Independent Petroleum Association for reconsideration of the denial of its petition for leave to intervene in this proceeding present no facts which would warrant any change or modification of our prior determination.

(2) Good cause exists for granting the motions for leave to file briefs on exceptions as amici curiae.

The Commission orders:

(A) Leave is hereby granted to Oklahoma Independent Petroleum Association to file a brief on exceptions as amicus curiae in this proceeding, and the brief attached to the motion filed November 19, 1964, is hereby accepted for filing.

(B) In all other respects the motion filed by Oklahoma Independent Petroleum Association on November 19, 1964, is hereby denied.

(C) Leave is hereby granted to Associated Gas Distributors and Philadelphia Electric Company to file briefs on exceptions as amici curiae in this proceeding, and the briefs attached by them to their motions of November 23, 1964, are hereby accepted for filing.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITY OF ALBANY, GEORGIA, DOCKET NO. CP65-59

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES

(Issued December 2, 1964)

On August 31, 1964, the City of Albany, Georgia (Applicant) filed in Docket No. CP65-59 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing South Georgia Natural Gas Company (South Georgia) to establish a second physical connection of its transmission facilities on the side of the City of Albany. There is now a physical connection between the Applicant's distribution system at a point on the southeast side of the city and South Georgia's transmission system. The sale of Applicant's gas requirements is being made under an existing sales agreement; no additional gas is being sought by Applicant. Due to the growth of the city in the direction away from the present connection of facilities and the proximity of the growing section of the city to South Georgia's 12¾-inch high pressure gas line, the new connection will enable Applicant to better serve its customers with gas. This warrants construction of the connection herein sought.

The estimated cost of the facilities to South Georgia is $25,000. The estimated cost of the proposed connecting line of Applicant is $22,000.

On October 5, 1964, South Georgia filed an answer to Applicant's application wherein no objection to the requested order is raised. Applicant agrees to make the connection requested due to the factual situation existing in the area at the present time.

Due notice of the filing of the application and opportunity for hearing thereon has been published in the Federal Register on November 5, 1964 (29 F.R. 15001). No protest, petition to intervene or notice of intervention in opposition to the granting of the application has been filed.

The Commission finds:

(1) South Georgia Natural Gas Company, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of September 2, 1954, in docket No. G-1915.

(2) Applicant, City of Albany, is a municipality organized and existing under the laws of the State of Georgia and is authorized to sell and distribute natural gas to the inhabitants of said city. Applicant is now engaged in the business of buying natural gas from South Georgia and reselling it to the customers in that city.

(3) It is necessary and desirable in the public interest that South Georgia Natural Gas Company, construct and establish the physical connection of its facilities with the facilities of the Applicant at the point requested.

(4) The establishment of a second connection of facilities of South Georgia with the distribution system of Applicant will not place an additional burden upon it nor will it impair its ability to render adequate service to its existing customers.

The Commission orders:

The South Georgia Natural Gas Company be and is hereby directed to establish and maintain the physical connection of its natural gas transmission system with the Applicant's distribution system at the point described in the application, and to deliver a portion of the Applicant's gas requirements through said new connection to the Applicant.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP65-96

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 2, 1964)

On October 12, 1964, Natural Gas Pipeline Company of America (Applicant), filed in Docket No. CP65-96, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of an additional Daily Contract Quantity of 1,000 Mcf of natural gas to Iowa Electric Light & Power Company (Iowa Electric) for resale to Monsanto Company, an existing industrial customer of Iowa Electric, all as more fully set forth in the application.

Applicant proposes to sell and deliver the additional contract demand quantity of 1,000 Mcf on a firm and non-interruptible basis to Iowa Electric with a presently effective daily contract quantity of 31,776 Mcf under Applicant's Rate Schedule CD-1. Iowa Electric will supply the gas to Monsanto for use as a raw material in the manufacture of agricultural fertilizers. No additional facilities are required.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on November 30, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 7, 1958, in Docket No. G-9066 (20 FPC 694).

(2) The proposed sale and delivery of natural gas by Applicant to Iowa Electric Light & Power Company as hereinbefore described, and as more fully described in the application, in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale and delivery of natural gas is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Natural Gas Pipeline Company of America, authorizing the sale and delivery of natural gas to Iowa Electric Light & Power Company, as

hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant and Iowa Electric Light & Power Company shall execute a superseding service agreement in accordance with the Commission's Regulations reflecting the increase in Iowa Electric's daily contract quantity of 1,000 Mcf, and file the same with the Commission within 30 days after the issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NEVADA POWER COMPANY, DOCKET NO. E-7180

ORDER AUTHORIZING SALE OF FACILITIES

(Issued December 2, 1964)

Nevada Power Company (Applicant), incorporated under the laws of the State of Nevada and doing business in the State of Nevada, with its principal office at Las Vegas, Nevada, filed an application on August 31, 1964, for an order pursuant to Section 203 of the Federal Power Act, requesting authorization to sell certain facilities to Amargosa Valley Cooperative, Inc. (Amargosa) of Nye County, Nevada.

Applicant is an electric public utility corporation engaged in the generation, transmission and distribution of electric energy in Clark and Elko Counties, State of Nevada and in the transmission and distribution of electric energy in Nye County, State of Nevada. The territory served by Applicant centers around Las Vegas in southern Nevada and Elko in northeastern Nevada. The two systems are not interconnected.

During 1962, Applicant extended its lines to serve the Lathrop Wells-Amargosa Valley area in Nye County, about 90 miles northwest of Las Vegas. Subsequently, Amargosa Valley Cooperative, Inc., a Rural Electrification Administration financed cooperative, which at that time claimed not to be subject to the jurisdiction of the Public Service Commission of Nevada, constructed lines in the same area and also contracted for the transmission over its lines of a portion of the Atomic Energy Commission's power requirements to Jackass Flats at the Nevada Test Site. The Nevada State Legislature at its 1963 session passed an act which expressly placed electric cooperatives under the jurisdiction of the Public Service Commission.

On September 18, 1963, an Agreement was executed between Applicant and Amargosa, which provides for the sale of certain facilities and rights-of-way of Applicant in the Lathrop Wells-Amargosa Valley area to the Cooperative and a definition of service areas. The Agreement has been approved by the Public Service Commission of Nevada and the Rural Electrification Administration.

The facilities to be disposed of by Applicant in the Amargosa Valley-Lathrop Wells, Nevada area consist of approximately 53 miles of 34.5 kv three-phase distribution lines, line transformers, services, meters, metering equipment and rights-of-way to serve electrical energy to, as of June 30, 1964, 38 customers, and to deliver energy to Southern California Edison Company at the California state line. The main feeder line extends from the Rock Valley substation, located

on Applicant's 138 kv transmission line between Mercury and Jackass Flats to the community of Lathrop Wells, Nevada and south along State Highway 29 to the California border. Taps from the main feeder line supply electric energy to customers in Lathrop Wells, and ranches in the Amargosa Valley area. The feeder line connects with Southern California Edison Company facilities at the Nevada–California state line.

The application recites that the consideration will be $350,000 to be paid in cash. The consideration of $350,000 will be $32,893.42 less than original cost depreciated of $382,893.42. Therefore, the Applicant will have a loss of $32,893.42 on the sale of the facilities. The Applicant proposes to eliminate the loss of $32,893.42 by debits of $32,200 to Account 253, Other Deferred Credits, and of $693.42 to Account 426, Other Income Deductions.

After the proposed disposition, Amargosa intends to continue the use of the facilities for the same purposes as now used. The present Nevada Power Company-Southern California Edison Company contract dated July 26, 1962 for power supply at the California-Nevada state line is to remain in force and effect with no change in rates under the proposed sale of facilities.

In support of the application, Applicant states that since the Lathrop Wells-Amargosa Valley area is sparsely settled and within the foreseeable future its growth possibilities appear quite limited, it believes that on an economic basis the serving and development of the area cannot be supported or undertaken by more than one electric utility organization. Furthermore, Applicant believes that the Public Service Commission of Nevada in the exercise of its jurisdiction over both electric utility companies and electric cooperatives will not permit the duplication of facilities in the future such as occurred in the Lathrop Wells-Amargosa Valley area.

Written notice of the application has been given to the State of Nevada Public Service Commission and to the Governor of that State. Notice was also published in the Federal Register on September 17, 1964 (29 F.R. 13055), stating that any person desiring to be heard or to make any protest with reference to said application, should on or before October 5, 1964, file petitions or protests with the Federal Power Commission, Washington, D.C., 20426. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued December 29, 1960, *Southern Nevada Power Co.; Elko Lamoille Power Company*, Docket No. E–6966 (24 FPC 1211) (Nevada Power Company was then operating under the name of Southern Nevada Power Company).

(2) By the proposed sale of facilities, Applicant will dispose of part of its facilities subject to the jurisdiction of the Commission within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed sale of facilities of Applicant, as described above upon the terms and conditions set forth in the application and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

The Commission orders:

(A) The proposed sale by Applicant of the aforementioned transmission line facilities and related rights-of-way all as described above, are authorized and approved upon the terms and conditions and for the purposes set forth in the application, subject to the provisions of this order.

(B) Applicant shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) This authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, services, accounts, evaluation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body, and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted by this Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SINCLAIR OIL & GAS COMPANY, ET AL., DOCKET NO. G–16760, ET AL.; HAWKINS & HAWKINS, ET AL., G–18077, ET AL.; TURNBULL & ZOCH DRILLING COMPANY, ET AL., G–17960, ET AL.

ORDER DENYING APPLICATIONS FOR REHEARING

(Issued December 2, 1964)

Applications for Rehearing and Reconsideration were filed in the above-styled proceedings by H. D. Bruns (Operator), *et al.*, (Bruns) and the Public Service Commission of the State of New York (New York Commission),[1] on October 26, 1964, and November 3, 1964, respectively. Both applications refer to the Order Granting and Denying in Part Motions and Petitions, issued October 5, 1964, 32 FPC 914, particularly Paragraph (A) thereof wherein the Commission deferred consideration of whether or not to require refunds from applicants whose certificates contain no express refund conditions. Bruns correctly infers from the order that refunds will be required as a matter of law from applicants whose authorizations do contain express conditions, and as such an applicant Bruns contends that the order is discriminatory and violative of procedural and substantive due process. Separately, and in addition, Bruns contends that our order is contrary to the decision of the Court of Appeals in *Callery Properties, Inc.* v. *F.P.C.*, 335 F. 2d 1004 (5th Cir., decided August 14, 1964, as Case No. 20872).

We do not believe that our action in denying Bruns and similar holders of conditioned certificates a hearing on the refund equities in any manner constitutes discrimination or denial of due process. The order issuing a conditioned temporary certificate is an appealable order,[2] and an applicant's acceptance thereof without appeal generates an absolute obligation to refund in accordance with the order; Bruns cannot now be heard to question for the first time on equitable grounds the binding character of a condition which has been thus imposed and accepted.

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[1] The application filed by the New York Commission was styled to include the in-line price proceedings for Texas Railroad Districts 2, 3 and 4: Sinclair Oil & Gas Company, *et al.*, Docket No. G–16760, *et al.*; Hawkins & Hawkins, *et al.*, Docket No. G–18077, *et al.*; Turnbull & Zoch Drilling Co., *et al.*, Docket No. G–17960, *et al.* Bruns application was filed only in the Sinclair, *et al.*, proceeding.

[2] *Texaco Inc.* v. *F.P.C.*, 290 F. 2d 149, (5th Cir., 1961).

The decision of the court in the *Callery* case has been stayed in order to permit the Commission to seek review by the United States Supreme Court. In the meantime, Callery does not constrain us to disregard the conflicting decision of the Court of Appeals for the District of Columbia in *P.S.C.* v. *F.P.C.*, 329 F. 2d 242 (D.C. Cir. 1964). Union Texas Petroleum, *et al.*, Opinion No. 436–A, issued October 8, 1964, 32 FPC 952 at 955; Sun Oil Company, *et al.*, Opinion No. 445, issued October 26, 1964, 32 FPC 1183 at 1185.

The application for rehearing by the New York Commission urges that we vacate our order issued October 5, 1964, in Docket No. G–16760, *et al.*, and G–17960, *et al.*, and our order issued October 13, 1964, in Docket No. G–18077, *et al.*, which similarly deferred the refund question in the in-line price proceeding for Texas Railroad District No. 3.[2] The New York Commission contends that any delay resulting from deferral of the refund issue redounds to the disadvantage of the consumer and is inconsistant with the position taken by the Commission in *F.P.C.* v. *Tennessee Gas Transmission Company*, 371 U.S. 145 (1962). It is argued, moreover, that deferral of the refund issue has misled certain applicants selling gas under conditioned certificates, such as Bruns, to believe that they may contest the equity of refund obligations as imposed upon them.

We believe that a two-stage hearing and decision will expedite the decision on the initial rate for these sales and out weigh the disadvantage of a conceivable delay in resolving the refund issue. This is particularly true since the hearing on the initial rate question has already been completed and is pending before the examiner for decision. The New York Commission's discussion of the *Tennessee Case*, moreover, is inapposite to the present situation. There the Commission was fixing just and reasonable rates for the future and was faced with the likelihood of protracted hearings on a complex of issues arising under Section 4(e) of the Act. As in the present proceedings, other than the Hawkins & Hawkins, *et al.*, proceeding, the issues were heard separately in order to expedite the case as a whole. Here our decision, by severing the refund issue, will enable us to decide the appropriate initial rate for these sales much more promptly. The refund issue covers a past period and does not determine future rates to consumers. The procedure we have adopted is thus analogous to the procedure in the *Tennessee Case* rather than in conflict with it.

Finally, our denial herein of Bruns' application for rehearing should serve to dispel any doubt that refund obligations extend to applicants selling gas under expressly-conditioned temporary certificates.

The Commission orders:

The Applications for Rehearing and Reconsideration filed by H. D. Bruns and the Public Service Commission of the State of New York on October 26, 1964, and November 3, 1964, respectively, are hereby denied.

Commissioner Ross *concurring in part* and *dissenting in part.*

[2] *H. L. Hawkins & H. L. Hawkins, Jr., (Operator), et al.*, Docket No. G–18077, *et al.*, 32 FPC 991.

Ross, *Commissioner, concurring in part and dissenting in part:*

On January 23, 1964, the D.C. Circuit Court of Appeals held that the absence of a specific refund provision in a temporary certificate constituted an insufficient basis upon which to refuse to order any refunds.[1] The Supreme Court denied certiorari and the Commission thereafter provided for the filing of briefs and reply briefs on May 7, and May 18, 1964, respectively.[2] Over six months have elapsed since the filing of those briefs and we seem to be little closer to a decision.

[1] *P.S.C. of N.Y.* v. *F.P.C.*, 329 F. 2d 292 (D.C. Cir.)

[2] Amerada Petroleum Corporation, *et al.*, Docket No. CI62–1544, *et al.*, Commission's order issued April 30, 1964, 31 FPC 1041.

In these circumstances I dissent to the instant order as it relates to the *Hawkins & Hawkins* proceeding. There, the evidence has been submitted, the hearing has ended, briefs have been submitted and the case is ripe for decision by the presiding examiner. A decision on this issue by an independent hearing examiner might well be all that's needed to break the current logjam.

In addition, while it is true that the refund issue covers a past period, by this action we are extending the past into the future. As a result, the equities become more and more vested and difficult to disintangle. Moreover, the present consumers who have paid the price are interested in securing the sums due, if any, now and not in the indefinite future; see *F.P.C.* v. *Tennessee Gas Transmission Co.*, 371 U.S. 145 (1962).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TURNBULL & ZOCH DRILLING CO. (OPERATOR), ET AL., DOCKET NO. G-17960, ET AL.

ORDER GRANTING MOTIONS FOR CLARIFICATION

(Issued December 2, 1964)

On October 22, 1964, Clark Fuel Producing Company (Operator), *et al.*, Austral Oil Company Incorporated, K. D. Owen, *et al.*, and Appell Petroleum Corporation filed a joint motion for clarification of the following Commission orders in the above-entitled consolidated proceedings:

(1) "Order Severing Proceedings, Consolidating Proceedings, Cancelling Docket Numbers, Fixing Date for Prehearing Conference and Notice of Applications," issued May 28, 1964 [Unreported]; and

(2) "Order Granting and Denying in Part Motions and Petitions", issued October 5, 1964, 32 FPC 914.

On October 23, 1964, Continental Oil Company filed a telegram with the Secretary, joining the above-described joint motion. On November 3, 1964, Bright & Schiff filed a motion for clarification of the same orders, substantially adopting the arguments of the above-named movants, and, in addition, for clarification of our "Order Denying Alternative Motions for Rehearing of Order Consolidating Proceedings for Hearing or for Severance", issued September 11, 1964 [Unreported]. All of the above-named applicants will be referred to collectively as movants.

Movants state that originally they understood that the May 28, 1964, order instituting this consolidated proceeding was a procedural order consolidating the various applications for administrative convenience and that such consolidation was without substantive significance insofar as the decision to be rendered in each docket was concerned. They state, however, that the following language contained in our order of October 5, 1964, *supra*, leads them to question whether their original interpretation of the May 28, order was correct:

> These consolidations for hearing of virtually all pending producer applications relating to Railroad Districts 2 and 4 were in keeping with our policy of utilizing area approach to producer regulation in both certificate and Sections 4 and 5 rate matters. (p. 914).

Movants state that they assume this use of an "area approach" in certificate matters is merely a reference to our policy of consolidating various certificate applications proposing sales from a particular area for the purposes of hearing and the issuance of a single decision covering the individual applications, but movants fear that this "area approach" may have a substantive effect on the

decision to be rendered. They fear that the order of consolidation might in some way limit the presiding examiner's consideration of the evidence presented on the price issues. They refer to the presiding examiner's comment upon sales comparisons that he is bound by the order of consolidation (Tr. 1606–1608). They do, however, recognize his further comments that the question of comparability of sales is a matter to be argued in briefs. (Tr. 1616–1617).

Movants original interpretation of our May 28, order, *supra*, is correct. It is a procedural order and was not intended to effect the substantive issues including comparability of sales. It appears that the presiding examiner so interpreted this order at Transcript 1616–1617 when he stated that the matter was open to argument in the briefs filed. The questions of comparability of sales in Section 7(c) producer certificate cases should be decided upon the evidence presented in the proceeding.

Since the primary relief sought is granted herein, the alternative motions for severance are deemed moot.

The Commission orders:

The motion for clarification or alternatively motion for severance filed on October 22, 1964, by Clark Fuel Producing Company (Operator), *et al.*, Austral Oil Company, Incorporated, K. D. Owen, *et al.*, and Appell Petroleum Corporation (Operator), *et al.*, adopted by Continental Oil Company on October 23, 1964, and the motion for clarification or alternatively motion for severance filed by Bright & Schiff on November 3, 1964, are hereby granted to the extent set forth herein.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

W. H. DENNIS AND SON NATURAL GAS COMPANY, DOCKET NO. CP65-67

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued December 2, 1964)

On September 11, 1964, W. H. Dennis and Son Natural Gas Company, a public utility company, (Applicant) filed in Docket No. CP65-67 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing The Ohio Fuel Gas Company to establish a physical connection of its natural gas transportation facilities with the proposed facilities of the Applicant at a point in Wood County, Ohio, and to sell and deliver natural gas to Applicant for resale in the Village of West Millgrove, Ohio, and to customers along the 3-inch and 2-inch pipeline leading from the point of connection to the said village distribution system.

Applicant states that it is now engaged in selling and distributing gas to the inhabitants of West Millgrove from local production but that the supply from this source is not adequate to meet its present and future requirements, and that there is a need for additional volumes up to 164 Mcf per day on peak days and 12,000 Mcf in the third year and thereafter.

Applicant states that the estimated cost of its proposed facilities is $29,045, which will be financed from current funds.

On October 5, 1964, The Ohio Fuel Gas Company filed its answer to the application herein advising that it had no objection to the issuance of the order requested by the Applicant.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on November 5, 1964 (29 F.R. 15001). No protest, petition to intervene or notice of intervention in opposition to the granting of the application has been filed.

The Commission finds:

(1) The Ohio Fuel Gas Company is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of August 21, 1945, in Docket No. G–371 (4 FPC 1033).

(2) Applicant is a public utility company in the State of Ohio and is authorized to construct and operate the facilities proposed and to distribute and sell natural gas to the inhabitants of the Village of West Millgrove and to customers along its pipeline leading to West Millgrove.

(3) It is necessary and desirable in the public interest that The Ohio Fuel Gas Company be directed to establish a physical connection of its transportation facilities with the facilities proposed by Applicant and to sell and deliver natural gas to the Applicant its daily and annual requirements, as set forth in the application and as hereinafter ordered and conditioned.

(4) The requirement that The Ohio Fuel Gas Company serve the Applicant as requested will not place an undue burden upon it nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) The Ohio Fuel Gas Company be and is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of the Applicant and to sell and deliver up to 164 Mcf of natural gas per day to Applicant, all as hereinbefore stated and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from The Ohio Fuel Gas Company within one year from the date of this order.

(C) Applicant shall execute a service agreement with The Ohio Fuel Gas Company in accordance with the Commission's Regulations.

(D) The Ohio Fuel Gas Company shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MERCED IRRIGATION DISTRICT, PROJECT NO. 2179

ORDER AMENDING LICENSE (MAJOR) AND APPROVING REVISED EXHIBITS

(Issued December 3, 1964)

Application was filed on May 27, 1964, and supplemented on June 18 and July 27, 1964, by Merced Irrigation District (Applicant), licensee for proposed Project No. 2179, for amendment of its license for the project to authorize by approval of revised exhibits pursuant to Article 36 of the license, certain changes in the project works. The project is to be located on Merced River, County of Mariposa, California, and affects public lands of the United States.

The amendment and proposed changes thereunder would make the following changes to the project works: (1) the Exchequer reservoir pool would be increased from elevation 865 to 867 feet; (2) the spillway would be changed by the deletion of two of eight gates and the addition of an emergency uncontrolled

spillway section about 1080 feet long with crest at elevation 868 feet; (3) the generators at the Exchequer power plant would be changed from two units at 40,000 kilowatts each (80,000 kilowatts total capacity) to one unit at 80,100 kilowatts; (4) the McSwain (formerly referred to as the afterbay) development would be changed from a concrete gravity gated spillway and power intake sections with rock-fill abutment sections to a rock-fill structure with impervious core, a concrete power conduit extending through the dam and an uncontrolled spillway on the left abutment; and (5) the generator at the McSwain power plant would be increased from 7,000 to 9,000 kilowatts.

The change in the reservoir elevation at Exchequer reservoir was made to satisfy requests of the U.S. Corps of Engineers and the California Department of Water Resources relating to spillway capacity. The increase in storage capacity of 16,000 acre-feet will have some value for irrigation supply and power generation. The changes in the design at the McSwain dam were required as the result of extensive foundation explorations made at the site. Other structural and design changes were the result of detailed studies and analysis to provide the most economical project to satisfy design criteria. The changes in design of the project structures of both the enlarged Exchequer and McSwain developments result in a savings of about $700,000. The stability analyses submitted by Applicant was reviewed by our staff and the project structures for the Exchequer and McSwain developments of Project No. 2179 have been found to be safe and adequate for the development of the head in the reach of the river involved.

The Department of the Interior, in commenting on the application, stated that the proposed structural change of the McSwain afterbay dam from a concrete gravity to a rock-fill or earth-fill type, and the raising of the elevation of Exchequer dam, could result in significant losses to downstream fish resources through excessive siltation and debris deposition induced by construction activities, particularly if rock-washing techniques are employed. The Department recommended that Commission approval of the amendment be contingent upon the development and implementation of adequate water pollution prevention measures by Applicant, acceptable to the California Department of Fish and Game and the Department's Bureau of Sport Fisheries and Wildlife.

The California Department of Fish and Game, by telegram received in the Commission on November 14, 1964, recommends that Applicant comply with seven stated conditions to protect salmon spawning areas in the Merced River downstream from Pacific Gas & Electric Company's licensed Merced Falls Project No. 1335. The conditions relate to inspection, reporting, and standards pertaining to turbidity and settleable solids as measured immediately below the Merced Falls dam and Crocker-Huffman diversion dam during project construction, together with provisions for debris disposal. Compliance with these conditions is imposed by Article 50, as hereinafter provided.

Discussions between representatives of the Department of the Interior and Commission staff have disclosed that the Department had participated with Applicant and the California Department of Fish and Game concerning the fish problem and the Department is in agreement with the conditions recommended by the California Department of Fish and Game, and that Interior's Bureau of Sport Fisheries and Wildlife desires to participate in the inspection and reporting of the program.

Article 48 of the license for Project No. 2179 requires Applicant to cooperate with the Central California Archeological Foundation in the possible archeological survey and salvage and to compensate for expenses incurred but not to exceed

$6,000. In this connection, the Department of the Interior advises that the raising of Exchequer dam will flood the site of Bagby, California, a point of importance in California's mining history, and Interior recommends that $500 of the $6,000 for archeological survey and salvage should be provided for a survey of the historical values in the Bagby site area to be flooded.

The Corps of Engineers has approved the revised plans and specifications of the project structures insofar as they affect the functional flood control features.

The installed generating capacity of the Exchequer and McSwain developments will be increased, as shown on revised Exhibit M, from the presently authorized capacity of 116,000 to 119,000 horsepower.

The Commission finds:

(1) Public notice of the application has been given. No protests or petitions to intervene have been received.

(2) The following-described revised exhibits filed June 18, 1964, conform to the Commission's rules and regulations and should be approved as part of the license for the project:

Exhibit	FPC No.	Showing
J	2179-42	General plan.
		New Exchequer Dam
L-1	2179-43	Reservoir map.
L-2	-44	General plan.
L-4	-46	Plan view—main dam.
L-5	-47	Concrete face details.
L-6	-48	Main dam—right sections.
L-7	-49	Main dam—left sections.
L-8	-50	Tunnel profile and sections.
L-9	-51	Tunnel gate shaft details.
L-10	-52	Tunnel tainter gate.
L-11	-53	Spillway and dike plan.
L-13	-55	Spillway geological sections.
L-14	-56	Dike elevations and sections.
L-15	-57	Spillway sections.
L-16	-58	Powerhouse—plan views.
L-17	-59	Powerhouse—plan views.
L-18	-60	Powerhouse—sections.
L-19	-61	Powerhouse—sections.
L-20	-62	Powerhouse—single line diagram.
		McSwain Dam
L-21	2179-63	Reservoir map.
L-22	-64	Plan view.
L-26	-72	Typical sections.
L-27	-73	Conduits—plan and sections.
L-28	-70	Powerhouse—plan views and sections.
L-29	-71	Powerhouse—single line diagram.
M	Comprised of two typewritten sheets, signed June 16, 1964, and filed June 18, 1964.	

(3) The following-described exhibits now part of the license and which have been superseded should be eliminated from the license for the project:

Exhibit	FPC No.	Showing
J	2179-24	General map.
L	-31	General plan, exchequer development.
	-32	Typical details, exchequer development.
	-33	General plan, Afterbay Dam.
	-34	Typical details, Afterbay Dam.
	-37	Dike and spillway exchequer development.
M	Comprised of two typewritten pages, signed January 29, 1963.	

The Commission orders:

(A) The license for Project No. 2179 is hereby amended, effective as of December 1, 1964, as follows:

Article 49 of the license is amended to read as follows:

Article 49. The Licensee shall pay to the United States the following annual charges:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part II of the Commission's regulations, in effect from time to time. The authorized installed capacity for such purposes is 119,000 horsepower.

(ii) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands, an amount to be determined hereafter by the Commission.

(B) Of the sum of $6,000 specified in Article 48 of the license, a sum not exceeding $500 shall be made available by the Licensee under Article 48 for a survey of the historical values of the Bagby site area to be flooded.

(C) The following additional article is hereby added to the license:

Article 50. Until further order of the Commission, the Licensee shall during the construction of the project works comply substantially with the conditions set forth in telegram received by the Commission on November 14, 1964, from the California Department of Fish and Game, which is on file with the Commission, and a copy of which has been furnished to the Licensee, pertaining to inspection, reporting and standards relating to turbidity and settleable solids in the Merced River as measured immediately below Merced Falls dam and Crocker-Huffman dam, together with provisions for debris disposal.

(D) The revised exhibits described in finding (2) above are hereby approved as part of the license for the project.

(E) The superseded exhibits described in finding (3) above are hereby eliminated from the license for the project.

(F) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(G) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgement of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PAN AMERICAN PETROLEUM CORPORATION, ET AL., DOCKET NO. RI63-481, ET AL.[1]

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued December 3, 1964)

El Paso Gas Company on November 3, 1964, filed a motion for reconsideration[2] of our order of October 9, 1964, 32 FPC 966, herein deferring action on the

[1] Additional proceedings involved in this order are printed, *supra*, p. 968.

Footnotes *continued* on following page.

legality of certain increased rate filings pending final determination of the complaint filed by Pan American Petroleum Corporation (Pan American) in the District Court of Lea County, State of New Mexico. That complaint requested a declaratory order which would determine and establish the contractual right of Pan American to tax reimbursement based on the 2.55% tax paid under the April 1, 1963, Tax Act as a new tax or an increase in tax. El Paso in answer to Pan American's complaint claims, *inter alia*, that the proper contractual tax reimbursement is based on a 0.55% tax calculation.

A determination of the question of the contractual basis for the tax reimbursement increases filed by these producers involves an interpretation of state statutes which is now pending in a New Mexico state court. For this reason we deferred Commission action pending state court ruling on the question of statutory interpretation.

El Paso states, *inter alia*, in its motion for reconsideration that (1) the Commission does not have discretionary power to defer action here after having decided to suspend these rates but is required under Section 4(e) to decide these questions as speedily as possible citing *Minneapolis Gas Company* v. *F.P.C.*, 294 F. 2d 212; (2) the procedure followed here will permit the producers to collect the increased rates involved here indefinitely; and (3) the October 9 order ignores the fact that Pan American by requesting the New Mexico Court to enter judgment against El Paso for the contractual amounts determined to be due it is seeking relief far beyond an interpretation of state statutes and involves an obvious attempt to circumvent the Commission's jurisdiction.

In the Minneapolis case the Court ruled that the Commission had no power to terminate a suspension proceeding after the case had gone to hearing and an examiner's decision had been issued without determining the justness and reasonableness of the increased rates involved. That case is inapposite here where we are simply deferring action pending resolution of the question of statutory interpretation of a state law question by a state court.

We do not agree with El Paso's claim that the procedure followed here will cause any delay in the ultimate resolution of this question. On the contrary, this question has been fully briefed in a state court proceeding which, as El Paso indicates, is already *sub judice*.

As we pointed out in the October 9 order, the ultimate determination of the justness and reasonableness of the subject rates is within the exclusive jurisdiction of this Commission. No relief may be properly granted by the New Mexico court which would invade such jurisdiction, but this does not mean that the state court cannot or will not decide the threshold state law question which has been presented to it. Of course, should the state court action be terminated for any reason without such determination or should it be unduly delayed, we shall decide our future course of action in the light of the circumstances then prevailing.

The Commission orders:

For the reasons set forth above, the motion for reconsideration filed by El Paso on November 3, 1964, is hereby denied.

Footnotes—*Continued.*

[2] El Paso termed its motion as an "Application For Reconsideration Or, In The Alternative, For Rehearing". An application for rehearing of an interlocutory order, such as involved here, may not properly be filed. [Section 1.30(e) of the Rules of Practice and Procedure (18 CFR 1.30(e)]. The instant tender has been considered as a motion for reconsideration pursuant to Section 1.12 of the Commission's Rules of Practice and Procedure.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PUBLIC SERVICE COMPANY OF OKLAHOMA, DOCKET NOS. E-7179 AND E-7196

ORDER ACCEPTING RATE SCHEDULE FOR FILING, EFFECTING RATE REDUCTION, INITIATING RATE INVESTIGATION, PROVIDING FOR HEARING AND CONSOLIDATING PROCEEDINGS

(Issued December 3, 1964)

By this order, the Commission accepts for filing a proposed rate schedule submittal of Public Service Company of Oklahoma (Public Service) effecting a rate reduction of approximately $2350 annually to the City of Duncan, Oklahoma; initiates a rate investigation as to the lawfulness of Public Service's contractual arrangements for terminating wholesale electric service to Duncan, as well as to Altus, Oklahoma, another wholesale electric customer of the Company; and consolidates, for hearing purposes, that proceeding with a rate suspension proceeding involving a similar contractual provision of the Company relative to the City of New Cordell, Oklahoma, *Public Service Company of Oklahoma*, Order issued August 26, 1964, Providing for Hearing and Suspension of Proposed Rate Schedule Change, Docket No. E-7179 [Unreported].

The reduced rates and charges embodied in the proffered rate schedule for service to Duncan reflect a revision of Public Service's fuel adjustment clause. That clause will be changed to reflect the current over-all system heat rate of 12,000 BTU/kwh (formerly 20,000 BTU/kwh), adjusted for losses and the base price of current fuel costs. The need for such revision was previously called to the Company's attention by this Commission.

Public Service submitted its rate schedule reducing its rates to Duncan on November 5, 1964, with the request that the proffered schedule be permitted to take effect as a filed rate schedule of the Company pursuant to Section 205 of the Federal Power Act on October 26, 1964, or if that be denied, 30 days after filing, December 6, 1964. The proposed schedule is identified in the files of the Commission as Supplement No. 3 to Public Service's Rate Schedule FPC No. 126.

In granting the requested effective date of October 26, 1964, and in ordering the rate investigation and hearing hereinafter provided, the Commission will give full effect to the Company's intent to pass along the benefits of the reduced rates and charges to Duncan, commencing with the billing period October 26, 1964, and still permit full and effective Commission consideration of the lawfulness of contractual provisions set forth in Supplement No. 3 to Public Service's Rate Schedule No. 126, providing for termination of Public Service's contractual undertaking to serve Duncan in the event of Commission ordered rate decreases to the City.

The questioned contractual provisions included within the terms of Supplement No. 3 are as follows:

> In the event any regulatory body having jurisdiction thereof should lawfully establish an increase in the rate set forth in Exhibit "A", attached hereto, to the damage of City, the City shall have the option at any time thereafter to terminate and cancel this supplemental contract, the original contract of October 1, 1951, and the supplemental contract of March 25, 1958, by giving 30 days notice in writing to Company at Tulsa, Oklahoma, of its intention so to terminate same. Likewise, in the event any regulatory body having jurisdiction thereof should lawfully decrease the rate chargeable to the City, as set out in Exhibit "A", to the damage of Company, Company shall have the option at any time thereafter to terminate and cancel this

supplemental contract, the original contract of October 1, 1951, and the supplemental contract of March 25, 1958, upon 30 days notice in writing to City of its intention so to terminate same.

A similar contractual provision appears as a part of the Company's currently filed rate schedule for service to the City of Altus, Oklahoma, Public Service's Rate Schedule FPC No. 23, Supplement No. 5 thereto. And as noted above, by order issued August 26, 1964, the Commission suspended and set for hearing a contractual provision of this type included within Public Service's Rate Schedule FPC No. 159, Supplement No. 2, for service to the City of New Cordell, Oklahoma.* To date, no hearing has been held in Docket No. E–7179.

The Commission further finds:

It is necessary and appropriate for the purposes of the Federal Power Act (particularly Sections 205, 206, 308 and 309 thereof) and the Commission's Regulations thereunder that:

(a) Supplement No. 3 to Public Service's Rate Schedule FPC No. 126 be accepted for filing and allowed to take effect as that Company's rate schedule effective October 26, 1964, good cause having been shown that the 30-day notice period provided in Section 205(d) of the Federal Power Act be waived with respect thereto;

(b) the Commission enter upon a hearing concerning the lawfulness of Public Service's Rate Schedule FPC No. 23, Supplement No. 5 thereto, and FPC No. 126, Supplement No. 3 thereto, inasmuch as the afore-mentioned contractual provisions set forth therein may have the effect of unduly restricting this Commission in carrying out its regulatory duties under the provisions of the Federal Power Act and may be unjust, unreasonable or discriminatory and, therefore, unlawful; and

(c) the investigation and hearing ordered with respect to the lawfulness of Public Service's Rate Schedule FPC No. 23, Supplement No. 5 thereto, and FPC No. 126, Supplement No. 3 thereto (Docket No. E–7196), be consolidated for hearing purposes with the hearing as to the lawfulness of Public Service's Rate Schedule FPC No. 159, Supplement No. 2 thereto (Docket No. E–7179).

The Commission orders:

(A) The 30-day notice period provided in Section 205(d) of the Federal Power Act is hereby waived with respect to Public Service's Rate Schedule FPC No. 126, Supplement No. 3 thereto, and that supplemental rate schedule is hereby allowed to take effect as of October 26, 1964; *Provided, however:* nothing contained herein shall be construed as a waiver in any other respect of the requirements of Section 205(d) of the Federal Power Act and this acceptance for filing does not constitute approval of any service, rate, charge, classification, or any rule, regulation, contract or practice affecting such rate or service provided for in that rate schedule, nor shall acceptance be deemed as recognition of any claimed contractual right or obligation affecting or relating to such rate or service, and such acceptance is without prejudice to any findings herein or which the Commission may make hereafter in Docket Nos. E–7179 and E–7196 or any other proceeding now pending or hereafter instituted by or against Public Service.

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*That order provides in part as follows:

The clause set out above may have the effect of unduly restricting this Commission in carrying out its regulatory duties under the provisions of the Federal Power Act. Such clause constitutes a contract affecting rates, charges or classifications within the meaning of Section 205 of the Federal Power Act and may be unjust, unreasonable, or discriminatory and, therefore, unlawful.

(B) The issuance of this order shall constitute full notice of the filing and publication of the afore-mentioned supplemental rate schedule insofar as its effective date is concerned.

(C) A public hearing shall be held concerning the lawfulness of Public Service's Rate Schedule FPC No. 23, Supplement No. 5 thereto, and FPC No. 126, Supplement No. 3 thereto, at a time and place to be fixed by further order of the Commission, Docket No. E–7196.

(D) For purposes of the hearing ordered in Docket No. E–7196 and the hearing previously directed by order of the Commission issued August 26, 1964, in Docket No. E–7179, those dockets are hereby consolidated, the time and place of the consolidated hearing to be fixed by further order of the Commission.

(E) Notices of intervention or petitions to intervene in Docket No. E–7196, may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.37) on or before December 31, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

COLUMBIA GULF TRANSMISSION COMPANY, DOCKET NO. CP65–32

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 4, 1964)

On August 5, 1964, Columbia Gulf Transmission Company (Applicant), filed in Docket No. CP65–32 an application for a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act authorizing the construction and operation of approximately 4.8 miles of 16-inch pipeline extending southerly from a point of connection of Applicant's East Lateral System with a point located on Grand Isle, Jefferson Parish, Louisiana, together with a measuring station in connection therewith in said Parish, and the transportation of natural gas, all as more fully set forth in the application.

Applicant proposes to transport for the account of United Fuel Gas Company natural gas produced by Humble Oil & Refining Company from the West Delta and Grand Isle areas, offshore Louisiana. Deliveries commencing with 25,000 Mcf daily in 1964, will increase to approximately 100,000 Mcf daily in 1970.

The proposal of Applicant is in implementation of the program initiated in Docket No. CP64–1 [1] to increase its pipeline system capacity by 114,000 Mcf daily, and enable it to transport for its sole customer, the United Fuel Gas Company, a total of 972,500 Mcf daily commencing with the 1964–65 winter season. United Fuel on June 28, 1963, entered into long-term purchase agreements with Humble Oil & Refining Company (Humble) and Isaac Arnold, *et al.*, providing for the delivery into Applicant's system in southern Louisiana of approximately 6.2 trillion cubic feet of natural gas at daily volumes ranging from an initial level of 235,000 Mcf to a maximum of 765,000 Mcf on November 1, 1969, and thereafter. Humble in order to insure availability of gas required under the contract agreed to use its best-efforts commencing on November 1,

[1] Sale certificated by Commission order issued November 15, 1963, in Docket No. CP64–1. 30 FPC 1297.

1968, to discover new reserves of gas in the area of named fields in Parishes within the vicinity of the pipeline system of Applicant in Louisiana and adjacent offshore areas between the Pecan Island Field on the west and the Venice Field in Plaquemines Parish, Louisiana, on the east. In conformity with the agreement of June 28, 1963, Humble by amendment dated July 22, 1964, committed to United Fuel reserves estimated to consist of 500,000 MMcf at 15.025 psia. To attach these additional reserves, Applicant seeks authorization herein for the proposed facilities.

The estimated cost of the proposed facilities is $837,600 and will be defrayed from Applicant's current funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on November 30, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Columbia Gulf Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 5, 1958, in Docket No. G–15524 (20 FPC 681).

(2) The proposed construction and operation of facilities and transportation of natural gas by Applicant as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities and transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Columbia Gulf Transmission Company in this proceeding, authorizing the construction and operation of facilities and the transportation of natural gas as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months of the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. CP65-80

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 4, 1964)

On September 21, 1964, Kansas-Nebraska Natural Gas Company, Inc. (Applicant) filed in Docket No. CP65-80 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1965 and the operation of routine field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the facilities covered by this application will not exceed a maximum of $1,550,000, with no single project to exceed a cost of $385,000, which costs are proposed to be financed from current working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on November 30, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Kansas-Nebraska Natural Gas Company, Inc., a Kansas corporation having its principal place of business in Phillipsburg, Phillips County, Kansas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-259 (3 FPC 966).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $1,550,000, with no single project to exceed a cost of $385,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Kansas-Nebraska Natural Gas Company, Inc., to construct during the calendar year 1965, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1965, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $1,550,000, with no single project to exceed a cost of $385,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-72

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 4, 1964)

On September 14, 1964, Northern Natural Gas Company (Applicant), filed in Docket No. CP65-72, an application pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the construction and operation of a measuring and regulating station and appurtenances to establish a new delivery point for Western Power and Gas Company (Western) for the sale and delivery thereto of natural gas for the Bruning Manufacturing Company's (Bruning) new plant located near Lincoln, Nebraska, all as more fully set forth in the application.

The estimated annual sales to Western for resale to Bruning are 253 Mcf of firm gas and 14,192 Mcf of interruptible gas. The proposed sale will not require an increase in Western's contract demand with Northern and will be made under Northern's Zone 2 Rate Schedule.

The estimated cost of required facilities is $3,200, and will be paid by Western.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on November 30, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–280 (3 FPC 967).

(2) The proposed construction and operation of facilities and sale and delivery of natural gas by Applicant to Western Power and Gas Company as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and sale and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the sale and delivery of natural gas to Western Power and Gas Company as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 60 days of the date on which this order issues.

(D) Northern shall file pursuant to Part 154 of the Commission's Regulations an acceptable superseding service agreement reflecting the additional delivery point to Applicant.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP64-34

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 4, 1964)

On September 18, 1964, Transwestern Pipeline Company (Applicant) filed in Docket No. CP64-34 a petition to amend the Commission's order of December 16, 1963, 30 FPC 1520, in said docket authorizing it to sell and deliver to Pacific Lighting Gas Supply Company (Pacific Lighting) up to 410,000 Mcf of natural gas per day on an average annual basis for a period ending November 1, 1965, or until the commencement of a new service sought to be initiated in a proceeding now pending before the Commission in Docket No. CP63-204, *et al.*, whichever date comes first.

Applicant requests herein that the volume of gas heretofore authorized be increased to 430,000 Mcf per day on an average annual basis and the date of expiration of the authorization be extended from November 1 to December 31, 1965.

Applicant shows that it has the capacity in its facilities as they are now installed to deliver substantially more gas during days of cold weather months than it is now authorized to deliver. During the year 1964 to date Applicant has experienced a three-day peak average delivery of 440,000 Mcf per day to Pacific Lighting, and during the first six months of 1964 Applicant has averaged deliveries of close to 420,000 Mcf per day.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on November 3, 1964 (29 F.R. 14904). No protest, petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued December 16, 1963, in Docket No. CP64-34 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued December 16, 1963, in Docket No. CP64-34 be and the same is hereby amended by increasing the volume of natural gas which may be sold and delivered by Applicant to Pacific Lighting Gas Supply Company from 410,000 Mcf per day to 430,000 Mcf per day on an average annual basis and by extending the term of the certificate through December 31, 1965, instead of November 1, 1965, or until the commencement of new service, if any, which may be authorized as a result of a proceeding now pending before the Commission in Docket No. CP63-204, *et al.*; provided however, this order shall not be construed as prejudicing the determinations to be made in the proceeding pending in Docket No. CP63-204, *et al.*

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NIAGARA MOHAWK POWER CORPORATION, PROJECT NO. 2424

ORDER ISSUING LICENSE (MAJOR)

(Issued December 9, 1964)*

Application was filed on November 8, 1963, by Niagara Mohawk Power Corporation (Applicant) of Syracuse, New York, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2424, known as the Hydraulic Race Project, located on the Erie Canal which is a part of the New York State Barge Canal System in the City of Lockport, Niagara County, New York.

According to the application, the project was constructed in its present form in 1941 by a predecessor of Applicant. The latter acquired the project in 1950 through merger with the immediate predecessor-owner of the project works.

The Erie Canal, now called the New York State Barge Canal, is one of the Nation's earliest and greatest improvements for internal navigation. Though developed by the State of New York and lying wholly within its borders, it has supported, from its inception, important traffic in interstate and foreign commerce through the port of New York. Under well established principles of navigability, the Erie Canal, as long ago as 1903, was declared by the Supreme Court to be a navigable water of the United States.[1] "When once found to be navigable, a waterway remains so."[2]

The Secretary of the Army and the Chief of Engineers have approved the plans of the project structures affecting navigation pursuant to Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, advised that wildlife resources are not involved and the fishery resources of the project area are not significant. No conditions in the interest of the Department were recommended for inclusion in any license for the project.

The Department of Health, Education and Welfare has advised that the project has no significant effects on water supply quality, or vector control in the area, and none is expected.

In accordance with the criteria set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of July 1, 1941 and a termination date of June 30, 1991.

The Commission finds:

(1) The project affects navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of New York, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

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*Order issued January 29, 1965 granting rehearing for further consideration. See Opinion No. 481, issued November 15, 1965, 34 FPC 1298. Affirmed, *Niagara Mohawk Power Corp. v. F.P.C.*, — F. 2d — (CADC–1967).

[1] See, Robert W. Parsons, 191 U.S. 17, 27 (1903).

[2] *United States v. Appalachian Electric Power Company*, 311 U.S. 377, 408 (1940).

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 6,250 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for a project, for the costs of administration of Part I of the Act is reasonable.

(7) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to Niagara Mohawk Power Corporation (Licensee) of Syracuse, New York, under Section 4(e) of the Federal Power (Act), for a period of 50 years, effective as of July 1, 1941 and terminating June 30, 1991, for the continued operation and maintenance of the Hydraulic Race Project No. 2424, located on the Erie Canal, a part of the New York State Barge Canal, a navigable water of the United States, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2424 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by the following exhibits which formed a part of the application for license.

Exhibit J: (FPC No. 2424–1) General Location Map

Exhibit K: (FPC No. 2424–2) Detail Map

(ii) A regulator tunnel owned by the State of New York takes water through a gate structure in the south canal wall above Lock No. 35, at Lockport. Applicant's 12.5-foot diameter tunnel connects with the State tunnel and conveys the water 140 feet to a steel penstock 13 feet in diameter and 99 feet long. The water passes through the single unit powerhouse, through a short tailrace, and back into the canal below Lock No. 34. The powerhouse contains one vertical type generating unit—a Kaplan turbine with adjustable blades directly connected to a generator rated at 4,687 kilowatts—and other mechanical and electrical appurtenances, the location, nature, and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L: General Design Drawings

Sheet 1 (FPC No. 2424–3) General Plan and Sections—Tunnel, Penstock and Tailrace

Sheet 2 (FPC No. 2424–4) Plan and Sections—Powerhouse.

Exhibit M: Consisting of 2 pages entitled "Hydraulic Race Project, General Descriptions and General Specifications of Mechanical, and Transmission Equipment and their Appurtenances" filed in the Commission November 8, 1963.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–3 (Revised August 1, 1964), entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States", (32 FPC 1114), which terms and conditions, designated as Articles 1 through 29, are attached hereto and made a part hereof, except for Articles 15, 16 and 25 thereof; and subject to the following special conditions set forth herein as additional articles:

Article 30. The Licensee shall pay to the United States the following annual charge, effective as of July 1, 1941:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purpose is 6,250 horsepower.

Article 31. The Commission reserves the right to determine at a later date what transmission facilities, if any, shall be included in this license.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313 (a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NOS. RP61–19, RP62–7; NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. RP63–6

ORDER GRANTING REHEARING FOR PURPOSES OF ADEQUATE CONSIDERATION

(Issued December 11, 1964)

Midwestern Gas Transmission Company (Midwestern), filed on November 12, 1964 an application for rehearing of our Opinion No. 444 and accompanying order issued October 13, 1964, 32 FPC 993. In the interest of avoiding further litigation, Midwestern proposes therein a settlement under which it would accept our original order with respect to the cost-of-service issues in this docket, subject to certain changes. Midwestern also filed, concurrently with its application for rehearing, a separate motion requesting an extension of the time presently prescribed by the ordering clauses of Opinion No. 444 for the submission of revised tariff sheets embodying the lower rates prescribed by the Commission. In a

notice issued November 20, 1964, we granted this motion and extended the date for the filing of such tariffs to December 28, 1964. (This of course did not affect the effective date of such action.)

Comments concerning the settlement proposals advanced in Midwestern's application for rehearing have been filed by the following parties: The Peoples Gas Light and Coke Company and The Northern Illinois Gas Company on November 23, 1964; Michigan Wisconsin Pipe Line Company on November 30, 1964; The City of Chicago on December 5, 1964 and Northern Indiana Public Service Company on December 7, 1964.

Under Section 1.34 of our Rules, an answer to an application for rehearing may be filed when rehearing is granted. Since we are here granting the application only to permit more orderly and more adequate consideration and have not yet determined the specific areas, if any, to which we wish to give further consideration, we do not believe answers will be helpful at this time. We shall, of course, by further order provide all parties an opportunity to respond to the application on those matters which we conclude warrant our further consideration.

The Commission orders:

The application for rehearing filed herein by Midwestern on November 12, 1964, is hereby granted for purposes of more orderly and more adequate consideration.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MINNESOTA POWER & LIGHT COMPANY, PROJECT NO. 2360

ORDER ISSUING LICENSE (MAJOR) AND DENYING REQUEST FOR DISCLAIMER OF JURISDICTION

(Issued December 11, 1964)*

Application was filed on April 25, 1963, and later supplemented, by Minnesota Power & Light Company (Applicant), of Duluth, Minnesota, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2360, known as the St. Louis River Project, located on the St. Louis, Cloquet, Whiteface, Skunk, Beaver, and Otter Rivers, in Carlton and St. Louis Counties, Minnesota.

According to the application, the project consists of four hydroelectric developments on the St. Louis River having a total installed capacity of 83,350 kilowatts, and which are known as: (1) Knife Falls Development at river mile 34.3; (2) Scanlon Development at river mile 32.0; (3) Thomson Development at river mile 24.8; and (4) Fond du Lac Development at river mile 22.5. In addition, the project embraces five storage reservoirs having a total storage capacity of 337,870 acre-feet which are located on upstream tributaries of the St. Louis River and which are known as: (1) Whiteface Dam and Reservoir on Skunk and Whiteface Rivers, 126.0 miles above the mouth of the St. Louis River; (2) Boulder Lake Dam and Reservoir on Otter River, 81.5 miles above the mouth of the St. Louis; (3) Rice Lake Dam and Reservoir on Beaver River,

*Rehearing granted by order issued February 5, 1965.

79.2 miles above the mouth of the St. Louis; (4) Island Lake Dam and Reservoir on Cloquet River, 74.0 miles above the mouth of the St. Louis; and (5) Fish Lake Dam and Reservoir on Beaver River, 7.0 miles above the mouth of the St. Louis.

Also according to the application, the project was constructed by predecessor companies of Applicant over a period of years from 1907 through 1927. Applicant acquired the Scanlon and Knife Falls Developments in 1923, the Fond du Lac Development in 1924, and the Thomson Falls Development in 1927. There have been few major constructural changes in the four hydroelectric developments since 1935. The earliest and most important of which were with respect to the Thomson Development and consisted of the installation of a 12,000 kilowatt generator in 1949 and the raising of the reservoir five feet in 1950–1951.

According to available records, the St. Louis River has been extensively used since early days for substantial log driving and the floating of canoes by fur traders from its mouth in Lake Superior at least to a point above the Knife Falls Development at river mile 34.3, notwithstanding the rapids between Fond du Lac and Thomson reservoirs. Applicant's storage reservoirs have caused fluctuations in the St. Louis River. For example, in December of 1959, their storage releases increased the St. Louis River elevation at the Scanlon gage at river mile 31.4 on the average of about 1½ feet. On the basis of these facts, we are herein denying the alternative request in the application for license that we disclaim jurisdiction over the St. Louis River Project.

In accordance with the criteria set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of January 1, 1950 and a termination date of December 31, 1993.

The Secretary of the Army and the Chief of Engineers have advised that the plans of the project structures affecting navigation have been approved pursuant to Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project certain conditions in the interests of fish and wildlife resources.

The Department of Health, Education and Welfare recommended that Commission action on the application be held in abeyance until Applicant and State agencies have had an opportunity to complete the preliminary review of water control quality, since the project affects the water quality in the river system involved to a substantial degree. However, rather than to unduly delay the issuance of this license for the project, we are including herein a special condition to provide for modification of the project operations as may be reasonably necessary to alleviate adverse water quality upon completion of the current studies by Applicant and participating agencies.

The Commission finds:

(1) The project is located on navigable waters of the United States and affects downstream navigable capacity.

(2) Applicant is a corporation organized under the laws of the State of Minnesota, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 111,000 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(7) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of this license.

The Commission orders:

(A) This license is hereby issued to Minnesota Power & Light Company (Licensee) of Duluth, Minnesota, under Section 4(e) of the Federal Power Act (Act) for a period effective as of January 1, 1950 and terminating December 31, 1993, for the continued operation and maintenance of constructed Project No. 2360, located on the St. Louis River, a navigable water of the United States, and the Beaver, Cloquet, Otter, Whiteface and Skunk Rivers, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) The St. Louis River Project consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purpose of the project, whether such lands or interests therein are owned or held by the Licensee or by the United States; such project area and project boundary being more generally shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2360-1) General Map of Project Area; (FPC No. 2360-2) Fond du Lac Hydro-electric Station; (FPC No. 2360-3) Thomson Hydroelectric Station; (FPC No. 2360-4) Scanlon Hydroelectric Station; (FPC No. 2360-5) Knife Falls Hydroelectric Station; (FPC No. 2360-6) Fish Lake and Rice Lake Reservoirs; (FPC No. 2360-7) Boulder Lake and Island Lake Reservoirs; (FPC No. 2360-8) Whiteface Reservoir.

Exhibit K: (FPC No. 2360-9) Key Map;

Sheets 1, 2 and 3, of 32 (FPC Nos. 2360-10, -11 and -12) showing the Fond du Lac, Thomson, Scanlon and Knife Falls Hydroelectric Developments;

Sheets 8 to 17, inclusive, of 32 (FPC Nos. 2360-17 to -26, inclusive) showing the Fish Lake, Rice Lake, Island Lake and Boulder Lake Reservoirs; and

Sheets 30, 31 and 32 of 32 (FPC Nos. 2360-39, -40 and -41) showing the Whiteface Reservoir.

(ii) project works comprising:

Fond du Lac Development—Located on the St. Louis River 22.5 miles upstream from the mouth of the river at the western end of Lake Superior, consisting of

a concrete gated spillway section and an earthfill dam; an intake structure with two 18-foot diameter penstocks (only one of which is in use) a reservoir having a capacity of 1,280 acre-feet at a normal pool elevation of 681.42 feet; a powerhouse containing one 15,000-hp turbine connected to one 12,000-kw generator; a substation; and other appurtenant transmission and electrical facilities;

Thomson Development—Located 2.3 miles above the Fond du Lac Development, consisting of a concrete main dam containing two spillway sections and a sluice gate structure; seventeen small rock or earthfill or concrete structures that span depressions in the natural rock ridge; a reservoir with a full pool elevation of 1,070.66 feet; a canal 10,750 feet long connecting the Upper and Lower headgate houses; two surge tanks, one 230 feet high and one 240 feet high; a powerhouse containing six turbines with a capacity of 89,000 hp connected to six generators having a capacity of 67,350-kw; step-up transformers; a switchyard; and other appurtenant transmission and electrical facilities;

Scanlon Development—Located 7.2 miles above the Thomson development consisting of two gated concrete gravity type dam sections connected by a mid stream island; a reservoir with a normal pool elevation of 1,120.8 feet; a concrete powerhouse containing four 615-hp turbines each connected to a 400-kw generator; a substation; and other appurtenant transmission and electrical facilities;

Knife Falls Development—Located 2.3 miles above the Scanlon development consisting of one major and two minor structures, the major structure consisting of three separate gate sections, a powerhouse section, a spillway section, and several non-overflow sections; a powerhouse containing three 1,100-hp turbines each connected to a 800-kw generator; the minor structures containing tainter and sluice gate sections; a reservoir with a normal pool elevation of 1,179.64 feet; and other appurtenant transmission and electrical facilities;

Fish Lake Dam and Reservoir—Located on the Beaver River near its confluence with the Cloquet River, 15 air miles north of Duluth, consisting of an earth-fill and concrete dam, a reservoir containing about 39,650 acre-feet at a full pool elevation of 1,359 feet, and other appurtenant facilities;

Rice Lake Dam and Reservoir—Located on Beaver River 12 air miles north of Duluth, and discharging into Fish Lake, consisting of an earth-fill and concrete dam, a reservoir with a capacity of 15,360 acre-feet at maximum pool elevation of 1,377 feet, and other appurtenant facilities;

Island Lake Dam and Reservoir—Located on Cloquet River 15 air miles about Duluth, consisting of an earth-fill and concrete dam, a reservoir with a capacity of 171,500 acre-feet with a maximum pool elevation of 1,370 feet, and other appurtenant facilities;

Boulder Lake Dam and Reservoir—Located on Otter River 18 air miles north of Duluth, consisting of a concrete arch and earth-fill dam, a reservoir with a capacity of 29,400 acre-feet at a maximum pool elevation of 1,391 feet, and other appurtenant facilities; and

Whiteface Dam and Reservoir—Located on the Skunk and Whiteface Rivers 40 air miles north of Duluth, consisting of an earth-fill and concrete dam, a reservoir with a capacity of 81,920 acre-feet at a maximum pool elevation of 1,462 feet, and other appurtenant facilities; the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L: General Design Drawings.

Sheet No.	FPC No.	Title
Fond du Lac Hydroelectric Station		
Sheet 1 of 28	2360-42	General layout.
Sheet 3 of 28	2360-44	East abutment—plan and elevation.
Sheet 5 of 28	2360-46	Dam—west abutment—plan and elevation.
Sheet 6 of 28	2360-47	Dam—spillway plan, section excavation.
Sheet 7 of 28	2360-48	Dam—spillway east wing—wall and trash gate.
Sheet 8 of 28	2360-49	Masonry plan, elevation 590.
Sheet 9 of 28	2360-50	Masonry plan, elevation 610.
Sheet 14 of 28	2360-55	Plan at elevation 590.5.
Sheet 15 of 28	2360-56	Intake—masonry horizontal section.
Sheet 16 of 28	2360-57	Intake masonry—elevation.
Sheet 21 of 28	2360-62	Typical longitudinal sections.
Sheet 22 of 28	2360-63	Typical floor plans.
Sheet 23 of 28	2360-64	Sections and elevations.
Sheet 25 of 28	2360-66	North and south elevations.
Sheet 27 of 28	2360-68	East elevation.
Sheet 28 of 28	2360-69	Switchyard location.
Rice Lake Reservoir		
Sheet 1 of 1	2360-70	Details of dam.
Fish Lake Reservoir		
Sheet 1 of 1	2360-71	Details of dam.
Island Lake Reservoir		
Sheet 1 of 15	2360-72	Map of main dam.
Sheet 2 of 15	2360-73	Main dam—general plan.
Sheet 3 of 15	2360-74	Main dam—wasteway and draft tube floors.
Sheet 11 of 15	2360-82	Main dam—wasteway arch.
Sheet 12 of 15	2360-83	Main dam—log sluice platform.
Sheet 13 of 15	2360-84	Main Dam—south platform and bridge braces.
Sheet 14 of 15	2360-85	Main dam—fishways.
Sheet 15 of 15	2360-86	1962 conversion of north dike to earth fill.
Scanlon Hydroelectric Station		
Sheet 1 of 6	2360-87	General layout.
Sheet 2 of 6	2360-88	Floor plan of powerhouse.
Sheet 3 of 6	2360-89	Powerhouse elevations.
Sheet 4 of 6	2360-90	Section through powerhouse.
Sheet 5 of 6	2360-91	Plans and sections of tainter gates in west channel.
Sheet 6 of 6	2360-92	Plan and section of spillway and tainter gates in east channel.
Knife Falls Hydroelectric Station		
Sheet 1 of 10	2360-93	General layout.
Sheet 2 of 10	2360-94	Plan of powerhouse.
Sheet 3 of 10	2360-95	North, south and west elevation.
Sheet 4 of 10	2360-96	East elevation, gallery and section through powerhouse.
Sheet 5 of 10	2360-97	Section through powerhouse substructure.
Sheet 6 of 10	2360-98	Bark and log sluice details.
Sheet 7 of 10	2360-99	Leffel vertical turbine.
Sheet 8 of 10	2360-100	Details of tainter gates 6, 7 and 8.
Sheet 9 of 10	2360-101	Details of tainter gates 10-22 and miscellaneous section.
Sheet 10 of 10	2360-102	North channel dam—Details.
Whiteface Reservoir		
Sheet 1 of 19	2360-103	Skunk Creek outlet location map.
Sheet 2 of 19	2360-104	Skunk Creek outlet approach channel and tower.
Sheet 3 of 19	2360-105	Skunk Creek outlet conduit and outlet channel.
Sheet 9 of 19	2360-111	General plan and sections.
Sheet 10 of 19	2360-112	Middle wall and sluiceway.
Sheet 11 of 19	2360-113	East retaining wall, fishway and buttresses.

Sheet No.	FPC No.	Title
		Thomson Hydroelectric Station
Sheet 1 of 27	2360-122	General layout.
Sheet 2 of 27	2360-123	General plan of reservoir structures.
Sheet 3 of 27	2360-124	Plan and south elevation, main dam sluice gates.
Sheet 4 of 27	2360-125	North, east and west elevations, main dam sluice gates.
Sheet 5 of 27	2360-126	Sluice gate house.
Sheet 9 of 27	2360-130	Upper gate house—plan.
Sheet 10 of 27	2360-131	Upper gate house—elevation and section.
Sheet 11 of 27	2360-132	Lower gate house—plan and elevation.
Sheet 12 of 27	2360-133	Miscellaneous sections at lower gate house.
Sheet 13 of 27	2360-134	Flowlines and penstocks.
Sheet 14 of 27	2360-135	Boiler house—plan, section and elevation
Sheet 16 of 27	2360-137	Cross receiver house—plans, elevation and sections.
Sheet 18 of 27	2360-139	Surge tank No. 1.
Sheet 19 of 27	2360-140	Surge tank No. 2.
Sheet 20 of 27	2360-141	Switchyard locations.
Sheet 21 of 27	2360-142	Floor plan at elevation—699.66.
Sheet 22 of 27	2360-143	Floor plan at elevation—687.16.
Sheet 23 of 27	2360-144	Floor plan at elevation—719.66.
Sheet 24 of 27	2360-145	Powerhouse—east and west elevations.
Sheet 25 of 27	2360-146	Powerhouse—south elevation.
Sheet 26 of 27	2360-147	Cross section through powerhouse.
Sheet 27 of 27	2360-148	Sections 1917 extension to powerhouse.
		Boulder Lake Reservoir
Sheet 1 of 7	2360-149	General plan and location.
Sheet 2 of 7	2360-150	Spillway arches.
Sheet 5 of 7	2360-153	Assembly—log gate and sluice.
Sheet 6 of 7	2360-154	Fishway.
Sheet 7 of 7	2360-155	Plans, profiles and sections for all retaining dikes.

Exhibit M: Ten typewritten sheets entitled, "General Descriptions and Specifications of Equipment", filed in the Commission on April 25, 1963.

(iii) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of any such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-3 (Revised August 1, 1964) entitled, "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (32 FPC 1114), which terms and conditions, designated as Articles 1 through 29, are attached hereto and made a part hereof, and subject to the following special conditions set forth herein as additional articles:

Article 30. The Licensee shall pay to the United States the following annual charge, effective as of January 1, 1950:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purpose is 111,000 horsepower.

Article 31. The Licensee shall submit for Commission approval Exhibits F and K showing project lands and project boundary prepared in accordance with the Commission's rules and regulations, within one year from the date of issuance of this license.

Article 32. The Licensee shall submit for Commission approval additional Exhibit L drawings for the Whiteface River main dam, Rice Lake dam, Fish Lake

dam, and South dike at Island Lake reservoir within one year from the date of issuance of this license.

Article 33. The Licensee shall, following completion and review of the current cooperative water quality studies being conducted at the project, install such facilities as may be reasonably necessary and/or modify project operations as may be reasonably necessary in the interest of improving the water quality of the St. Louis River, as may be ordered by the Commission upon its own motion or upon the recommendations of the Minnesota State Departments of Health and Conservation or the Secretary of Health, Education, and Welfare, to the extent that such modifications are consistent with the primary purpose of the project and in the public interest to do so, after notice and opportunity for hearing.

Article 34. The Commission reserves the right to determine at a later date what additional transmission facilities, if any, shall be included in this license as part of the project works.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) Applicant's afore-mentioned request that we disclaim Commission jurisdiction over the St. Louis River Project is hereby denied.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgement of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE NORTHWEST PAPER COMPANY, PROJECT NO. 2363

ORDER ISSUING LICENSE (MAJOR) AND DENYING REQUEST FOR DISCLAIMER OF JURISDICTION

(Issued December 11, 1964)*

Application was filed on April 25, 1963 by The Northwest Paper Company (Applicant) of Cloquet, Minnesota, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2363, known as the Cloquet Project, located on the St. Louis River, in the City of Cloquet, Carlton County, Minnesota.

According to the application, the original timber crib dam and powerhouse were constructed in 1898 and 1899 by a predecessor of Applicant and included seven turbines having a total capacity of 6,240 horsepower driving various paper mill machinery and one 96 horsepower turbine connected to a 110 V. generator. Applicant was organized in 1910 and acquired all the properties of its predecessor. Beginning in 1914 power generation was installed to replace abandoned wood grinders. In 1948–1949, the timber crib dam was replaced by a concrete structure including modern flood control gates.

According to available records, the St. Louis River has been extensively used since early days for substantial log driving and the floating of canoes by fur traders from its mouth in Lake Superior at least to a point above Minnesota Power & Light Company's Knife Falls Development at river mile 34.3. The

*Rehearing granted by order issued February 5, 1965.

Cloquet Project is located downstream from the Knife Falls Development. On the basis of these facts, we are herein denying the alternative request in the application for license that we disclaim jurisdiction over the Cloquet Project.

In accordance with the criteria set forth in our April 25, 1962, Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of July 1, 1948 and a termination date of December 31, 1993.

The Secretary of the Army and the Chief of Engineers have reported that the plans of the project structures affecting navigation are satisfactory.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project certain conditions in the interests of fish and wildlife.

The Department of Health, Education, and Welfare has reported that the project is not known to have created any water quality or vector control problems and none is expected, as apparently no changes in operation are proposed.

Since Exhibits J, K and L filed as part of the application do not conform to the Commission's rules and regulations, we are herein requiring Applicant to file revised exhibits prepared in accordance with the Commission's rules and regulations.

The Commission finds:

(1) The project is located on navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of Minnesota, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 7,300 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(7) Exhibit M filed as part of the application and described in paragraph (B) below conforms to the Commission's rules and regulations and should be approved as part of this license.

The Commission orders:

(A) This license is hereby issued to The Northwest Paper Company (Licensee) of Cloquet, Minnesota, under Section 4(e) of the Federal Power Act (Act) for a period effective as of July 1, 1948 and terminating December 31, 1993, for the continued operation and maintenance of constructed Project No. 2363, located on the St. Louis River, a navigable water of the United States, subject to the terms and conditions of the Act which is incorporated herein by reference as a

part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Cloquet Project No. 2363 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States;

(ii) project works consisting of: (a) a concrete gravity dam about 47 feet high and 369 feet long including a non-overflow section about 152.5 feet long, a gated spillway section about 185.5 feet long (with 7 tainter gates, each 15 feet high by 20 feet long) and a non-overflow section about 31 feet long; (b) a reservoir with negligible storage capacity (normal elevation 1161.29 feet M.S.L.); (c) a powerhouse integral with the dam, adjacent to the right bank, containing a 2,500 hp turbine connected to a 2,250 kva generator, two 1,250 hp turbines connected to two 1,100 kva generators, a 600 hp turbine connected to a 500 kva generator, an 880 hp turbine connected to an 800 kva generator, and a 1,210 hp turbine connected to an 1,100 kva generator; and (d) appurtenant facilities; the general description of which is shown on Exhibit M: Two typewritten pages, "General Description of Project", filed in the Commission April 25, 1963.

(iii) all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-3 (Revised August 1, 1964) entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (32 FPC 1114), which terms and conditions, designated as Articles 1 through 29, are attached hereto and made a part hereof, and subject to the following special conditions set forth herein as additional articles:

Article 30. The Licensee shall pay to the United States the following annual charge, effective as of July 1, 1948:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purpose is 7,300 horsepower.

Article 31. The Commission reserves the right to determine at a later date what additional transmission facilities, if any, should be included in this license as part of the project works.

Article 32. The Licensee shall, within six months from the date of issuance of this license, submit for Commission approval revised Exhibits "J", "K" and "L" prepared in accordance with the Commission's rules and regulations.

(D) Exhibit M designated and described in paragraph (B) above is hereby approved as part of this license.

(E) Applicant's afore-mentioned request that we disclaim Commission jurisdiction over the Cloquet Project No. 2363 is hereby denied.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act,

and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SABINE RIVER AUTHORITY OF TEXAS AND SABINE RIVER AUTHORITY OF LOUISIANA, PROJECT NO. 2305

ORDER APPROVING REVISED EXHIBIT L DRAWING

(Issued December 11, 1964)

On July 23, 1964, Sabine River Authority of Texas and Sabine River Authority of Louisiana, joint licensees for Project No. 2305, filed for Commission approval a revised Exhibit L drawing showing a change in the upstream slope protection for the earth embankment.

The licensee's initial proposal called for rock riprap as slope protection for the upstream face of the earth embankment of the Toledo Bend Dam. Inasmuch as stone for riprap is not available locally, the licensees in their construction plans and specifications called for alternate bids on soil-cement as well as rock riprap for protection of the upstream slope of the dam. A bid providing for soil-cement protection is nearly $600,000 less than the cost of rock riprap.

Soil-cement on the upstream face of a dam consists of soil or earth, portland cement and water properly mixed and placed in layers for compaction. When soil suitable for a durable soil-cement mixture is available, a soil-cement facing can be constructed that is competitive in performance and cost with rock riprap in some areas where the latter is not available locally. Our staff analysis of the licensees' specification shows that the materials and method of construction proposed are adequate for the proposed soil-cement protective facing.

The Commission finds:

The following described revised exhibit conforms to the Commission's rules and regulations and should be approved as part of the license for the project, and Exhibit L, Sheet 5 (FPC No. 2305–23), now part of the license and which has been superseded, should be eliminated from the license.

Exhibit L, Sheet 5 (FPC No. 2305–36) showing Embankment-Typical Sections.

The Commission orders:

The revised exhibit described in the above finding is hereby approved as part of the license for Project No. 2305 and the superseded exhibit described in the same finding is hereby eliminated from the license for the project.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ARIZONA PUBLIC SERVICE COMPANY, DOCKET NO. E-7182

ORDER AUTHORIZING SALE OF FACILITIES

(Issued December 14, 1964)

Arizona Public Service Company (Applicant), incorporated under the laws of the State of Arizona and doing business in the States of Arizona and New

Mexico, filed an application on September 15, 1964, for an order pursuant to Section 203 of the Federal Power Act, requesting authorization to sell a 230 kv oil circuit breaker, less relaying equipment, and a 230 kv disconnect switch and associated metering equipment to the Bureau of Reclamation of the Department of the Interior of the United States. Applicant is engaged in rendering electric and gas utility services in Arizona. Electric service is rendered in the Counties of Maricopa, Yuma, Navajo, Apache, Yavapai, Pinal, Gila, Cochise, Coconino, and Pima, and gas service is rendered in the Counties of Gila, Graham, Maricopa, Cochise, Pima, Pinal, and Yuma.

The facilities to be sold to the Bureau of Reclamation are located at the Prescott Substation of the Parker Davis Project of the United States and comprise part of the interconnected transmission system and terminal facilities at the substation.

The facilities are to be sold by the Applicant at an amount based on the installed cost of the facilities as determined by certified cost data provided by the Applicant, less depreciation at the rate of 3% per year. The consideration as of June 30, 1964 would have been $153,137. The consideration of $153.137 is $2,509 more than original cost depreciated of $150,628. Therefore, the Applicant will have a gain of $2,509 on the sale of the facilities. The Applicant proposes to credit this gain to Account 434, Miscellaneous Credits to Surplus.

Under a "Contract for Interconnections and Transmission Service" between the Bureau and the Applicant, dated September 3, 1964, the two parties have agreed that in order to achieve a fair division of transmission line facilities for purposes set forth in the contract and to avoid insofar as practicable the facilities of one party being located in the substation of the other party, the Applicant will sell and the Bureau will purchase "A 230 kv oil circuit breaker, less relaying equipment, a 230 kv disconnect switch and associated metering equipment presently in place at the Prescott Substation of the Parker Davis Project of the United States."

In connection with the Interconnection Agreement, the Applicant represents that it was necessary to decide on ownership of a number of oil circuit breakers, and it was felt preferable to have the breakers owned by the party owning the substation. Hence, it was deemed consistent with this policy to have this breaker owned by the United States rather than by Applicant.

According to the application, the proposed disposition to the Bureau of Reclamation will have no effect upon any contract of the Applicant for purchase, sale or interchange of electric energy and that there will be no change in the location, use or operation of facilities after the transfer since facilities will continue in use and remain in place despite change of ownership.

Written notice of this application has been given to the Arizona Corporation Commission and to the Governor of the State of Arkansas. Notice was also published in the Federal Register on October 1, 1964 (29 F.R. 13549), stating that any person desiring to be heard or to make any protest with reference to said application should on or before October 12, 1964, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No protest or petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued July 6, 1961, in *Arizona Public Service Company*, Docket No. E-6981 (26 FPC 36).

(2) By the proposed sale of facilities, Applicant will dispose of part of its facilities subject to the jurisdiction of the Commission within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed sale of facilities of Applicant, as described above upon the terms and conditions set forth in the application and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

(4) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed sale by Applicant of the aforementioned transmission line facilities all as described above, are authorized and approved upon the terms and conditions and for the purposes set forth in the application, subject to the provisions of this order.

(B) Applicant shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) This authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, services, accounts, evaluation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body, and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted by the Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TEX-STAR OIL & GAS CORP., DOCKET NO. CI65-418

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING FPC GAS RATE SCHEDULE FOR FILING

(Issued December 14, 1964)

On November 2, 1964, Tex-Star Oil & Gas Corp. (Applicant) filed in Docket No. CI65-418 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Cities Service Gas Company from the South Bishop Field, Ellis County, Oklahoma, all as more fully set forth in the application.

Concurrently with the subject application Applicant submitted a copy of the related contract which will hereinafter be accepted for filing as Applicant's FPC gas rate schedule.

After due notice, no petition or notice to intervene or protest to the granting of the application has been received.

At a hearing held on December 11, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including

the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The sale of natural gas hereinbefore described, as more fully described in the application herein, will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sale by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The sale of natural gas by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the related contract submitted by Applicant should be accepted for filing and designated as Applicant's FPC gas rate schedule.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued, upon the terms and conditions of this order, authorizing the sale by Applicant of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary for such sale, all as hereinbefore described and as more fully described in the application and exhibits in this proceeding.

(B) The certificate granted in paragraph (A) above is not transferable and shall be effective only so long as Applicant continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(C) The grant of the certificate issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Applicant. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contract herein involved. Nor shall the grant of the certificate aforesaid for service to the particular customer involved imply approval of all of the terms of the contract, particularly as to the cessation of service upon termination of said contract, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificate aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sale of natural gas subject to said certificate.

(D) The related contract dated October 29, 1964, submitted by Applicant is accepted for filing and designated as Tex-Star Oil & Gas Corp., FPC Gas Rate Schedule No. 39 to be effective on the date of initial delivery.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP65-70

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 14, 1964)

On September 14, 1964, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP65-70 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of an annual volume of 2,000,000 Mcf of natural gas to Carolina Pipeline Company (Carolina), an existing customer, all as more fully set forth in the application.

The subject sale would be made pursuant to Applicant's proposed FPC Gas Rate Schedule ACQ-2 (annual contract quantity—Zone 2). Such sale will be made in addition to the existing sales to Carolina made under Applicant's FPC Gas Rate Schedules CD-2 and E-2 and by means of existing facilities. Further, the proposed sale will be on an off-peak basis when capacity is available in Zone 2.

The application indicates that Carolina has need for ACQ service in Zone 2 similar to that rendered by Applicant in Zone 3. Further, it appears that the proposed service will enable Carolina to serve its market area with a greater degree of effectiveness since volumes of excess gas available to Carolina under Applicant's Rate Schedule E-2 have not proved sufficient to meet the requirements of Carolina's system.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 11, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware Corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G-1143 (7 FPC 145).

(2) The proposed transportation and sale of natural gas by Applicant hereinbefore described, as more fully described in the application in this proceeding, will be in interstate commerce, subject to the jurisdiction of the Commission, and such proposed transportation and sale are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas

Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Transcontinental Gas Pipe Line Corporation, to sell and deliver natural gas as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) (b), (c) (3) and (e) of Section 157.20 of such Regulations.

(C) The sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 3 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman: L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

AMERICAN LOUISIANA PIPE LINE COMPANY, DOCKET NO. CP65-69

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 15, 1964)

On September 14, 1964, American Louisiana Pipe Line Company (Applicant) filed in Docket No. CP65-69 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 1.9 miles of 30-inch pipeline crossing the Cumberland River at a point located in Trigg and Lyon Counties, Kentucky, all as more fully set forth in the application. This line, a second river crossing, will parallel the existing line crossing the River.

Applicant states that the second line is required to assure the continuity of service which might be interrupted due to the construction of a dam on the Cumberland below the present river crossing of its pipeline. The existing line will be submerged by the reservoir which will be created thus rendering maintenance of the line difficult and expensive.

The estimated cost of the proposed facilities is $498,000, which will be financed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 11, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, American Louisiana Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order accompanying Opinion No. 276 in Docket No. G-2306, *et al.*, issued October 1, 1954 (13 FPC 380).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation of natural gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, American Louisiana Pipe Line Company, to construct and operate the proposed facilities as hereinbefore described, all as more fully described in the application, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP65-77

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 15, 1964)

On September 18, 1964, Cities Service Gas Company (Applicant) filed in Docket No. CP65-77 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation during the balance of the calendar year 1964 of facilities consisting of taps and service lines, meters and regulating equipment for the purpose of making direct industrial sales and deliveries of natural gas to interruptible customers, all as more fully set forth in the application.

The purpose of this "budget-type" application is to enable Applicant to act with dispatch in establishing new delivery points for direct sales which will not exceed 100,000 Mcf annually and will not be used in consumers boilers for fuel purposes.

The estimated cost of the proposed facilities to be constructed hereunder is $64,000, which costs will be financed from funds on hand.

Deliveries of natural gas through the proposed facilities will be a minimum of 25¢ per Mcf for direct industrial sales, while the jurisdictional interruptible rates for Zones I and II are 21.3 and 23.2¢ per Mcf respectively.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 11, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G-298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application and exhibits in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant to construct and operate the kind and number of facilities proposed by it in the application and to transport and sell natural gas to interruptible customers during the remainder of the calendar year 1964.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable regulations under the Natural Gas Act and particularly the terms and conditions set forth in Section 157.7(c) thereof.

(C) Applicant shall submit within 60 days after the expiration of the authorization herein granted, a statement showing by projects: (a) a description of each project or projects constructed, (b) the location, (c) the actual cost, (d) name and address of customer served, (e) estimated peak day deliveries and (f) nature of use to which the gas purchased is to be put.

(D) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Cities Service Gas Company for firm service to its customers.

(E) The authorization granted is hereby limited to construction during the period between the date of this order and December 31, 1964.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64-99

FINDINGS AND ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 15, 1964)

On August 18, 1964, El Paso Natural Gas Company (Applicant) filed in Docket No. CP64-99 an application to amend further the Commission's order issued February 18, 1964, 31 FPC 422, in said docket, as amended, by authorizing Applicant to continue to participate, as to its one-third interest, in certain additional testing activities of the Jackson Prairie Storage Unit, including an increase in the volumetric limitation on the inventory of gas in said storage reservoir from 600,000 Mcf to 1,400,000 Mcf, for a period continuing through June 30, 1965, or until divestiture of Applicant's Northwest Division System, whichever first occurs, all as more fully set forth in the application to amend in this proceeding.

The order of February 18, 1964, as amended, authorized Applicant to construct and operate certain facilities; to sell and deliver natural gas to Washington Natural Gas Company (Washington Natural) and Washington Water Power Company (Water Power) and, with respect to Applicant's interest therein, to share in the cost of facilities to be constructed and operated by Water Power, all solely for the purpose of testing the Jackson Prairie Storage Unit. The total estimated cost, which is to be shared equally by the three participants, of the project was $1,019,400. The order, as amended, also limited the gas inventory in the storage reservoir to 600,000 Mcf (14.73 psia) and terminated the authorization on December 31, 1964.

In addition to the request for extension of authorization through June 30, 1965, or until divestiture of Applicant's Northwest Division System, whichever first occurs, it is proposed to increase the volumetric limitation of the inventory gas from 600,000 Mcf (14.73 psia) to 1,400,000 Mcf (14.73 psia), inclusive of the 232,900 Mcf injected through August 1, 1964. Further, Applicants, Washington Natural and Water Power, the latter continuing as Storage Unit Operator, have agreed to increase their individual commitments from $350,000 to $700,000 to finance the proposed expanded testing program which includes the installation of water removal facilities, the drilling of two stratigraphic test wells, four withdrawal wells and one water disposal well. The total estimated cost of continuing the testing program, as proposed, will increase from $1,019,400 to $2,100,000, inclusive of the amount of $1,004,980 expended through August 1, 1964.

The application indicates that the herein proposed project is required to verify the to-date testing conclusion that gas injected into Zone No. 2 is not migrating to Zone No. 1 and to evaluate fully the potential of the underground storage reservoir.

By letter dated September 25, 1964, Applicant was issued a temporary certificate authorizing the subject proposals.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on November 18, 1964 (29 F.R. 15460). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued February 18, 1964, in Docket No. CP64–99, as amended, be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued February 18, 1964, in Docket No. CP64–99, as amended, be and the same is hereby further amended by authorizing:

(1) With respect to Applicant as an undivided one-third interest participant, the extension of the period for joint testing of the Jackson Prairie Storage structure to continue through June 30, 1965, or until divestiture of Applicant's Northwest Division System, whichever first occurs;

(2) The increase in the volumetric limitation on gas inventory in the storage reservoir from 600,000 Mcf (at 14.73 psia) to 1,400,000 Mcf (at 14.73 psia), inclusive of the 232,900 Mcf injected through August 1, 1964, and

(3) The expansion of the testing facilities and activities of the Jackson Prairie Storage Reservoir as proposed at an estimated total cost of up to $2,100,000, inclusive of the amount of $1,004,980 expended through August 1, 1964, with Applicant increasing its one-third commitment to $700,000.

(B) In all other respects said order, as amended, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65–61

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 15, 1964)

On September 1, 1964, El Paso Natural Gas Company (Applicant) filed in Docket No. CP65–61 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the sale and delivery of natural gas by means thereof and the sale and delivery of natural gas by means of certain of Applicant's existing facilities and certain facilities to be constructed and operated by Pacific Gas Transmission Company (Pacific Gas), all as more fully set forth in the application in this proceeding.

Specifically, Applicant proposes the following:

(a) To sell and deliver natural gas to Intermountain Gas Company (Intermountain) for resale in the community of Aberdeen, Idaho, and surrounding irrigation areas. Applicant will utilize its existing Lamb-Weston Meter Station to make said sale. Intermountain will construct and operate distribution and connecting facilities at an estimated cost of $494,175.

(b) To construct and operate a measuring and regulating station adjacent to its existing 10¾-inch O.D. Northwest Division Eugene lateral pipeline and to sell and deliver natural gas to Northwest Natural Gas Company (Northwest) for resale to the Coburg Veneer Company, near Coburg, Oregon. Northwest Natural will construct and operate connecting facilities at an estimated cost of $5,000.

(c) To construct and operate mainline taps on its 20-inch O.D. San Juan-Maricopa pipeline and on its 5-inch O.D. Yuma lateral pipeline and to sell and deliver natural gas to Arizona Public Service Company (Public Service) for resale to Lone Butte Ranch, near Phoenix, Arizona, for irrigation use and to American Concrete and Pipe Company, Yuma County, Arizona, for industrial use. Public Service will construct and operate connecting facilities at an estimated cost of $36,154.

(d) To sell natural gas to California-Pacific Utilities Company (California-Pacific) for resale to Winema Lumber Company, near Beaver Marsh, Oregon. Deliveries will be made out of gas transported by Pacific Gas for the account of Applicant. Applicant will pay for and Pacific Gas will construct, operate and own a measuring and regulating station necessary for the deliveries.* California-Pacific will construct and operate connecting facilities at an estimated cost of $19,960.

The total third year estimated annual and maximum daily requirements for the herein proposed service are 515,705 Mcf and 2,635 Mcf, respectively.

The total estimated cost of Applicant's proposed facilities, including the facilities to be constructed by Pacific Gas, is $17,400, which cost will be financed out of current working funds.

Applicant was issued a temporary certificate on November 23, 1964, authorizing the proposed sale to California-Pacific for resale to Winema Lumber Company.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 11, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G–288 (4 FPC 486).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and sales of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

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*By authorization issued in Docket No. G–17350, Pacific Gas transports for the account of Applicant and delivers natural gas at specified delivery points along Pacific Gas' system in Idaho, Washington and Oregon. Said gas is purchased by Applicant from Westcoast Transmission Company at Kingsgate, British Columbia. In Docket No. CP62–50 Pacific Gas was authorized to construct and operate the facilities necessary to make deliveries of said gas transported for Applicant.

(4) The construction and operation of the proposed facilities and the proposed transportation and sales of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sales and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. CP65-79

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 15, 1964)

On September 21, 1964, as amended on October 1, 1964, Kansas-Nebraska Natural Gas Company, Inc. (Applicant) filed in Docket No. CP65-79 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1965 and the operation of natural gas facilities for the sale of natural gas to direct customers and existing distributors for resale and for miscellaneous rearrangements not resulting in any change of service rendered by means of the facilities involved, all as more fully set forth in the application, as amended, on file with the Commission and open to public inspection.

Applicant proposes to construct a maximum of 12 lateral lines of up to 6⅝-inch diameter pipe with the maximum length being 10 miles and a maximum of 12 taps and meters in order to transport and sell natural gas previously authorized under certificates for transportation or sale to existing distributors at rates on file with the Commission, for resale in existing market areas, and in order to deliver natural gas to direct consumers who will use the gas solely for road building, irrigation, agriculture, general use in schools and hospitals

located in areas outside of local distributors' franchise areas, and seasonal industrial purposes. Applicant also proposes to construct facilities necessary for a maximum of 4 miscellaneous rearrangements which affect direct sales to ultimate consumers.

The total cost of facilities proposed under this application will not exceed a maximum of $300,000 and the total deliveries to any one consumer will not exceed a maximum of 100,000 Mcf of natural gas per year.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 11, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, amendment and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Kansas-Nebraska Natural Gas Company, Inc., a Kansas corporation having its principal place of business in Phillipsburg, Phillips County, Kansas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–259 (3 FPC 966).

(2) The facilities hereinbefore described, as more fully described in the application, as amended, in this proceeding, are proposed to be used in the transportation and/or sale of natural gas in interstate commerce and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $300,000, with the total deliveries to any one customer not to exceed a maximum of 100,000 Mcf of natural gas per year.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(8) The certificate issued hereinafter should be conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Kansas-Nebraska Natural Gas Company, Inc., to construct during the calendar year 1965 the proposed facilities hereinbefore described, as more fully described

in the application, as amended, in this proceeding, and to operate such facilities to sell natural gas to direct customers and to distributors for resale as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set fort hin paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $300,000, with the total deliveries to any one customer limited to a maximum of 100,000 Mcf of natural gas per year.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(E) The certificate issued by paragraph (A) above is expressly conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations and, further, shall not entitle any industrial customer to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

LONE STAR GAS COMPANY, DOCKET NO. CP65-104

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 15, 1964)

On October 16, 1964, Lone Star Gas Company (Applicant) filed in Docket No. CP65-104 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1965 and the operation of routine field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application in this proceeding.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

Total cost of the facilities covered by this application will not exceed a maximum of $1,770,000, with no single project to exceed a cost of $442,500, which costs are proposed to be financed out of funds currently on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 11, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

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The Commission finds:

(1) Applicant, Lone Star Gas Company, a Texas corporation having its principal place of business in Dallas, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 11, 1944, in Docket No. G–442 (4 FPC 565).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $1,770,000, with no single project to exceed a cost of $442,500.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Lone Star Gas Company, to construct during the calendar year 1965, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1965, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $1,770,000, with no single project to exceed a cost of $442,500.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP64–155

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 15, 1964)

On September 23, 1964, Michigan Wisconsin Pipe Line Company (Applicant), filed in Docket No. CP64–155 an application to amend an order of the Commission issued June 2, 1964, 31 FPC 1333, in Docket No. CP64–155, authorizing among other things the delivery by Applicant of a Maximum Daily Quantity (MDQ) of 78,000 Mcf to Wisconsin Power & Light Company (Wisconsin Power), and a Maximum Daily Quantity of 4,000 Mcf to Stoughton Light & Fuel Company (Stoughton).

The application to amend requests modification of the said order so as to authorize an increase in deliveries to Wisconsin Power from 78,000 Mcf to 81,000 Mcf of MDQ under Applicants' Rate Schedule ACQ–1, and a deletion of the authorization for the sale and delivery to Stoughton of an MDQ of 4,000 Mcf under Applicant's Rate Schedule SGS–1, as a result of a merger of Wisconsin Power and Stoughton, all as more fully set forth in the application to amend.

Wisconsin Power has obtained approval of the merger from the Public Service Commission of Wisconsin, and has requested that the service agreements between Michigan Wisconsin and Wisconsin Power and Stoughton tendered for filing by Michigan Wisconsin on July 13, 1964, be superseded and that there be substituted in lieu thereof a new service agreement between Michigan Wisconsin and Wisconsin Power providing for an MDQ of 81,000 Mcf. Applicant requested an effective date of November 1, 1964.

Due notice of the filing of the application to amend and opportunity for hearing thereon have been given by publication in the Federal Register on November 19, 1964 (29 F.R. 15546). No protest or petition to intervene has been filed in the proceeding concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require (1) that the Commission's order issued June 2, 1964, in Docket No. CP64–155 be further amended as hereinafter ordered, and (2) the executed superseding service agreement filed with the Commission on September 23, 1964, be accepted for filing, effective on the date of the issuance of this order.

The Commission orders:

(A) The Commission's order issued June 2, 1964, in Docket No. CP64–155 be and the same is hereby further amended so as to authorize an increase in Maximum Daily Quantity (MDQ) of Wisconsin Power to 81,000 Mcf and a reduction in the Maximum Daily Quantity (MDQ) of Stoughton to zero quantity under Applicant's Rate Schedule ACQ–1, all as hereinbefore described and as set forth in the subject application to amend.

(B) The service agreement filed with the Commission on September 23, 1964, be accepted for filing, effective on the date of issuance of this order.

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MISSOURI NATURAL GAS COMPANY, DOCKET NO. CP65-83

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued December 15, 1964)

On September 25, 1964, Missouri Natural Gas Company (Applicant), filed in Docket No. CP65-83 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Mississippi River Transmission Corporation (Transmission) to establish a physical connection of its natural gas transportation facilities with the proposed gas distribution facilities of the Applicant at a point near the City of Annapolis, Iron County, Missouri and to serve natural gas for resale in that city and its environs, all as more fully set forth in the application.

Applicant states that its estimated third year peak-day and annual volume requirements will be 189 Mcf and 22,315 Mcf respectively. Applicant's presently authorized peak-day volume of 34,480 Mcf is sufficient to meet the requirements of the City of Annapolis and therefore no increase is necessary at this time.

The estimated cost of Applicant's proposed facilities is $51,100, which cost will be financed from funds on hand.

Applicant shows that it has been duly authorized to construct and operate all of the proposed facilities described and referred to in the application by the Public Service Commission of the State of Missouri, by the County Court of Iron County, Missouri and by the City of Annapolis, Missouri.

On October 8, 1964, Transmission filed its answer to the application stating that it has no objection to establishing the requested connection of its facilities with the proposed facilities of the Applicant.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on November 17, 1964 (29 F.R. 15397). No protest or petition to intervene or notice of intervention has been filed in this proceeding.

The Commission finds:

(1) Mississippi River Transmission Corporation, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 29, 1960, in Docket No. CP60-95 (24 FPC 1020).

(2) Applicant, Missouri Natural Gas Company, is a public utility company, duly organized under the laws of the State of Missouri and legally authorized to construct and operate gas distribution facilities and to sell and distribute natural gas within the said state and in the municipality of the City of Annapolis.

(3) It is necessary and convenient, desirable and in the public interest that Transmission be directed to establish a physical connection of its facilities with the facilities proposed to be constructed by Applicant and to deliver natural gas to Applicant the volumes as set forth in the application and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Transmission within one year from the date of this order.

(5) The requirement that Transmission serve Applicant, as proposed, will not place an undue burden upon it nor will Transmission's ability to serve its existing customers adequately be impaired.

The Commission orders:

(A) Mississippi River Transmission Corporation be and is hereby directed to establish physical connection of its natural gas transmission system with proposed facilities of the Applicant and to deliver up to 189 Mcf of natural gas per day and 22,315 Mcf per year during and after the third year of service to the Applicant, all as hereinbefore described and as more fully set forth in the application.

(B) Applicant shall be prepared to receive natural gas through the connecting facilities from Transmission within one year from the date of this order.

(C) Transmission shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP65-106

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 15, 1964)

On October 22, 1964, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP65-106 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1965 and the operation of routine field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application in this proceeding.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the facilities covered by this application will not exceed a maximum of $3,500,000, with no single project to exceed a cost of $500,000, which costs are proposed to be financed out of funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 11, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G-235 (3 FPC 830).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1965 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $3,500,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Natural Gas Pipeline Company of America, to construct during the calendar year 1965, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is hereby limited to construction during the calendar year 1965, and the total expenditures for facilities to be constructed thereunder are hereby limited to a maximum of $3,500,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-56

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 15, 1964)

On August 28, 1964, Southern Natural Gas Company (Applicant), filed in Docket No. CP65-56, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the

construction and operation of facilities and the transportation of natural gas in interstate commerce to Triad Oil and Gas Company (Triad) in Smith County, Mississippi, all as more fully set forth in the application.

Applicant proposes to construct and operate a measuring station on its 18-inch South Line at M.P. 23.9 for the purpose of selling and delivering natural gas on an interruptible basis to Triad. Peak day and annual requirements of Triad of 500 Mcf and 129,600 Mcf, respectively, will be purchased at a cost of 33 cents per Mcf, and delivered at a pressure not less than 175 psig.

The cost of the proposed facilities is $4,100.00, and will be paid for by Triad. After Southern sells 120,000 Mcf to Triad this sum will be refunded to Triad.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 11, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorizations sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Southern Natural Gas Company, a Delaware corporation, having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G-296 (3 FPC 822).

(2) The proposed construction and operation of facilities and the transportation of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application and exhibits filed in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and the transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Southern Natural Gas Company, in this proceeding authorizing the construction and operation of facilities, and the transportation of natural gas in interstate commerce, as hereinbefore described, all as more fully described in the application and exhibits filed in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized by paragraph (A) above shall be constructed and placed in operation within 3 months from the date of the issuance of this order.

(D) The certificate issued by paragraph (A) above is granted on the express condition that the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP65-89

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 15, 1964)

On October 1, 1964, Texas Gas Transmission Corporation (Applicant), filed in Docket No. CP65-89, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities, and the transportation of natural gas in interstate commerce, all as more fully set forth in the application.

Applicant proposes to construct and operate metering and regulating facilities and to receive, measure and transport for the account of Hope Natural Gas Company (Hope), gas to be produced by Hope together with gas to be purchased by Hope from the Exchange Oil & Gas Company (Exchange) and Sinclair Oil & Gas Company (Sinclair), all from one jointly owned well in the Chalkey Field, Cameron Parish, Louisiana.

The transportation of natural gas for the account of Hope will be rendered under the certificate authorization issued to Texas Gas on August 10, 1959, in Docket No. G-17335 and will not involve a change in the presently authorized transportation obligation of Applicant of 100,000 Mcf per day. The rate to be charged for such transportation will be as provided in Rate Schedule X-21 contained in Applicants' FPC Gas Tariff, Original Volume No. II.

The estimated cost of the proposed facilities is $2,790, and will be defrayed from cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, has been filed.

At a hearing held on December 11, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorizations sought, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1948, in Docket No. G-855 (7 FPC 213).

(2) The proposed construction and operation of facilities, and the transportation of natural gas in interstate commerce, as hereinbefore described and as more fully described in the application, filed in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities, and the transportation of natural gas in interstate commerce are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Applicant, Texas Gas Transmission Corporation, authorizing the construction and operation of facilities, and the transportation of natural gas as hereinbefore described, all as more fully described in the application, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, and the transportation of gas authorized in paragraph (A) above shall commence as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations within 3 months of the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TURNBULL & ZOCH DRILLING CO. (OPERATOR), ET AL, DOCKET NO. G-17960, ET AL

ORDER ON APPEAL AFFIRMING ACTION OF THE SECRETARY

(Issued December 15, 1964)

On September 25, 1964, Bright & Schiff, the applicant in Docket No. CI61-1541 filed with the Secretary a document entitled, "Petition for Rehearing and Reconsideration of Order Issued September 11, 1964, And Order Dated May 28, 1964, and to Sever All Matters in Docket No. CI61-1541 from the above Consolidated Proceeding."

On October 7, 1964, by letter, the Secretary rejected this pleading explaining that it was a petition for rehearing of an order denying a motion for rehearing* and that the Natural Gas Act and the Commission's Rules of Practice and Procedure, promulgated thereunder, do not provide for such a pleading.

On November 2, 1964, Bright & Schiff filed a letter with the Secretary, appealing his action in rejecting the September 25 pleading and requesting that the Com-

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*The order of September 11, 1964 [Unreported], herein, was entitled "Order Denying Alternative Motions for Rehearing of Order Consolidating Proceedings for Hearing or for Severance." The "Order Consolidating Proceedings for Hearing" was our procedural order of May 28, 1964 instituting this consolidated proceeding. [Unreported.]

mission render a decision on this pleading. Although this November 2 letter was not filed within the time prescribed, we shall treat it as an appeal under Section 1.7(d) of the Rules of Practice and Procedure, entertain the appeal and affirm the action of the Secretary.

The "Petition" of September 26, did not cite any provision of the Rules or Regulations under which it was filed. It simply restated and elaborated upon the arguments made in its "Motion for Rehearing of Order Issued May 28, 1964, Consolidating Applications; and, In the Alternative, Motion to Sever", of June 29, 1964, which was denied by our order of September 11, 1964. Clearly no useful purpose could be served by entertaining interlocutory pleadings which seek reconsideration after we have already reconsidered and affirmed our prior action. Compare orders issued September 30, 1964 and October 22, 1964, 32 FPC 879 and 1163, respectively, in *United Gas Pipe Line Company*, Docket No. RP63–1; *Philadelphia Electric Power Co.* v. *F.P.C.*, 156 F. 2d 648 (CA3–1946). Should Bright & Schiff be aggrieved by our final order herein, it will be free to file an application for rehearing under Section 1.34 of the Regulations and, should such application be denied, it will have its recourse to the courts.

The Commission orders:

The action of the Secretary of October 7, 1964, rejecting the "Petition for Rehearing and Reconsideration of Order Issued September 11, 1964 and Order Dated May 28, 1964, and To Sever All Matters in Docket No. CI61–1541 from the Above Consolidated Proceeding", is hereby affirmed for the reasons set out hereinabove.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TOWN OF WELLMAN, IOWA, DOCKET NO. CP65–54

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued December 15, 1964)

On August 26, 1964, as amended on October 5, 1964, the Town of Wellman, Washington County, Iowa, (Applicant) filed in Docket No. CP65–54 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Natural Gas Pipeline Company of America (Natural) to establish physical connection of its transmission facilities with the proposed facilities of and to sell natural gas to Applicant for resale and distribution in Wellman, all as more fully set forth in the application, as amended, in this proceeding.

Applicant proposes to construct and operate a distribution system in Wellman and 7.4 miles of 2⅞-inch lateral pipeline connecting the facilities of Natural with the proposed distribution system.

Applicant's estimated third year peak day and annual natural gas requirements are 799 Mcf (14.73 psia) and 95,490 Mcf (14.73 psia), respectively.

The total estimated cost of transmission and distribution facilities for the project is $259,790 which cost will be financed by the issuance of gas revenue bonds.

On September 14, 1964, Natural filed an answer to the subject application stating that it had no objection to the issuance of the requested order.

Due notice of the filing of the application, as amended, and opportunity for hearing thereon has been given by publication in the Federal Register on Novem-

ber 18, 1964 (29 F.R. 15461). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G–235 (3 FPC 830).

(2) Applicant, the Town of Wellman, Iowa, is a municipal corporation incorporated under the laws of the State of Iowa and is empowered to engage in the distribution of natural gas in said town.

(3) It is necessary and desirable in the public interest that Natural be directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 799 Mcf (14.73 psia) of natural gas per day to Applicant, as set forth in the application, as amended, and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to receive gas from Natural, as proposed, within one year from the date on which said order issues.

(5) The requirement that Natural serve Applicant, as proposed, will not place any undue burden upon Natural nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Natural Gas Pipeline Company of America be and it is hereby directed to establish physical connection of its natural gas transportation system with the proposed facilities of Applicant and to sell and deliver up to 799 Mcf (14.73 psia) of natural gas per day to Applicant, all as hereinbefore described and as set forth in the application, as amended.

(B) Natural shall report to the Commission in writing the date of commencement of service to Applicant.

(C) This order is conditioned upon Applicant being prepared to receive natural gas from Natural, as proposed, within one year from the date on which said order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

LONE STAR PRODUCING COMPANY, DOCKET NO. CI62–996

ORDER GRANTING RECONSIDERATION AND FURTHER AMENDING TEMPORARY CERTIFICATE

(Issued December 16, 1964)

On November 27, 1964, Lone Star Producing Company (Producing) filed a request for reconsideration and clarification of the Commission's letter order dated October 29, 1964, granting Producing's application for amendment of the temporary certificate issued September 7, 1962, in Docket No. CI62–996 to the extent of amending the temporary certificate to include sales of gas to Lone Star Gathering Company (Gathering) from the Alfred A. Koenig Lease located in DeWitt County, Texas, but failing to take any action on Producing's request to delete nearly 12,500 acres from approximately 19,200 acres of leasehold interests in DeWitt, Goliad, and Victoria Counties, Texas, which Producing had originally committed to the sale of gas to Gathering under its contract with Gathering dated November 2, 1961.

Producing's request for reconsideration alleges that Producing's request to delete acreage should be granted because: (1) the reserves underlying about 12,460.6 acres deleted by the amendment to Producing's contract with Gathering dated July 1, 1964, were excess when service was commenced; (2) no abandonment of service or facilities will result from the deletion of acreage; (3) the deletion of acreage does not impair Gathering's ability to deliver gas to Gathering's sole purchaser, United Gas Pipe Line Company (United); (4) no public need exists for the reserves underlying the deleted acreage; (5) United has the right under its contract with Gathering to require Gathering to delete acreage so as to restrict to no more than 248.2 MMMcf the total reserves committed by Gathering to making sales to United; (6) Gathering may have to make prepayments for substantial gas volumes if excess reserves are developed; (7) Producing has had to enter into a temporary agreement to sell its gas in intrastate commerce to Houston Pipe Line Company in order to prevent its uncommitted reserves from being drained by Atlantic Refining Company's sales to Houston Pipe Line Company, but even this temporary arrangement as to uncommitted reserves is subjecting Producing's surrounding leases under contract to Gathering to severe drainage; (8) Gathering's limited capacity and marketing outlet prevent it from being able to take Producing's gas fast enough to eliminate drainage of Producing's acreage by other producers selling gas to an intrastate purchaser, and as a direct result of these limitations on capacity and markets, Gathering is obligated under the terms of its contract with Producing to release acreage to the extent necessary to prevent drainage; (9) one of the prime considerations motivating United to enter into an agreement to purchase all of the facilities and to acquire the contracts by means of which Gathering is now supplying gas to United, as proposed in Gathering's and United's joint application filed October 30, 1964, in Docket No. CP65–118, was the understanding that Gathering would rid itself of the large amount of excess acreage which it holds under contract; and (10) Producing's request to delete acreage is required by the public interest because it frees Gathering from the "very real prospect" of having to pay for gas which cannot be taken, eliminates the problem of drainage, will enable Producing to make arrangement to sell gas from its shut-in S. F. Ruschaupt well located in Victoria County, Texas, on acreage to be deleted, and will remove Producing's "very real danger" of losing leases unless it can proceed "fairly promptly" with a development program on the leasehold interests which are the subject of its request to delete acreage.

Producing's request to delete acreage states that it has drilled two wells (Angerstein Nos. 1 and 2) in DeWitt County on acreage which is not covered by its basic contract with Gathering but that these two wells are unitized with 1,222.18 acres which are committed to the sale of gas to Gathering. The Atlantic Refining Company has completed its Schorre Unit No. 1 well in the same producing horizons as Producing's Angerstein Units Nos. 1 and 2. Since Atlantic Refining Company began delivering gas produced from its Schorre No. 1 well to Houston Pipe Line Company (Houston) on October 26, 1964, Producing alleges that its Angerstein Nos. 1 and 2 wells were subjected to drainage until it entered into a temporary arrangement with Houston whereby Producing is delivering gas to Houston at the rate of 16,000 Mcf per day until such time as Producing is able to commit the unitized acreage associated with its Angerstein Nos. 1 and 2 wells to the sale of gas to Houston. Since it appears that leases covering 1,222.18 acres of land are subject to drainage even under Producing's temporary arrangement with Houston, Producing has shown the existence of emergency conditions which justify the amendment of Producing's temporary certificate in Docket No. CI62–996 so as to permit the deletion of the 1,222.18 acres of leasehold interests which have been unitized with Producing's Angerstein Nos. 1 and 2 wells.

However, Producing's request for deletion of acreage asks that a total of about 12,460.60 acres be deleted from the contract under which it sells gas to Gathering. Neither in its request to delete acreage nor in its request for reconsideration has Producing demonstrated reasons showing that emergency conditions exist with respect to the 11,238.42 acres of land which remain committed to the sale of gas to Gathering after deletion of the 1,222.18 acres of land unitized with Producing's Angerstein wells. Producing does not contend that any drainage of the additional 11,238.42 acres will occur because of production of gas from its Angerstein Nos. 1 and 2 wells or because of Producing's plan to commence shortly the drilling of its Angerstein No. 3 well to compensate for the possibility that Sinclair Oil & Gas Company is contemplating the drilling of an offset well on acreage owned by Sinclair.

Producing's other claims regarding Gathering's limitations as to pipeline capacity and marketing arrangements with United have been rendered moot by the filing of Lone Star Gas Company's, Gathering's, and United's aforementioned joint application in Docket No. CP65–118. Under the arrangement contemplated in Docket No. CP65–118, United will become the purchaser of gas from Producing instead of Gathering and the service agreement between Gathering and United, which is the cause of Gathering's existing market limitations, will be cancelled. As to Gathering's alleged pipeline capacity limitations, the application in Docket No. CP65–118 does not indicate in any way that United will limit purchases from the producers in DeWitt, Goliad, and Victoria Counties to an average daily volume of 40,000 Mcf, nor, under the proposals in Docket No. CP65–118, will there be a limitation of 248.2 MMMcf on the quantity of reserves which can be committed to the sale of gas to United.

While it is true that Gathering proposes in Docket No. CP65–118 to assign to United its contract with Producing subject to the amendment of July 1, 1964, which deleted approximately 12,500 acres of the reserves originally committed to the performance of the contract, there is no statement in the application implying that United's take-or-pay problem will be aggravated merely because it is proposing to purchase Gathering's facilities and to acquire by assignment all of Gathering's contracts with the producers who presently supply gas to Gathering. Likewise, the obligation to allow the producers to delete acreage to prevent drainage is no longer dependent on Gathering's pipeline capacity but is rather dependent on United's plans for operation of the facilities which it proposes to acquire from Gathering.

As for Producing's claim that it must delete acreage in order to find a market for gas to be produced from its shut-in S. F. Ruschaupt well located in Victoria County, Texas, it is noted that one of United's flow diagrams in the application in Docket No. CP65–118 shows the proposed construction of new facilities for the purpose of attaching a newly-developed source of gas to its system. Additionally, Gathering itself has not indicated any difficulty in taking gas from producers who have recently received certificates authorizing them to sell substantial volumes of additional gas to Gathering, including the sale of gas to Gathering from acreage located in Victoria County, Texas, as proposed by Hugh Goodrich in his application filed September 8, 1964, in Docket No. CI65–215. Producing has given no explanation for Gathering's apparent ability to keep receiving new gas supplies offered by other producers while simultaneously having no capacity to receive any additional gas from Producing's shut-in S. F. Ruschaupt well.

There is no support in the proposals in Docket No. CP65–118 for other allegations made by Producing, such as the claim that no public need exists for the reserves underlying the acreage for which authorization to delete is requested,

or its argument that no abandonment of service or facilities will occur if the acreage is deleted as requested, or that the reserves underlying the acreage for which deletion is requested are excess to United's requirements. All of these allegations of fact and conclusions of law which are made by Producing are matters which will have to be determined before the Commission can reach a final decision regarding the application in Docket No. CP65–118.

The discussion above shows that Producing's request to delete acreage is inextricably interrelated with the proposals of Gathering and United in Docket No. CP65–118. The Commission's staff is presently endeavoring to obtain from the applicants in Docket No. CP65–118 considerable data which were not included in the application. Producing's application will be consolidated with the application in Docket No. CP65–118 and further action will be taken on both the application in Docket No. CP65–118 and Producing's request to delete acreage in Docket No. CI62–996 when the information sought by the staff regarding the application in Docket No. CP65–118 has been furnished.

The Commission finds:

(1) Emergency conditions exist which require the granting of Producing's request for amendment of its temporary certificate to permit deletion of 1,222.18 acres of unitized leases associated with Producing Angerstein Units Nos. 1 and 2.

(2) Producing has not shown that emergency conditions exist which require the granting of its request to amend its temporary certificate so as to permit the deletion of additional leasehold interests totaling approximately 11,238 acres.

(3) Decision regarding Producing's request to delete the additional acreage referred to in paragraph (2) should be deferred until such time as the applicants have furnished all requisite information needed for determining whether the interrelated application in Docket No. CP65–118 should be granted or denied.

The Commission orders:

(A) The temporary certificate issued September 7, 1962, in Docket No. CI62–996 is hereby amended to delete therefrom sales of gas to Lone Star Gathering Company from the unitized acreage associated with Lone Star Producing Company's Angerstein Units Nos. 1 and 2 as described in Producing's Second Supplement to its application filed September 24, 1964, in Docket No. CI62–996 and as shown on the plat accompanying Producing's request for reconsideration filed November 27, 1964.

(B) In all other respects, the temporary certificate issued September 7, 1962, shall remain unchanged and in full force and effect.

(C) Decision on that portion of Producing's request involving deletion of approximately 11,238 acres of additional leasehold interests is hereby deferred until such time as the Commission acts on the interrelated joint application filed October 30, 1964, by Lone Star Gas Company, Lone Star Gathering Company, and United Gas Pipe Line Company in Docket No. CP65–118.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MISSISSIPPI RIVER FUEL CORPORATION, DOCKET NO. G–18686

FINDINGS AND ORDER DISMISSING APPLICATION

(Issued December 16, 1964)

On December 19, 1962, Mississippi River Fuel Corporation (Applicant) filed in Docket No. G–18686, an application to amend an order of the Commission issued June 30, 1959, 21 FPC 917, in Docket No. G–18686, authorizing the operation of facilities certificated in Docket No. G–2417 for the transportation and sale of natural gas on an interruptible basis to the purchaser of Applicant's chemical plant near Crystal City, Missouri. The application to amend seeks authorization to deliver to Armour and Company (Armour) a daily average of 23,000 Mcf of natural gas instead of the originally authorized 13,000 Mcf, all as more fully set forth in the application to amend.

The letter of intent of Armour and Company submitted with the application to amend states that Armour had not made a final decision to expand its plant but that in case of expansion, an additional 10,000 Mcf daily would be required in June, 1964. Since Armour has not indicated the need for the additional gas the application to amend the Commission's order of June 30, 1959, should be dismissed.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the application to amend the order of the Commission issued on June 30, 1959, in Docket No. G–18686, be dismissed.

The Commission orders:

The application to amend the order of the Commission issued June 30, 1959, in Docket No. G–18686, filed in this proceeding on December 19, 1962, be and the same is hereby dismissed.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PUGET SOUND POWER & LIGHT COMPANY, PROJECT NO. 2150

ORDER DETERMINING ACTUAL LEGITIMATE ORIGINAL PROJECT COST, NET CHANGE IN PROJECT COST, AND PRESCRIBING ACCOUNTING THEREFOR

(Issued December 16, 1964)

Puget Sound Power & Light Company, Licensee for Project No. 2150[1] filed a statement on March 23, 1962 pursuant to Section 4.1 of the Commission's

[1] The project is located on the Baker River, a tributary of the Skagit River in Whatcom and Skagit Counties, Washington. It consists of the Upper Baker River and the Lower Baker River Developments. The license, effective May 1, 1956, for a period of 50 years, authorized, among other things, construction of the Upper Baker River Development and the addition of a third generating unit in the constructed Lower Baker River Development.

Regulations under the Federal Power Act, claiming an actual legitimate original cost for the Upper Baker River Development as of December 31, 1960 in the amount of $46,075,055.53; a net addition to actual legitimate original project cost for the Lower Baker River Development for the period May 1, 1956 through December 31, 1960[2] in the amount of $10,513,684.76; an actual legitimate original cost of project property common to both developments as of December 31, 1960 in the amount of $823,691.93; and an actual legitimate original cost of intangible plant attributable to the project as of December 31, 1960, in the amount of $29,788.84.

The resulting total of all claimed project costs as of December 31, 1960 is $63,992,512.55, all as shown classified by development and by primary plant account in Schedule I attached.

The Commission's staff conducted a field examination of Licensee's books, records and other data for the purpose of ascertaining the correctness of the claimed amounts indicated above. Following the review, tentative agreement, subject to Commission approval, was reached between the staff and Licensee's representatives with respect to adjustments proposed by the staff which are summarized in the attached Schedule I. These adjustments result in (1) a reduction of $281,520 in the claimed actual legitimate original cost of the Upper Baker development as of December 31, 1960; (2) a revision of the previously determined initial cost of the Lower Baker development, a reduction of $4,625;[3] and (3) a reduction of $100,685 in the claimed cost of changes in project plant accounts of the Lower Baker development for the period from May 1, 1956 through December 31, 1960.

The proposed adjustments are to be accomplished by the following composite journal entry:

Account No.		Debit	Credit
101	Electric plant in service—Project No. 2150		$386,830.21
101	Electric plant in service—Nonproject		212,294.02
108	Accumulated provision for depreciation of electric plant in service—Project No. 2150		76,387.66
108	Accumulated provision for depreciation of electric plant in service—Nonproject	$121,523.58	
216	Unappropriated earned surplus	553,988.31	
	Totals	675,511.89	675,511.89

The Washington Utilities and Transportation Commission was advised by letter dated June 18, 1963, of the proposed adjustments and the resulting project

[2] By Commission order issued January 8, 1963 (29 FPC 54), the actual legitimate original cost of the constructed Lower Baker River Development as of May 1, 1956, the effective date of the license, was determined to be $6,550,291.49, the accrued depreciation as of that date to be in the credit amount of $652,227.00, and the resulting net investment as of that date to be $5,898,064.49.

[3] To reclassify land cost of $4,352.00 from Hydraulic Production Land and Land Rights, Lower Baker River Development to Transmission Land and Land Rights, Upper Baker River Development, and to eliminate the costs of land of $273.60 which was sold.

costs. By letter of June 24, 1963, that Commission concurred in the proposed adjustments and accounting disposition thereof.

The Commission finds:

(1) Licensee by its acceptance of the proposed adjustments, including the accounting dispositions and the resulting project cost as of December 31, 1960, and the Washington Utilities and Transportation Commission, by its concurrence in the staff recommendations herein have obviated the necessity for the notice and opportunity to protest, provided by Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act.

(2) The foregoing adjustments and accounting dispositions are reasonable and appropriate for the purposes of the Federal Power Act and therefore should be approved and directed as hereinafter provided.

(3) The actual legitimate original cost of the Upper Baker River development, common and intangible project plant as of December 31, 1960, is hereby determined to be $46,647,016.34, all as shown in attached Schedule I.

(4) The actual legitimate original cost of the constructed Lower Baker River development as of May 1, 1956, the effective date of the license, previously determined (29 FPC 54) to be $6,550,291.49 is hereby determined to be $6,545,665.89 resulting in a revised net investment of Licensee as of that date of $5,893,438.89. The net additions or change in project cost for the Lower Baker development for the period May 1, 1956, through December 31, 1960, is hereby determined to be $10,413,000.11 and the resulting actual legitimate original cost of the Lower Baker River as of December 31, 1960, is hereby determined to be $16,958,666 all as shown in the attached Schedule I.

(5) The total actual legitimate original cost of Project No. 2150 as of December 31, 1960, is hereby determined to be $63,605,682.34 all as classified by developments and primary plant accounts as shown in attached Schedule I.

The Commission orders:

(A) The provisions of Sections 4.4 and 4.5 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The adjustments and accounting dispositions proposed by the staff, agreed to by the Licensee, are hereby approved and directed to be made by the Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed plant accounts for Project No. 2150, showing: the debit balance of $6,545,665.89 as the initial cost of the Lower Baker River development as of May 1, 1956, and the debit balance of $46,647,016.34 as the initial cost of the Upper Baker development including intangible and common plant, as to December 31, 1960; the debit amount of $10,413,000.11 as the net addition or change in project cost of the Lower Baker River development for the period from May 1, 1956 through December 31, 1960; and the debit balance of $63,605,682.34 as the actual legitimate original cost of the entire Project No. 2150 including common plant and intangible plant and classified by developments and primary plant accounts as shown in attached Schedule I.

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(D) Licensee shall within 90 days file with the Commission, Federal Power Commission Form No. 7, showing compliance herewith, three copies to be filed with the Commission and two copies to be submitted to the Regional Accountant, San Francisco, California.

SCHEDULE I

Project No. 2150 (Baker River)

PUGET SOUND POWER & LIGHT COMPANY

SUMMARY BY DETAILED PLANT ACCOUNTS OF APPROVED INITIAL COST OF THE LOWER BAKER RIVER DEVELOPMENT AS OF MAY 1, 1956, CLAIMED COST OF CHANGES THERETO FROM MAY 1, 1956, THROUGH DEC. 31, 1960, AND CLAIMED INITIAL COST OF THE UPPER BAKER RIVER DEVELOPMENT AS OF DEC. 31, 1960, WITH ADJUSTMENTS THERETO AND BALANCE AS OF DEC. 31, 1960

Account		As of May 1, 1956			Project plant changes—May 1, 1956, through Dec. 31, 1960				Allowed cost as of Dec. 31, 1960
		As approved [1]	Adjustments	Allowed	As claimed	Adjustments	Allowed		
No.	Title						Before distribution	After distribution	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	LOWER BAKER RIVER DEVELOPMENT								
	Hydraulic Production Plant								
330	Land and land rights	$512,785.14	($4,625.60)	$508,159.54	$15,466.65	($114.87)	$15,351.78	$16,827.08	$524,986.62
331	Structures and improvements	1,066,436.13		1,066,436.13	1,416,538.00	(233.53)	1,416,304.47	2,150,495.82	3,216,931.95
332	Reservoirs, dams and waterways	3,921,601.77		3,921,601.77	2,878,852.53	(8,607.06)	2,870,245.47	3,892,875.42	7,814,477.19
333	Water wheels, turbines and generators	711,285.87		711,285.87	1,996,182.18		1,996,182.18	2,876,259.40	3,587,545.27
334	Accessory electric equipment	197,497.00		197,497.00	179,714.15		179,714.15	257,194.23	454,691.23
335	Miscellaneous powerplant equipment	87,215.16		87,215.16	251,621.71		251,621.71	365,819.86	453,035.02
336	Roads, railroads and bridges	53,470.42		53,470.42	26,363.00	(28,118.61)	(1,755.61)	11,706.86	65,179.28
	Total Hydraulic Production Plant	6,550,291.49	(4,625.60)	6,545,665.89	6,764,738.22	(37,074.07)	6,727,664.15	9,571,180.67	16,116,846.56
	Transmission Plant								
352	Structures and improvements				53,172.00		53,172.00	77,669.44	77,669.44
353	Station equipment				355,551.06	232,187.33	587,738.39	764,150.00	764,150.00
	Total transmission plant				408,723.06	232,187.33	640,910.39	841,819.44	841,819.44
	Total direct costs	6,550,291.49	(4,625.60)	6,545,665.89	7,173,461.28	195,113.26	7,368,574.54	10,413,000.11	16,958,666.00

See footnotes at end of table.

SCHEDULE I—Continued
Project No. 2150 (Baker River)
PUGET SOUND POWER & LIGHT COMPANY

No.	Account Title	As of May 1, 1956			Project plant changes—May 1, 1956, through Dec. 31, 1960				Allowed cost as of Dec. 31, 1960
		As approved [1]	Adjustments	Allowed	As claimed	Adjustments	Allowed		
							Before distribution	After distribution	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	LOWER BAKER RIVER DEVELOPMENT—cont.								
	Indirect Construction Costs								
61	Temporary construction facilities				$230,201.00	($4,872.14)	$225,328.86		
62	Construction equipment				495,564.23	(4,644.52)	490,919.71		
64	Labor expense				30,310.15	(6,911.34)	23,398.81		
65	Superintendents, timekeepers, clerks, accountants, etc.				205,875.02	(13,415.42)	192,459.60		
66	Insurance, injuries and damages				19,261.76	(1,071.20)	18,190.56		
69	Contractors' fees				448,329.05	(30,835.18)	417,493.87		
	Total Indirect Construction Costs				1,429,541.21	(61,749.80)	1,367,791.41		
	Overhead Construction Costs								
71	Engineering				790,857.63	(72,431.09)	718,426.54		
72	Legal expense				2,553.37	(370.25)	2,183.12		
75	Taxes during construction				140,439.98	(29,404.09)	111,035.89		
76	Administration and miscellaneous general expense				77,738.54	(11,272.55)	66,465.99		
77	Interest during construction				899,092.75	(120,403.15)	778,689.60		
80	Earnings and expenses during construction					(166.98)	(166.98)		
	Total Overhead Construction Costs				1,910,682.27	(234,048.11)	1,676,634.16		
	Total indirect and overhead construction costs				3,340,223.48	(295,797.91)	3,044,425.57		
	Total Lower Baker River Development	$6,550,291.49	($4,625.60)	$6,545,665.89	10,513,684.76	(100,684.65)	10,413,000.11	$10,413,000.11	$16,958,666.00

	INTANGIBLE PLANT								
302	Franchises and consents				29,788.84		29,788.84	29,788.84	29,788.84
	UPPER BAKER RIVER DEVELOPMENT								
	Hydraulic Production Plant								
330	Land and land rights				897,459.27	10,636.08	908,095.35	1,262,776.55	1,262,776.55
331	Structures and improvements				1,503,584.57	(1,040.00)	1,502,544.57	2,764,169.93	2,764,169.93
332	Reservoirs, dams and waterways				19,567,332.06		19,567,332.06	34,442,425.54	34,442,425.54
333	Water wheels, turbines and generators				2,680,619.51		2,680,619.51	4,448,116.85	4,448,116.85
334	Accessory electric equipment				479,627.57	1,621.48	481,249.05	880,133.96	880,133.96
335	Miscellaneous powerplant equipment				242,118.98		242,118.98	437,140.98	437,140.98
336	Roads, railroads and bridges				313,997.00		313,997.00	550,107.41	550,107.41
	Total hydraulic production plant				25,684,738.96	11,217.56	25,695,956.52	44,784,871.22	44,784,871.22
	Transmission Plant								
350	Land and land rights				39,784.60	4,352.00	44,136.60	54,539.42	54,539.42
351	Clearing land and rights-of-way				134,132.00		134,132.00	179,384.35	179,384.35
352	Structures and improvements				6,254.00		6,254.00	8,417.63	8,417.63
353	Station equipment				220,694.96		220,694.96	295,287.87	295,287.87
355	Poles and fixtures				90,608.00		90,608.00	122,678.79	122,678.79
356	Overhead conductors and devices				82,506.00		82,506.00	110,899.63	110,899.63
	Total transmission plant				573,979.56	4,352.00	578,331.56	771,207.69	771,207.69
	Total direct costs				26,258,718.52	15,569.56	26,274,288.08	45,556,078.91	45,556,078.91
	Indirect Construction Costs								
61	Temporary construction facilities				3,723,017.00	3,442.75	3,726,459.75		
63	Construction equipment				4,971,085.74	2,736.67	4,973,822.41		
63	Camp and commissary				417,298.53	(160.00)	417,138.53		
64	Labor expense				275,746.12	591.99	276,338.11		
65	Superintendents, timekeepers, clerks, accountants, etc.				755,901.76	(6,570.36)	749,331.40		
66	Insurance, injuries and damages				164,178.55	(3,268.91)	160,909.64		
69	Contractors' fees				1,876,488.11	(18,777.57)	1,857,710.54		
	Total indirect construction costs				12,163,715.81	(22,005.43)	12,161,710.38		

See footnotes at end of table.

SCHEDULE I—Continued
Project No. 2150 (Baker River)
PUGET SOUND POWER & LIGHT COMPANY

Account No.	Account Title	As of May 1, 1956			Project plant changes—May 1, 1956, through Dec. 31, 1960				Allowed cost as of Dec. 31, 1960
		As approved [1]	Adjustments	Allowed	As claimed	Adjustments	Allowed		
							Before distribution	After distribution	
No.	Title	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	UPPER BAKER RIVER DEVELOPMENT—cont.								
	Overhead Construction Costs								
71	Engineering				$2,665,195.40	($4,608.49)	$2,660,586.91		
72	Legal expense				11,174.43	132.39	11,306.82		
75	Taxes during construction				312,623.54	16,253.40	328,876.94		
76	Administration and miscellaneous general expenses				340,210.58	465.31	340,675.89		
77	Interest during construction				4,304,467.25	(524,968.53)	3,779,498.72		
80	Earnings and expenses during construction				(1,050.00)	185.17	(864.83)		
	Total overhead construction costs				7,632,621.20	(512,540.75)	7,120,080.45		
	Total indirect and overhead construction costs				19,816,337.01	(534,546.18)	19,281,790.83		
	Total Upper Baker River Development				46,075,055.53	(518,976.62)	45,556,078.91	$45,556,078.91	$45,556,078.91
	COMMON PLANT								
	115 KV Line from Lower Baker to Sedro Wooley								
350	Land and land rights				50,041.25		50,041.25	50,041.25	50,041.25
351	Clearing land and rights-of-way				89,439.68		89,439.68	89,439.68	89,439.68
355	Poles and fixtures				314,399.00		314,399.00	424,538.74	424,538.74
356	Overhead conductors and devises				369,812.00		369,812.00	497,128.92	497,128.92
	Total direct costs				823,691.93		823,691.93	1,061,148.59	1,061,148.59

	Indirect Construction Costs								
64	Labor expense					6,210.97	6,210.97		
65	Superintendence, timekeepers, clerks, accountants, etc.					19,090.80	19,090.80		
66	Insurance, injuries and damages					4,276.75	4,276.75		
69	Contractors' fees					48,881.42	48,881.42		
	Total indirect construction costs					79,059.94	79,059.94		
	Overhead Construction Costs								
71	Engineering					67,292.73	67,292.73		
72	Legal expense					233.43	233.43		
73	Taxes during construction					6,857.36	6,857.36		
76	Administration and miscellaneous general expenses					7,106.83	7,106.83		
77	Interest during construction					76,924.22	76,924.22		
80	Earnings and expenses during construction					(17.85)	(17.85)		
	Total overhead construction costs					158,396.72	158,396.72		
	Total indirect and overhead construction costs					237,456.66	237,456.66		
	Total common plant				823,691.93	237,456.66	1,061,148.59	1,061,148.59	1,061,148.59
	Total Project No. 2150	$6,550,291.49	($4,625.60)	$6,545,665.89	57,442,221.06	(382,204.61)	57,060,016.45	57,060,016.45	63,605,682.34

( ) Denotes credit.
[1] Per Commission Order issued Jan. 8, 1963, (29 FPC 54), and reclassified to Commission's System of Accounts effective Jan. 1, 1961.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TEXACO INC., DOCKET NO. CI65-366

ORDER DENYING APPLICATION FOR REHEARING

(Issued December 16, 1964)

On November 19, 1964, Texaco Inc. (Texaco) filed an "Application for Rehearing" of the Commission's letter order of November 5, 1964, in Docket No. CI65-366 wherein Texaco was granted temporary certificate authority to make sales of natural gas for resale in interstate commerce to Lone Star Gathering Company (Lone Star) from the Koenig Field located in Texas Railroad Commission District No. 2. The temporary certificate was subject to the following condition.

> (1) The total initial price for such service, including any tax reimbursement, shall be 16.0¢ per Mcf at 14.65 psia, subject to Texaco Inc., refunding to Lone Star Gathering Company, from the date of initial delivery, with interest at 7% per annum, any amounts collected in excess of the amounts resulting from the rate finally determined to be required by the public convenience and necessity in Docket No. CI65-366. Refunds shall not be required below 14.0¢ at 14.65 psia.

In its "Application for Rehearing" Texaco alleges that it is aggrieved by the Commission's order of November 5, 1964, because it makes Texaco's initial rate uncertain during the period of temporary authority and because it imposes a contingent refund obligation on the initial price which is within the price ceilings promulgated by the Commission in its Statement of General Policy No. 61-1, as amended. Hence, Texaco requests the Commission to modify its order of November 5, 1964, by deleting the contingent refund condition therefrom on the grounds that:

(1) The imposition of a contingent refund condition on a contract which complies with the ceiling price level is directly contrary to a policy which utilizes the initial price level as a ceiling, and;

(2) There is no reasonable basis for the 14 cents per Mcf refund floor.

It is obvious that Texaco is not aggrieved by the Commission's order. If the contingent refund condition were removed from the order Texaco's initial rate, by operation of law, would be subject to refund without a floor.[1]

The imposition of a contingent refund condition in the Commission's order was not inconsistent with past policy. This Commission has never held that it cannot impose a refund condition on a temporary certificate even though the proposed initial price is within the price ceiling promulgated in the Statement of General Policy. Moreover, twenty-four other producers have filed applications seeking authorization to sell natural gas for resale in interstate commerce to Lone Star from wells also located in Texas Railroad Commission District No.

[1] *Public Service Commission of New York, et al.* v. *F.P.C.*, 329 F. 2d 242; cert. denied, *sub nom.*, *Prado Oil & Gas Co.* v. *F.P.C.*, 377 U.S. 963 and *Skelly Oil Co.* v. *F.P.C.*, 377 U.S. 693.

2.[2] The initial price proposed was, in each case, within the Commission's guidelines.[3] Each applicant received temporary authorization to make the sales as proposed. Each of the temporary certificates was subject to a contingent refund obligation. Twenty-two of these temporary certificates contained refund floors of 14 cents per Mcf. The other two applications proposed the sale of sour gas at an initial price of 12 cents per Mcf and were subject to refund down to 11 cents per Mcf. Therefore, the Commission conditioned the temporary certificate granted to Texaco in order to be consistent with its past treatment of other producers seeking authority to make sales to Lone Star.

Texaco further contends that Opinion No. 412[4] requires that the refund floor cannot "* * * be less than the in-line price for contracts executed prior to the Policy Statement."[5] And, that, "[u]nless it is erroneously assumed that the in-line price for contracts executed four years after the Policy Statement is less than the in-line price of contracts executed prior to the Policy Statement, there would be no basis to have a refund floor lower than the in-line price determination in Opinion No. 412."

We disagree. Opinion No. 412 expressly left for a subsequent proceeding the determination of the in-line price applicable to contracts executed after September 28, 1960. Moreover, the refund floor will have no effect upon the Commission's subsequent determination of the in-line price applicable to the sale of gas proposed by Texaco in Docket No. CI65–366. It merely delimits the maximum extent of Texaco's refund obligation.

The Commission further finds:

The grounds for rehearing set forth in the "Application for Rehearing" filed by Texaco set forth no new facts or principles of law which were not fully considered by the Commission when it issued its letter order herein on November 5, 1964, or which now having been considered warrant any change or modification in said order.

The Commission orders:

The "Application for Rehearing" of Texaco filed on November 10, 1964, in Docket No. CI65–366 is hereby denied.

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[2] See Docket Nos. CI62–698; CI62–780; CI62–824; CI62–889; CI62–959; CI62–961; CI62–962; CI62–996; CI62–1023; CI63–874; CP63–192; CI63–5; CI63–56; CI63–58; CI63–67; CI63–790; CI63–814; CI63–820; CI63–875; CP63–193; CI64–346; CI65–62; CI65–293; and CI65–386.

[3] All but one of these applications were filed prior to the Eighth Amendment to the Policy Statement (issued on December 9, 1963, 30 FPC 1435) at a time when the "guideline" price for Railroad District No. 2 was 18 cents per Mcf. After the Eighth Amendment the "guideline" price was 16 cents per Mcf. Texaco's contract was executed on September 1, 1964.

[4] *Hassie Hunt Trust, Operator, et al.*, Docket No. G–19115, *et al.*, issued December 9, 1963, 30 FPC 1438.

[5] The in-line price for contracts executed prior to the Policy Statement was 15 cents per Mcf, *Hassie Hunt Trust, supra.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

DUKE POWER COMPANY, PROJECT NO. 2232

ORDER DETERMINING ACTUAL LEGITIMATE ORIGINAL PROJECT COST, NET CHANGES THEREIN, ACCRUED DEPRECIATION, NET CHANGES IN ACCRUED DEPRECIATION AND PRESCRIBING ACCOUNTING THEREFOR

(Issued December 17, 1964)

Duke Power Company, Licensee for Project No. 2232[1] filed statements on April 1, 1963 and October 18, 1963, pursuant to Section 4.20 of the Commission's Regulations under the Federal Power Act, claiming as the actual legitimate original cost for the developments, as of September 1, 1958 (the effective date of the license), a total of $42,861,150; as accrued project depreciation as of that date, a total of $25,659,811 resulting in a claimed project net investment of $17,201,389 as of that date. Licensee's books indicate a recorded cost for the developments as of September 1, 1958 which exceeds its claimed cost by $4,020,373. Licensee has recorded a total, in the credit amount of $56,501, as the net changes to actual legitimate original cost for the period September 1, 1958 through December 31, 1962 and a total of $2,216,649 as the net increase in Accrued Depreciation for the same period. These would result in recorded project costs of $46,825,022 and accrued depreciation of $27,876,460 as of December 31, 1962. These claimed and recorded costs and changes in cost are shown classified by development in Schedule I and by primary plant accounts in Schedule I–A, attached. Claimed and recorded project accrued depreciation and changes therein through December 31, 1962 are shown classified by development in the attached Schedule II.

The Commission's staff conducted a field examination of Licensee's books, records and other data for the purpose of ascertaining the correctness of the claimed and recorded amounts indicated above. Following the review, tentative agreement, subject to Commission approval, was reached between the staff and Licensee's representatives with respect to adjustments proposed by the staff which are summarized in the attached Schedule I–A and II. These adjustments include (1) a reduction of $1,072,260 in the claimed actual legitimate original project cost as of September 1, 1958; (2) a reduction of $349,655 in the claimed initial accrued depreciation as of September 1, 1958, resulting from the disposition of plant account adjustments; and (3) a reduction of $600 in the claimed cost of changes in project plant accounts for the period from September 1, 1958, through December 31, 1962. In addition to the credit adjustment of $1,072,260 to the claimed initial cost, there is included in the agreement a credit adjustment of $4,020,373 to project recorded costs not claimed. These additional adjustments to recorded costs consist of the cost of nonutility lands and other related costs included in project accounts and are summarized in Schedule III.

The adjustments referred to above are to be accomplished by the following composite journal entry:

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[1] The Project consists of 10 hydroelectric developments with 12 powerhouses constructed on the Catawba River in North Carolina and the Wateree River in South Carolina between 1905 and 1928. The Project License also provides for an additional development, Cowans Ford, now under construction, which is not included in the scope of this order.

Account No.			
101	Electric plant in service—Project No. 2232		$5,003,238
101	Electric plant in service—Nonproject		11,678
108	Accumulated provision for depreciation of electric plant in service—Project No. 2232	$350,255	
108	Accumulated provision for depreciation of electric plant in service—Nonproject	9,529	
121	Nonutility property	3,829,582	
216	Unappropriated earned surplus	915,545	
	Totals	5,104,911	5,104,911

This is all as more specifically shown in the Schedules appended hereto.

The North Carolina Utilities Commission and the South Carolina Public Service Commission were advised by letter of this Commission dated March 24, 1964, of the proposed adjustments, the resulting project costs and accrued depreciation. The North Carolina Utilities Commission by letter of March 27, 1964, and the South Carolina Public Service Commission by letter of June 8, 1964, have concurred in the proposed adjustments and accounting disposition thereof.

The Commission finds:

(1) Licensee by its acceptance of the proposed adjustments including the accounting dispositions and the resulting respective project cost, project reserve for depreciation and project net investment as of September 1, 1958, and the North Carolina Utilities Commission and South Carolina Public Service Commission, by their concurrence in the staff recommendations herein have obviated the necessity for the notice and opportunity to protest, provided by Sections 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act.

(2) The foregoing adjustments and accounting dispositions are reasonable and appropriate for the purposes of the Federal Power Act and therefore should be approved and directed as hereinafter provided.

(3) The actual legitimate original cost of Project No. 2232 as of September 1, 1958 is $41,788,890, net change in actual legitimate original cost for the period September 1, 1958 to December 31, 1962 is in the credit amount of $57,101 and the resulting actual legitimate original cost as of December 31, 1962 is $41,731,789 classified by developments and by primary plant accounts as shown in Schedules I and I–A.

(4) The project accumulated provision for depreciation of the constructed plants as of September 1, 1958, the effective date of the license, is $25,310,156 classified by developments and functions as shown in Schedule II, the net change in project accumulated depreciation for the period September 1, 1958 to December 31, 1962 is $2,216,049 and the resulting accumulated provision for depreciation as of December 31, 1962 is $27,526,205, classified by developments and functional groups as shown in Schedule II.

(5) The resulting net investment in the project as of September 1, 1958, the effective date of the license, is $16,478,734.

The Commission orders:

(A) The provisions of Sections 4.4, 4.5, 4.22 and 4.23 of the Commission's Regulations under the Federal Power Act are hereby waived for the purposes of this order.

(B) The adjustments and accounting dispositions proposed by the staff and agreed to by the Licensee are hereby approved and directed to be made by the Licensee.

(C) Licensee, to the extent that it has not already done so, shall establish and maintain control and detailed plant accounts for Project No. 2232, showing: the debit balance of $41,788,890 as of September 1, 1958, the effective date of the license; the net change in actual legitimate original cost for the period September 1, 1958 through December 31, 1962, in the credit amount of $57,101; and the total debit balance of $41,731,789 as of December 31, 1962; all as more specifically shown by primary accounts of the Commission's Uniform System of Accounts prescribed for Public Utilities and Licensees as set forth in the attached Schedules I and I–A.

(D) Licensee, to the extent that it has not already done so, shall establish and maintain an account for accumulated provision for depreciation applicable to in-service property of Project No. 2232, showing: a credit balance of $25,310,156 as of September 1, 1958, the effective date of the license; the credit amount of $2,216,049 as the net increase or change in the project accumulated provision for depreciation for the period from September 1, 1958, through December 31, 1962; and the credit balance of $27,526,205 as of December 31, 1962, all classified by functional groups as shown in the attached Schedule II.

(E) Licensee shall, within 90 days from the issuance of the Commission's order, file with the Commission three certified copies of Licensee's FPC Form No. 7 and adjusting journal entries showing compliance with this order.

SCHEDULE I

SUMMARY OF CLAIMED COST, BY DEVELOPMENTS, AS OF SEPT. 1, 1958, RECORDED CHANGES FOR THE PERIOD SEPT. 1, 1958 TO DEC. 31, 1962, WITH ADJUSTMENTS THERETO AND BALANCES AS OF DEC. 31, 1962

Particulars	Initial cost as of Sept. 1, 1958			Net additions for period Sept. 1, 1958, to Dec. 31, 1962			Total cost as of Dec. 31, 1962
	Claimed	Adjustments	Allowed cost	Claimed	Adjustments	Allowed cost	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Constructed Developments							
Bridgewater	$6,547,117.00	($226,174.00)	$6,380,943.00	($393.00)		($393.00)	$6,380,550.00
Rhodhiss	2,627,850.00		2,627,850.00	3,948.00		3,948.00	2,631,798.00
Oxford	4,101,805.00	(39,213.00)	4,062,592.00	(13,447.00)	($600.00)	(14,047.00)	4,048,545.00
Lookout Shoals	1,658,563.00	(6,518.00)	1,652,045.00	25,557.00		25,557.00	1,677,602.00
Mountain Island	4,946,850.00	(107,787.00)	4,839,063.00	20,142.00		20,142.00	4,859,205.00
Wylie	7,169,864.00	(77,288.00)	7,092,566.00	31,879.00		31,879.00	7,124,445.00
Fishing Creek	3,175,156.00	(71,801.00)	3,104,305.00	(10,131.00)		(10,131.00)	3,094,174.00
Great Falls	1,808,567.00	(29,673.00)	1,778,894.00	(2,974.00)		(2,974.00)	1,775,920.00
Dearborn	1,483,615.00	(19,936.00)	1,463,679.00	(14,561.00)		(14,561.00)	1,449,118.00
Rocky Creek	1,866,754.00	(46,806.00)	1,819,948.00	(118,912.00)		(118,912.00)	1,701,036.00
Cedar Creek	2,255,291.00	(18,717.00)	2,236,574.00	719.00		719.00	2,237,293.00
Watercc	5,118,778.00	(388,347.00)	4,730,431.00	21,672.00		21,672.00	4,752,103.00
Total project	42,861,150.00	(1,072,260.00)	41,788,890.00	(56,501.00)	(600.00)	(57,101.00)	41,731,789.00

( ) Denotes credit.

SCHEDULE I-A

SUMMARY OF CLAIMED COST, BY DEVELOPMENTS AND DETAILED PLANT ACCOUNTS, AS OF SEPT. 1, 1958, RECORDED CHANGES FOR THE PERIOD SEPT. 1, 1958 TO DEC. 31, 1962, WITH ADJUSTMENTS THERETO AND BALANCES AS OF DEC. 31, 1962

Account No.	Description	Initial cost as of Sept. 1, 1958			Net additions for period Sept. 1, 1958, to Dec. 31, 1962			Total cost as of Dec. 31, 1962
		Claimed	Adjustments	Allowed cost	Claimed	Adjustments	Allowed cost	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	CONSTRUCTED PLANTS							
	Bridgewater Development							
	Hydraulic production plant:							
330	Land and land rights	$907,896.00	($90,876.00)	$907,020.00				$907,020.00
331	Structures and improvements	155,610.00	(5,263.00)	150,347.00	($4,621.00)		($4,621.00)	145,726.00
332	Reservoirs, dams and waterways	4,979,565.00	(153,363.00)	4,826,202.00				4,826,202.00
333	Water wheels, turbines and generators	271,483.00	(10,857.00)	260,626.00				260,626.00
334	Accessory electric equipment	87,452.00	(2,832.00)	84,620.00	1,177.00		1,177.00	85,797.00
335	Miscellaneous powerplant equipment	35,047.00	(508.00)	34,539.00	787.00		787.00	35,326.00
336	Roads, railroads and bridges	9,881.00		9,881.00				9,881.00
	Total hydraulic production plant	6,536,934.00	(263,699.00)	6,273,235.00	(2,657.00)		(2,657.00)	6,270,578.00
	Transmission plant:							
353	Station equipment	110,183.00	(2,475.00)	107,708.00	2,264.00		2,264.00	109,972.00
	Total Bridgewater Development	6,647,117.00	(266,174.00)	6,380,943.00	(393.00)		(393.00)	6,380,550.00
	Rhodhiss Development							
	Hydraulic production plant:							
330	Land and land rights	523,278.00		523,278.00				523,278.00
331	Structures and improvements	186,245.00		186,245.00	(21,960.00)		(21,960.00)	164,285.00
332	Reservoirs, dams and waterways	1,209,915.00		1,209,915.00				1,209,915.00
333	Water wheels, turbines and generators	498,402.00		498,402.00				498,402.00
334	Accessory electric equipment	68,191.00		68,191.00	164.00		164.00	68,355.00
335	Miscellaneous powerplant equipment	5,758.00		5,758.00	448.00		448.00	6,206.00
	Total hydraulic production plant	2,491,789.00		2,491,789.00	(21,348.00)		(21,348.00)	2,470,441.00
	Transmission plant:							
353	Station equipment	136,061.00		136,061.00	25,296.00		25,296.00	161,357.00
	Total Rhodhiss Development	2,627,850.00		2,627,850.00	3,948.00		3,948.00	2,631,798.00

	Oxford Development							
	Hydraulic production plant:							
330	Land and land rights	1,245,197.00	(36,510.00)	1,208,687.00				1,208,687.00
331	Structures and improvements	146,364.00		146,364.00	(14,427.00)		(14,427.00)	131,937.00
332	Reservoirs, dams and waterways	2,133,263.00	(2,703.00)	2,130,560.00				2,130,560.00
333	Water wheels, turbines and generators	379,757.00		379,757.00	795.00		795.00	380,552.00
334	Accessory electric equipment	84,122.00		84,122.00	133.00		133.00	84,255.00
335	Miscellaneous powerplant equipment	11,449.00		11,449.00	52.00	($600.00)	(548.00)	10,901.00
	Total hydraulic production plant	4,000,152.00	(39,213.00)	3,960,939.00	(13,447.00)	(600.00)	(14,047.00)	3,945,892.00
	Transmission plant:							
353	Station equipment	101,653.00		101,653.00				101,653.00
	Total Oxford Development	4,101,805.00	(39,213.00)	4,062,592.00	(13,447.00)	(600.00)	(14,047.00)	4,048,545.00
	Lookout Shoals Development							
	Hydraulic production plant:							
330	Land and land rights	82,708.00	(658.00)	82,050.00				82,050.00
331	Structures and improvements	69,256.00	(253.00)	69,005.00	(5,000.00)		(5,000.00)	64,005.00
332	Reservoirs, dams and waterways	1,134,360.00	(3,881.00)	1,130,479.00				1,130,479.00
333	Water wheels, turbines and generators	193,748.00	(1,320.00)	192,428.00				192,428.00
334	Accessory electric equipment	65,052.00	(158.00)	64,894.00	144.00		144.00	65,038.00
335	Miscellaneous powerplant equipment	14,386.00	(43.00)	14,343.00	642.00		642.00	14,985.00
	Total hydraulic production plant	1,559,512.00	(6,313.00)	1,553,199.00	(4,214.00)		(4,214.00)	1,548,985.00
	Transmission plant:							
353	Station equipment	99,051.00	(205.00)	98,846.00	29,771.00		29,771.00	128,617.00
	Total lookout shoals development	1,658,563.00	(6,518.00)	1,652,045.00	25,557.00		25,557.00	1,677,602.00
	Mountain Island Development							
	Hydraulic production plant:							
330	Land and land rights	698,238.00	(75,142.00)	623,096.00				623,096.00
331	Structures and improvements	299,000.00	(698.00)	298,302.00	(756.00)		(756.00)	297,546.00
332	Reservoirs, dams and waterways	2,948,132.00	(31,947.00)	2,916,185.00				2,916,185.00
333	Water wheels, turbines and generators	632,853.00		632,853.00	8,800.00		8,800.00	641,653.00
334	Accessory electric equipment	135,069.00		135,069.00	617.00		617.00	135,686.00
335	Miscellaneous powerplant equipment	8,052.00		8,052.00	11,270.00		11,270.00	19,322.00
	Total hydraulic production plant	4,721,344.00	(107,787.00)	4,613,557.00	19,931.00		19,931.00	4,633,488.00
	Transmission plant:							
353	Station equipment	225,506.00		225,506.00	211.00		211.00	225,717.00
	Total Mountain Island Development	4,946,850.00	(107,787.00)	4,839,063.00	20,142.00		20,142.00	4,859,205.00

See footnotes at end of table.

SCHEDULE I-A—Continued

Account No.	Description	Initial cost as of Sept. 1, 1958			Net additions for period Sept. 1, 1958, to Dec. 31, 1962			Total cost as of Dec. 31, 1962
		Claimed	Adjustments	Allowed cost	Claimed	Adjustments	Allowed cost	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	Wylie Development							
	Hydraulic production plant:							
330	Land and land rights	$2,345,801.00	($50,856.00)	$2,294,945.00				$2,294,945.00
331	Structures and improvements	281,396.00	(2,295.00)	279,101.00	($4,995.00)		($4,995.00)	274,106.00
332	Reservoirs, dams and waterways	3,393,973.00	(17,378.00)	3,376,595.00	132.00		132.00	3,376,727.00
333	Water wheels, turbines and generators	783,968.00	(5,275.00)	778,693.00	1,067.00		1,067.00	779,760.00
334	Accessory electric equipment	133,007.00	(766.00)	132,241.00	2,063.00		2,063.00	134,304.00
335	Miscellaneous powerplant equipment	23,843.00	(103.00)	23,740.00	1,158.00		1,158.00	24,898.00
	Total hydraulic production plant	6,961,988.00	(76,673.00)	6,885,315.00	(575.00)		(575.00)	6,884,740.00
	Transmission plant:							
353	Station equipment	207,866.00	(615.00)	207,251.00	32,454.00		32,454.00	239,705.00
	Total Wylie Development	7,169,854.00	(77,288.00)	7,092,566.00	31,879.00		31,879.00	7,124,445.00
	Fishing Creek Development							
	Hydraulic production plant:							
330	Land and land rights	276,637.00	(6,730.00)	269,907.00				269,907.00
331	Structures and improvements	205,586.00	(1,216.00)	204,370.00	(23,504.00)		(23,504.00)	180,866.00
332	Reservoirs, dams and waterways	2,024,917.00	(62,605.00)	1,962,312.00				1,962,312.00
333	Water wheels, turbines and generators	500,673.00	(979.00)	499,694.00				499,694.00
334	Accessory electric equipment	91,882.00	(71.00)	91,811.00	12,850.00		12,850.00	104,661.00
335	Miscellaneous power plant equipment	16,988.00	(55.00)	16,933.00	283.00		283.00	17,216.00
	Total hydraulic production plant	3,116,683.00	(71,656.00)	3,045,027.00	(10,371.00)		(10,371.00)	3,034,656.00
	Transmission plant:							
353	Station equipment	59,423.00	(145.00)	59,278.00	240.00		240.00	59,518.00
	Total Fishing Creek Development	3,176,106.00	(71,801.00)	3,104,305.00	(10,131.00)		(10,131.00)	3,094,174.00

	Great Falls Development							
	Hydraulic production plant:							
330	Land and land rights [1]	19,088.00	(13,737.00)	5,351.00				5,351.00
331	Structures and improvements	226,798.00	(3,498.00)	223,300.00	(19,114.00)		(19,114.00)	204,186.00
332	Reservoirs, dams and waterways	749,405.00	(6,601.00)	742,804.00	4,683.00		4,683.00	747,487.00
333	Water wheels, turbines and generators	432,263.00	(3,786.00)	428,477.00				428,477.00
334	Accessory electric equipment	97,632.00	(487.00)	97,145.00	3,249.00		3,249.00	100,394.00
335	Miscellaneous powerplant equipment	53,937.00	(94.00)	53,843.00	5,332.00		5,332.00	59,175.00
	Total hydraulic production plant	1,579,123.00	(28,203.00)	1,550,920.00	(5,850.00)		(5,850.00)	1,545,070.00
	Transmission plant:							
353	Station equipment [1]	229,444.00	(1,470.00)	227,974.00	2,876.00		2,876.00	230,850.00
	Total Great Falls Development	1,808,567.00	(29,673.00)	1,778,894.00	(2,974.00)		(2,974.00)	1,775,920.00
	Dearborn Development							
	Hydraulic production plant:							
331	Structures and improvements	135,896.00	(187.00)	135,709.00	(14,985.00)		(14,985.00)	120,724.00
332	Reservoirs, dams and waterways	826,319.00	(19,025.00)	807,294.00				807,294.00
333	Water wheels, turbines and generators	462,369.00	(650.00)	461,719.00				461,719.00
334	Accessory electric equipment	55,115.00	(68.00)	55,047.00				55,047.00
335	Miscellaneous powerplant equipment	3,916.00	(6.00)	3,910.00	424.00		424.00	4,334.00
	Total Dearborn Development	1,483,615.00	(19,936.00)	1,463,679.00	(14,561.00)		(14,561.00)	1,449,118.00
	Rocky Creek Development							
	Hydraulic production plant:							
330	Land and land rights [2]	39,186.00	(9,769.00)	29,417.00				29,417.00
331	Structures and improvements	286,043.00	(6,369.00)	279,674.00	(914.00)		(914.00)	278,760.00
332	Reservoirs, dams and waterways	731,635.00	(14,523.00)	717,112.00				717,112.00
333	Water wheels, turbines and generators	680,850.00	(13,580.00)	667,270.00	(150,000.00)		(150,000.00)	517,270.00
334	Accessory electric equipment	44,250.00	(822.00)	43,428.00	34,889.00		34,889.00	78,317.00
335	Miscellaneous powerplant equipment	11,411.00	(224.00)	11,187.00	88.00		88.00	11,275.00
	Total hydraulic production plant	1,793,375.00	(45,287.00)	(1,748,088.00)	(115,937.00)		(115,937.00)	1,632,151.00
	Transmission plant:							
353	Station equipment	73,379.00	(1,519.00)	71,860.00	(2,975.00)		(2,975.00)	68,885.00
	Total Rocky Creek Development	1,866,754.00	(46,806.00)	1,819,948.00	(118,912.00)		(118,912.00)	1,701,036.00

See footnotes at end of table.

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SCHEDULE I-A—Continued

Account No.	Description	Initial cost as of Sept. 1, 1958—			Net additions for period Sept. 1, 1958, to Dec. 31, 1962			Total cost as of Dec. 31, 1962
		Claimed	Adjustments	Allowed cost	Claimed	Adjustments	Allowed cost	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	CONSTRUCTED PLANTS—CONT.							
	Cedar Creek Development							
	Hydraulic production plant:							
331	Structures and improvements	$220,431.00	($1,251.00)	$219,180.00	($26,366.00)		($26,366.00)	$192,814.00
332	Reservoirs, dams and waterways	1,098,426.00	(14,533.00)	1,083,893.00				1,083,893.00
333	Water wheels, turbines and generators	660,719.00	(2,070.00)	658,649.00	(512.00)		(512.00)	658,137.00
334	Accessory electric equipment	92,085.00	(288.00)	91,797.00	4,159.00		4,159.00	95,956.00
335	Miscellaneous powerplant equipment	17,155.00	(54.00)	17,101.00	(13.00)		(13.00)	17,088.00
	Total hydraulic production plant	2,088,816.00	(18,196.00)	2,070,620.00	(22,732.00)		(22,732.00)	2,047,888.00
	Transmission plant:							
	Station equipment	166,475.00	(521.00)	165,954.00	23,451.00		23,451.00	189,405.00
	Total Cedar Creek Development	2,255,291.00	(18,717.00)	2,236,574.00	719.00		719.00	2,237,293.00
	Wateree Development							
	Hydraulic production plant:							
330	Land and land rights	773,899.00	(301,606.00)	472,293.00				472,293.00
331	Structures and improvements	496,432.00	(10,722.00)	485,710.00	(18,805.00)		(18,805.00)	466,905.00
332	Reservoirs, dams and waterways	2,653,075.00	(51,581.00)	2,601,494.00				2,601,494.00
333	Water wheels, turbines and generators	896,472.00	(18,455.00)	878,017.00				878,017.00
334	Accessory electric equipment	116,710.00	(2,302.00)	114,408.00	28,558.00		28,558.00	142,966.00
335	Miscellaneous powerplant equipment	132,236.00	(235.00)	13,001.00	100.00		100.00	13,101.00
	Total hydraulic production plant	4,949,824.00	(384,901.00)	4,564,923.00	9,853.00		9,853.00	4,574,776.00
	Transmission plant:							
353	Station equipment	168,954.00	(3,446.00)	165,508.00	11,819.00		11,819.00	177,327.00
	Total Wateree Development	5,118,778.00	(388,347.00)	4,730,431.00	21,672.00		21,672.00	4,752,103.00

	All Developments							
	Hydraulic production plant:							
330	Land and land rights	7,001,928.00	(585,884.00)	6,416,044.00				6,416,044.00
331	Structures and improvements	2,709,059.00	(31,752.00)	2,677,307.00	(155,447.00)		(155,447.00)	2,521,860.00
332	Reservoirs, dams and waterways	23,882,985.00	(378,140.00)	23,504,845.00	4,815.00		4,815.00	23,509,660.00
333	Water wheels, turbines and generators	6,393,557.00	(56,972.00)	6,336,585.00	(139,850.00)		(139,850.00)	6,196,735.00
334	Accessory electric equipment	1,070,567.00	(7,794.00)	1,062,773.00	88,003.00		88,003.00	1,150,776.00
335	Miscellaneous powerplant equipment	215,178.00	(1,322.00)	213,856.00	20,571.00	($600.00)	19,971.00	233,827.00
336	Roads, railroads and bridges	9,881.00		9,881.00				9,881.00
	Total hydraulic production plant	41,283,155.00	(1,061,864.00)	40,221,291.00	(181,908.00)	(600.00)	(182,508.00)	40,038,783.00
	Transmission plant:							
353	Station equipment	1,577,995.00	(10,396.00)	1,567,599.00	125,407.00		125,407.00	1,693,006.00
	Total Project	42,861,150.00	(1,072,260.00)	41,788,890.00	(56,501.00)	(600.00)	(57,101.00)	41,731,789.00

( ) Denotes credit.

[1] Great Falls and Dearborn Developments share the same reservoir and transmission station equipment.

[2] Rocky Creek and Cedar Creek Developments share the same reservoirs.

SCHEDULE II

SUMMARY OF ACCUMULATED PROVISION FOR DEPRECIATION OF ELECTRIC PLANT IN SERVICE, BY DEVELOPMENTS, AS OF SEPT. 1, 1958, RECORDED CHANGES FOR THE PERIOD FROM SEPT. 1, 1958, TO DEC. 31, 1962, WITH ADJUSTMENTS THERETO AND BALANCES AS OF DEC. 31, 1962

Developments	Initial accrued depreciation at Sept. 1, 1958			Changes in accrued depreciation Sept. 1, 1958 to Dec. 31, 1962			Accrued depreciation as of Dec. 31, 1962		
	As recorded	Adjustments[2]	Allowed	As recorded	Adjustments[2]	Allowed	As recorded	Adjustments[2]	Allowed
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Constructed Plants									
Bridgewater:									
Hydraulic	$3,681,636.00	($114,876.00)	$3,566,760.00	$389,482.00		$389,482.00	$4,071,118.00	($114,876.00)	$3,956,242.00
Transmission	110,183.00	(2,475.00)	107,708.00	(11,081.00)		(11,081.00)	99,102.00	(2,475.00)	96,627.00
Total Bridgewater	3,791,819.00	(117,351.00)	3,674,468.00	378,401.00		378,401.00	4,170,220.00	(117,351.00)	4,052,869.00
Rhodhiss:									
Hydraulic	1,354,291.00		1,354,291.00	120,114.00		120,114.00	1,474,405.00		1,474,405.00
Transmission	76,112.00		76,112.00	17,810.00		17,810.00	93,922.00		93,922.00
Total Rhodhiss	1,430,403.00		1,430,403.00	137,924.00		137,924.00	1,568,327.00		1,568,327.00
Oxford:									
Hydraulic	1,749,667.00	(1,717.00)	1,747,950.00	218,572.00	($600.00)	217,972.00	1,968,239.00	(2,317.00)	1,965,922.00
Transmission	47,636.00		47,636.00	13,216.00		13,216.00	60,852.00		60,852.00
Total Oxford	1,797,303.00	(1,717.00)	1,795,586.00	231,788.00	(600.00)	231,188.00	2,029,091.00	(2,317.00)	2,026,774.00
Lookout Shoals:									
Hydraulic	1,324,393.00	(5,071.00)	1,319,322.00	90,806.00		90,806.00	1,415,199.00	(5,071.00)	1,410,128.00
Transmission	70,548.00	(146.00)	70,402.00	2,442.00		2,442.00	72,990.00	(146.00)	72,844.00
Total Lookout Shoals	1,394,941.00	(5,217.00)	1,389,724.00	93,248.00		93,248.00	1,488,189.00	(5,217.00)	1,482,972.00
Mountain Island:									
Hydraulic	2,941,231.00	(23,866.00)	2,917,365.00	266,358.00		266,358.00	3,207,589.00	(23,866.00)	3,183,723.00
Transmission	204,845.00		204,845.00	20,781.00		20,781.00	225,626.00		225,626.00
Total Mountain Island	3,146,076.00	(23,866.00)	3,122,210.00	287,139.00		287,139.00	3,433,215.00	(23,866.00)	3,409,349.00

Wylie:									
Hydraulic	2,997,465.00	(16,763.00)	2,980,702.00	371,399.00		371,399.00	3,368,864.00	(16,763.00)	3,352,101.00
Transmission	121,920.00	(361.00)	121,559.00	27,315.00		27,315.00	149,235.00	(361.00)	148,874.00
Total Wylie	3,119,385.00	(17,124.00)	3,102,261.00	398,714.00		398,714.00	3,518,099.00	(17,124.00)	3,500,975.00
Fishing Creek:									
Hydraulic	1,955,913.00	(44,714.00)	1,911,199.00	157,071.00		157,071.00	2,112,984.00	(44,714.00)	2,068,270.00
Transmission	55,978.00	(137.00)	55,841.00	3,649.00		3,649.00	59,627.00	(137.00)	59,490.00
Total Fishing Creek	2,011,891.00	(44,851.00)	1,967,040.00	160,720.00		160,720.00	2,172,611.00	(44,851.00)	2,127,760.00
Great Falls:									
Hydraulic	1,197,781.00	(11,107.00)	1,186,674.00	79,789.00		79,789.00	1,277,570.00	(11,107.00)	1,266,463.00
Transmission	105,710.00	(677.00)	105,033.00	30,113.00		30,113.00	135,823.00	(677.00)	135,146.00
Total Great Falls	1,303,491.00	(11,784.00)	1,291,707.00	109,902.00		109,902.00	1,413,393.00	(11,784.00)	1,401,609.00
Dearborn:									
Hydraulic	1,135,926.00	(15,263.00)	1,206,630.00	81,145.00		81,145.00	1,217,071.00	(15,263.00)	1,201,808.00
Transmission									
Total Dearborn	1,135,926.00	(15,263.00)	1,206,630.00	81,145.00		81,145.00	1,217,071.00	(15,263.00)	120,1808.00
Rocky Creek:									
Hydraulic	1,514,746.00	(30,670.00)	1,484,076.00	(61,096.00)		(61,096.00)	1,453,650.00	(30,670.00)	1,422,980.00
Transmission	73,379.00	(1,519.00)	71,860.00	(3,104.00)		(3,104.00)	70,275.00	(1,519.00)	68,756.00
Total Rocky Creek	1,588,125.00	(32,189.00)	1,555,936.00	(64,200.00)		(64,200.00)	1,523,925.00	(32,189.00)	1,491,736.00
Cedar Creek:									
Hydraulic	1,395,836.00	(12,159.00)	1,383,677.00	113,488.00		113,488.00	1,509,324.00	(12,159.00)	1,497,165.00
Transmission	157,099.00	(492.00)	156,607.00	11,710.00		11,710.00	168,809.00	(492.00)	168,317.00
Total Cedar Creek	1,552,935.00	(12,651.00)	1,540,284.00	125,198.00		125,198.00	1,678,133.00	(12,651.00)	1,665,482.00
Wateree:									
Hydraulic	3,218,362.00	(64,196.00)	3,154,366.00	278,918.00		278,918.00	3,497,480.00	(64,196.00)	3,433,284.00
Transmission	168,954.00	(3,446.00)	165,508.00	(2,248.00)		(2,248.00)	166,706.00	(3,446.00)	163,260.00
Total, Wateree	3,387,316.00	(67,642.00)	3,319,874.00	276,670.00		276,670.00	3,664,186.00	(67,642.00)	3,596,544.00
Total developments:									
Hydraulic	24,467,447.00	(340,402.00)	24,127,045.00	2,106,046.00	(600,000)	2,105,446.00	26,573,493.00	(341,002.00)	26,232,491.00
Transmission	1,192,364.00	(9,253.00)	1,183,111.00	110,603.00		110,603.00	1,302,967.00	(9,253.00)	1,293,714.00
Total Project No. 2232	25,659,811.00	(349,655.00)	25,310,156.00	2,216,649.00	(60,000)	2,216,049.00	27,876,460.00	(350,255.00)	27,526,205.00

( ) Denotes debit.
[1] Included in Great Falls.
[2] Staff adjustments represent project plant accounting dispositions.

SCHEDULE III

SUMMARY OF ADJUSTMENTS TO CLAIMED COST AND RECORDED COST NOT CLAIMED, BY DETAILED PLANT ACCOUNTS, AS OF SEPT. 1, 1958, TO RECORDED NET ADDITIONS FOR THE PERIOD SEPT. 1, 1958, TO DEC. 31, 1962, AND ACCOUNTING DISPOSITION THEREOF

Adjustments			Plant accounts affected					
Number	Description	Total	330	331	332	333	334	335
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	Initial Cost at September 1, 1958							
	Adjustments to claimed cost:							
1	Interest during construction	($725,311.00)	($368,283.00)	($27,161.00)	($254,460.00)	($55,895.00)	($7,794.00)	($1,322.00)
2	Maintenance expenditures capitalized	(86,605.00)	(2,429.00)	(4,491.00)	(78,508.00)	(1,077.00)		
3	Land rental revenues	(39,804.00)	(39,804.00)					
4	Land purchased from American Development Co.	(75,599.00)	(75,599.00)					
5	Writeup of Catawba Manufacturing & Electric Co. assets	(54,098.00)	(54,098.00)					
6	Damage payments capitalized	(10,948.00)	(10,948.00)					
7	Correction of timber credits	(923.00)	(923.00)					
8	Salvage not credited to land cost	(27,245.00)	(27,245.00)					
9	Payment to affiliated company for claims arising out of road and bridge changes	(5,000.00)	(5,000.00)					
10	Unsupported land costs	(1,555.00)	(1,555.00)					
11	Loss on Frank Lane Co. cement contract	(45,172.00)			(45,172.00)			
	Total adjustments to claimed cost	(1,072,260.00)	(585,884.00)	(31,752.00)	(378,140.00)	(56,972.00)	(7,794.00)	(1,322.00)
	Adjustments to recorded cost not claimed:							
4	Land purchased from American Development Co.	(127,173.00)	(127,173.00)					
5	Writeup of Catawba Manufacturing & Electric Co. assets	(52,902.00)	(52,102.00)					
12	Transfer of cost of land outside project boundary	(3,809,459.00)	(3,809,459.00)					
13	Transfer of acquisition cost applicable to land wholly outside project boundary	(20,123.00)	(20,123.00)					
14	Interest during construction capitalized on land wholly outside project boundary	(11,516.00)	(11,516.00)					
	Total adjustments to recorded cost not claimed	(4,020,373.00)	(4,020,373.00)					
	Total adjustments to initial cost	(5,092,633.00)	(4,606,257.00)	(31,752.00)	(378,140.00)	(56,972.00)	(7,794.00)	(1,322.00)
	Net Changes from Sept. 1, 1958, to Dec. 31, 1962							
15	Correction of transfer of motor generator set	(600.00)						(600.00)
	Total adjustments	(5,093,233.00)	(4,606,257.00)	(31,752.00)	(378,140.00)	(56,972.00)	(7,7940.00)	(1,922.00)

( ) Denotes credit.

SCHEDULE III—Continued

Number	Description	Adjustments 353	Total	Accounting Disposition: Electric plant in service depreciation nonproject 101	Accumulated provision for depreciation project number 2282 108	Accumulated provision for depreciation nonproject 108	Nonutility property 121	Unappropriated earned surplus 216
(1)	(2)	(10)	(11)	(12)	(13)	(14)	(15)	(16)
	Initial Cost at September 1, 1958							
	Adjustments to claimed cost:							
1	Interest during construction	($10,396.00)	$725,311.00	($12,601.00)	$257,980.00	$9,529.00		$470,403.00
2	Maintenance expenditures capitalized		86,605.00		58,194.00			28,411.00
3	Land rental revenues		39,804.00					39,804.00
4	Land purchased from American Development Co.		75,599.00					75,599.00
5	Writeup of Catawba Manufacturing & Electric Co. assets		54,098.00					54,098.00
6	Damage payments capitalized		10,948.00					10,948.00
7	Correction of timber credits		923.00	923.00				
8	Salvage not credited to land cost		27,245.00					27,245.00
9	Payment to affiliated company for claims arising out of road and bridge changes		5,000.00					5,000.00
10	Unsupported land costs		1,555.00					1,555.00
11	Loss on Frank Lane Co. cement contract		45,172.00		33,481.00			11,691.00
	Total adjustments to claimed cost	(10,396.00)	1,072,260.00	(11,678.00)	349,655.00	9,529.00		724,754.00
	Adjustments to recorded cost not claimed:							
4	Land purchased from American Development Co.		127,173.00					127,173.00
5	Writeup of Catawba Manufacturing & Electric Co. assets		52,102.00					52,102.00
12	Transfer of cost of land outside project boundary		3,809,459.00				$3,809,459.00	
13	Transfer of acquisition cost applicable to land wholly outside project boundary		20,123.00				20,123.00	
14	Interest during construction capitalized on land wholly outside project boundary		11,516.00					11,516.00
	Total adjustments to recorded cost not claimed		4,020,373.00				3,829,582.00	190,791.00
	Total adjustments to initial cost	(10,396.00)	5,092,633.00	(11,678.00)	349,655.00	9,529.00	3,829,582.00	915,545.00
	Net Changes from Sept. 1, 1958, to Dec. 31, 1962							
15	Correction of transfer of motor generator set		600.00		600.00			
	Total adjustments	(10,396.00)	5,093,233.00	(11,678.00)	350,255.00	9,529.00	3,829,582.00	915,545.00

( ) Denotes credit.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65-82

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 17, 1964)

On September 25, 1964, El Paso Natural Gas Company (Applicant) filed in Docket No. CP65-82 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline facilities to be located in Power County, Idaho, consisting of approximately 3.41 miles of 6⅝-inch O.D. pipeline looping a portion of its Simplot-Westvaco lateral line and the installation, as replacements, of certain valves and regulators in its Simplot-Westvaco meter station, all as more fully set forth in the application.

Applicant states that the purpose of the proposed facilities is to provide Intermountain Gas Company with increased delivery pressures and additional natural gas for resale to J. R. Simplot Company (Simplot) due to the construction by Simplot of an anhydrous ammonia plant adjacent to Simplot's phosphate plant. Estimated third year added requirements are 840 Mcf per day on a firm sale basis and 3,692 Mcf per day on an interruptible basis, for a total of 4,532 Mcf per day on a maximum day; and 274,239 Mcf firm sales on an annual basis and 972,303 Mcf of interruptible gas on an annual basis, for a total of 1,246,542 Mcf annually.

The total estimated total cost of the proposed facilities is $77,000, which cost will be financed from funds on hand.

A temporary certificate was issued to Applicant by letter on October 23, 1964.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 11, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G-242 and G-257 (3 FPC 851).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, El Paso Natural Gas Company to construct and operate the proposed facilities and to transport and sell natural gas as hereinbefore described, all as more fully described in the application, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be subject to any curtailment or interruption required to meet existing or future contracted maximum delivery obligations of Intermountain Gas Company and/or El Paso Natural Gas Company for firm service to its or their customers.

(D) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (c) of Section 157.7 of said Regulations.

(E) The construction of the facilities authorized by this order shall be completed and said facilities shall be placed in actual operation within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

INVESTMENT TAX CREDIT UNDER 1962 AND 1964 AMENDMENTS TO INTERNAL REVENUE CODE; ACCOUNTING TREATMENT BY NATURAL GAS COMPANIES, DOCKET NO. R-232

ORDER NO. 289-A

AMENDING PARAGRAPH B OF ACCOUNT 255 OF THE UNIFORM SYSTEM OF ACCOUNTS AS PRESCRIBED FOR NATURAL GAS COMPANIES BY ORDER NO. 289

(Issued December 17, 1964)*

On November 2, 1964, the Commission issued Order No. 289 (32 FPC 1255, 29 F.R. 15020) in which it prescribed, among other things, a new Account 255, Accumulated deferred investment tax credits, for use by natural gas companies under the Natural Gas Act (15 U.S.C. 717g).

Concurrently herewith, we are issuing Order No. 290 in which we prescribe generally similar accounting requirements for public utilities and licensees under the Federal Power Act (16 U.S.C. 825). As a result of the comments received relating to public utilities and licensees in Docket No. R-232, we revised Para-

*Published in the Federal Register on December 23, 1964 (29 F.R. 18216).

graph B of Account 255, as originally proposed, to permit changes in accounting method with respect to other than electric utility operations. A similar change should be made, as well, to that account as it applies to natural gas companies. Accordingly, we are here amending Paragraph B of Account 255, as prescribed in Order No. 289 to clarify our intention that the instruction relates solely to gas utility property and related consumers.

The Commission finds:

(1) The amendment herein adopted is necessary and appropriate for the purpose of the administration of the Natural Gas Act.

(2) For the reasons expressed above and in Order No. 289, it is unnecessary to comply with the notice and effective date provisions of section 4 of the Administrative Procedure Act.

The Commission, acting pursuant to the authority set out in Order No. 289, *orders:*

(A) Effective upon the issuance of this order, Paragraph B of Account 255, prescribed by Order No. 289 as an amendment to Part 201, Subchapter F, Chapter I, Title 18 of the Code of Federal Regulations, is amended by changing the words "useful life of the property" to "useful life of gas utility property". As so amended, Paragraph B of Account 255 will read as follows:

"B. Where the company's accounting provides that investment tax credits are to be passed on to customers, this account shall be debited and Account 411.1 credited with a proportionate amount determined in relation to the average useful life of gas utility property to which the tax credits relate or such lesser period of time as may be adopted and used by the company. If, however, the deferral procedure provides that investment tax credits are not to be passed on to customers, the proportionate restorations to income shall be credited to Account 420."

[Secs. 8, 16, 52 Stat. 825, 830; 15 U.S.C. 717g, 717o]

(B) The caption of Docket No. R-232 is amended, for the purposes of this order, to read as set forth above.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

INVESTMENT TAX CREDIT UNDER 1962 AND 1964 AMENDMENTS TO INTERNAL REVENUE CODE; ACCOUNTING TREATMENT BY PUBLIC UTILITIES AND LICENSEES, DOCKET NO. R-232; INTERIM ACCOUNTING TREATMENT OF INVESTMENT TAX CREDIT UNDER 1962 AMENDMENTS TO INTERNAL REVENUE CODE BY PUBLIC UTILITIES, LICENSEES, AND NATURAL GAS COMPANIES, DOCKET NO. R-231

ORDER NO. 290

AMENDING THE UNIFORM SYSTEM OF ACCOUNTS AND ANNUAL REPORT F.P.C. FORM NO.1 PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES

(Issued December 17, 1964)*

The Commission, in this order, is concluding the portion of this proceeding wherein, by notice issued January 15, 1963 (28 F.R. 528), it proposed the prescrip-

*Published in the Federal Register on December 23, 1964 (29 F.R. 18214). Amended by order issued January 7, 1965, 33 FPC 27.

tion of accounting requirements with respect to public utilities and licensees to reflect the tax credit for investment in certain depreciable property (investment tax credit) provided under section 2 of the Internal Revenue Act of 1962 (26 U.S.C. 38).[1]

Following the receipt of numerous responses to the invitation in the notice for the submission of comments on the proposals, oral argument was had before the Commission on October 7, 1963. However, due to the pendency in the Congress of legislation dealing with the investment credit, further consideration was postponed until after the enactment of the Revenue Act of 1964 (P.L. 88-272, Feb. 26, 1964.)

Thereafter, on May 1, 1964, the Commission announced the accounting treatment it proposed to provide—that the accounting to be prescribed should afford the various choices afforded by the Congress in that Act to the companies affected. Then, as also there announced, the Commission issued, on September 1, 1964, a notice of proposed rule-making (29 F.R. 12735, September 9, 1964) with respect to public utilities and licensees. It is the subject matter of that notice which is now before us for action.

The September 1 notice provided for the submission of comments from interested parties by October 15, 1964. Comments were received from 31 sources including licensees, public utilities, distributors, State regulatory agencies, firms of accountants, the National Association of Railroad and Utilities Commissioners Committee on Accounts and one federal agency. The majority of the responses approve the basic accounting proposed in the notice. Some requested clarification in texts, 12 recommended deletion of the amendment (attachment C to the notice) which proposed an amendment with respect to annual reports to stockholders, 3 requested that we provide accounting for balances accumulated in 1962 and 1963 under the interim order of the Commission, 12 recommended removal of the provision that approval by the Commission is needed for accounting changes when a company changes its election to pass or not to pass on the benefits of the tax credit to consumers, 2 included recommendations for changes in the reporting schedules, 1, a public utility, questioned the authority to issue the regulations and requested a hearing, and 3 distribution companies requested opportunity to appear if a hearing should be held.

All comments, recommendations and objections have been carefully considered. Many of the clarifying suggestions have been adopted and we will provide, as requested by three respondents, for the disposition of the investment tax credits which have been accumulated in Account 253 pursuant to the Commission's Interim Order of January 9, 1963, in Docket No. R-231.

Many of the comments were most helpful, some with respect to substance and others which suggested pertinent clarifying changes in the text of the accounts. As a result, we are modifying certain language and account requirements that were originally proposed in the notice. Most significant is the change in paragraph A of Account 255, which we are modifying to permit changes in accounting methods used for the investment tax credits relating to nonelectric and other operations as authorized in paragraph C of that Account without specific authorization by the Commission. A similar conforming change has been made in Account 411.1. Paragraph B, as here adopted, refers solely to electric

[1] On Jan. 9, 1963, the Commission had prescribed an interim accounting treatment (Order No. 261 in Docket No. R-231, 29 FPC 62, 28 F.R. 402) to be followed by the companies in closing their books for the year 1962 and in accounting for income taxes. Order No. 261 was continued in effect by a subsequent Interim Order, still effective with respect to public utilities and licensees as of the date hereof, issued in the instant proceeding January 23, 1964 (31 FPC 175, 29 F.R. 1567). The portion of this proceeding relating to natural gas companies was concluded by Order No. 289, issued Nov. 2, 1964 (32 FPC 1255, 29 F.R. 15020).

utility property rather than to total property as was implied in the notice. Finally, paragraph D has been modified so that companies will not be required to keep records on each of the properties acquired but rather on total properties acquired during the year on a weighted-average service life basis. An addition to the account also provides that tax investment records related to property acquisitions are not necessary when tax credits are not deferred. Slight conforming modifications have been made in the schedules being added to the annual report forms, FPC Nos. 1 and 1-F.

Since the Commission's authority to prescribe the basic accounting to be followed by public utilities and licensees is firmly established, questions raised on that issue by certain of the respondents are clearly without merit.

Paragraphs 2 and 3 of the September 1 notice herein fully explain the provisions of the Revenue Acts of 1962 and 1964 upon which this proceeding is based and the conclusions the Commission reached with respect to the proper and adequate accounting treatment for investment tax credits. The statements there made are still pertinent.

As we previously indicated, under section 2 of the Revenue Act of 1962 (26 U.S.C. 38), a credit is provided against federal income tax, based on investment in certain depreciable property placed in service during the tax year. Limitations on the amount of the credit which may be applied against the tax in any one year are provided, as well as carry-back and carry-forward provisions. The amount of the credit is seven percent for qualified property with the exception of public utility property, for which a credit of three percent is allowed. Section 203(e) of the Revenue Act of 1964 places limitations on the amount of the investment tax credit which may be used by the Commission in any one year to reduce the federal income tax of public utilities and licensees for the purpose of establishing cost of service for these utilities. In the case of public utility property, the Commission may use for this purpose no more than "a proportionate part (determined with reference to the average useful life of the property with respect to which the credit was allowed) of the credit against tax allowed for any taxable year . . .," without the consent of the taxpayer. Section 203(e) specifically recognizes that such public utilities and licensees may voluntarily pass along the entire amount of the tax credit in the year that it is used to reduce tax liability to their customers in the form of lower rates. It should also be noted that the Revenue Act of 1964 does not restrict the states in their treatment of the investment tax credit for ratemaking purposes.

In interpreting section 203(e) the Commission has concluded that the accounting prescribed for public utilities and licensees should accommodate the choices afforded the public utilities and licensees by the Congress, and that it should give such companies the option in accounting for the investment tax credit to elect between (1) prorating the benefits of the investment tax credit over a period of years not to exceed the useful life of the property which gave rise to the credit, by means of a deferral account; or (2) reflecting the benefits of the investment tax credit in the income statement of the year in which the credit is used to reduce income taxes.

The accounting we have prescribed herein is sufficiently flexible to accommodate any requirement which might be imposed upon a company by one or more state regulatory bodies which might have cognizance over some of the company's operations. Accordingly, there should be no problems caused by the possibility of conflicts between state regulatory bodies or between such groups and this Commission.

Upon consideration of the entire record in this proceeding, *the Commission further finds*:

(1) The amendments herein adopted are necessary and appropriate for the purposes of the administration of the Federal Power Act.

(2) Since the amendments to the Uniform System of Accounts herein adopted will, in effect, supersede the interim accounting prescribed in Order No. 261, in Docket No. R-231, issued January 9, 1963, and the Interim Order in Docket No. R.-232, issued January 23, 1964, it is appropriate to terminate those orders insofar as they relate to accounting by public utilities and licensees.

(3) In view of the termination referred to in finding clause (2), above, it is necessary and appropriate for the purposes of the administration of the Federal Power Act to provide, as hereinafter ordered, for the disposition of amounts of investment tax credits which have been accumulated in Account 253, Other deferred credits, pursuant to the directions contained in Order No. 261.

(4) Since it is desirable that the new schedule being added to F.P.C. Form Nos. 1 and 1-F be made available for reporting for the year 1964, good cause exists for making the amendments herein effective forthwith.

The Commission, acting pursuant to the authority granted by the Federal Power Act, as amended, particularly sections 301, 304 and 309 thereof (49 Stat. 854, 855, 858; 16 U.S.C. 825(a), 825c(a) and 825h), *orders:*

(A) Parts 101, 104 and 105, Uniform System of Accounts prescribed for public utilities and licensees, Subchapter C of Chapter I, Title 18 of the Code of Federal Regulations, are amended by adding at appropriate points therein two new accounts, viz., Account 255, Accumulated deferred investment tax credits and Account 411.1, Investment tax credit adjustments, to read, respectively, as set out in Attachment A, hereto.

(B) F.P.C. Forms Nos. 1 and 1-F, prescribed for public utilities and licensees by §§ 141.1 and 141.2 Subchapter D, Chapter I, Title 18 of the Code of Federal Regulations, are amended, effective for the reporting year 1964, by adding at appropriate points therein, two new schedules, viz.: Investment Tax Credits Generated and Utilized and Accumulated Deferred Investment Credits (Account 255), to read as set forth in Attachment B, hereto.

(C) Paragraph (d) of the aforesaid § 141.1 and paragraph (c) of the aforesaid § 141.2 are amended respectively by inserting, to follow the line "Accumulated Deferred Income Taxes" in § 141.1(d), and to precede the line "Verification" in § 141.2(c) the following new schedule titles:

"Investment Tax Credits Generated and Utilized."

"Accumulated Deferred Investment Tax Credits."

(D) The aforesaid Part 141 is amended by adding a new § 141.100 to read as follows:

"§ 141.100 General requirements for annual reports to stockholders and others.

All annual reports to stockholders and others shall include an appropriate summary of the investment tax credits generated and utilized and a statement of the accounting method elected by the company in connection with the utilization of the credits."

[Secs. 301, 304, 309, 49 Stat. 854, 855, 858; 16 U.S.C. 825(a), 825c(a), 825h.]

(E) Effective upon the issuance of this order, the provisions of Order No. 261 in Docket No. R-231 and the Interim Order of January 23, 1964 in Docket No. R-232 are terminated to the extent that they relate to public utilities and licensees.

(F) In view of our order herein terminating Order No. 261, issued January 9, 1963, insofar as it relates to the interim accounting of public utilities and

licensees, such companies shall dispose of the amounts of accumulated investment tax credits in Account 253, Other deferred credits, accumulated in accordance with the interim procedure established by that order during 1962 and 1963, as follows:

1. Companies which will not follow deferral accounting for nonelectric and other operations whereby all or a part of the tax credits are not to be passed on to customers in accordance with the provisions of this order and the texts of accounts prescribed herein, shall credit all or such portion of those balances as applicable to Account 421, Miscellaneous Nonoperating Income, for the reporting period ending December 31, 1964.

2. Companies which will not follow deferral accounting whereby all or a part of the tax credits are to be passed on to electric utility customers in accordance with the provisions of this order and the texts of accounts prescribed herein, shall credit all or such portion of those balances as applicable to Account 411.1, Investment Tax Credit Adjustments, for the reporting period ending December 31, 1964.

3. Companies which will follow deferral accounting for all or a part of the investment tax credits in accordance with the provisions of this order and the texts of accounts prescribed herein, shall transfer the applicable balances from Account 253 to Account 255, Accumulated Deferred Investment Tax Credits. Any amounts in such balances shall be recorded in the same manner as if the procedures and instructions in texts of Accounts 255 and 411.1 as promulgated in this order, had been effective in 1962 and 1963. In other words, amounts under deferral accounting procedures pertaining to 1962 and 1963 that would have been amortized in those respective years to Account 411.1 or to nonelectric or to other operations accounts had this order been then in effect, shall be recorded in the same manner as the amounts to be amortized for 1964.

It is recognized that for 1964 the amounts that will be shown as credits to Account 411.1 and to other accounts will be overstated. It is believed that such amounts should not be sufficiently large in most instances to distort the net income of reporting companies. Separation of the amounts in Account 411.1 by years (1962, 1963 and 1964) will be shown in the schedules of F.P.C. Forms Nos. 1 and 1–F prescribed herein.

(G) The caption of Docket No. R–232 is amended, for the purposes of this order, to read as set forth above.

(H) The amendments herein made to Parts 101, 104 and 141 and to Annual Report F.P.C. Forms Nos. 1 and 1–F shall be effective upon the issuance of this order.

(I) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Commissioner O'Connor *dissenting in part.*

O'CONNOR, Commissioner, *dissenting in part:*

The addition of Section 141.100 to the Regulations Under the Federal Power Act implies that the accounting profession is presently not complying with a principle unanimously adopted by the Accounting Principles Board of the American Institute of Certified Public Accountants:

> The Board emphasizes that whichever method of accounting for the investment credit is adopted, it is essential that full disclosure be made of the method followed and the amounts involved, when material.[1]

[1] Opinion No. 4, Accounting for Investment Credit, issued March 1964.

This same implication was present in the addition of the identical section to the Regulations Under the Natural Gas Act,[2] and because of it, I could not join in its adoption.

I remain persuaded that the accounting profession does not need a statutory reminder of its obligation to report all material entries. Thus, because of its contrary premise, I must once again dissent to the adoption of this Regulation.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNAUTHORIZED OVERRUN PENALTY PROVISIONS TO BE INCLUDED IN FPC GAS PIPELINE TARIFFS FILED PURSUANT TO SECTION 4 OF THE NATURAL GAS ACT, DOCKET NO. R-242

ORDER TERMINATING PROCEEDING

(Issued December 17, 1964)*

The Commission issued a notice on July 15, 1963, wherein it proposed to amend § 154.38 of the Regulations Under the Natural Gas Act by prescribing uniform unauthorized overrun penalty provisions to be included in rate schedules filed, pursuant to section 4 of the Natural Gas Act, by natural gas pipeline companies where a contracted volume is specified. The notice was published in the Federal Register on July 20, 1963 (28 F.R. 7432) and mailed to persons who would be affected or interested including federal and state agencies. Comments on the proposed rule were received from 79 respondents, including 19 pipeline companies, 48 distributors, 12 state commissions, municipalities and municipal associations. Of these, sixty respondents strongly opposed the proposal for a variety of reasons.

We have concluded, in the light of the opposition expressed by all segments of the industry and various regulatory bodies, that the regulations as proposed are not necessary for general application at this time. We have decided to withdraw the proposal for the present. However, as indicated in paragraph (3) of the July 15, 1963 notice, the existence of overrun penalty provisions in contracts between pipeline companies and their buyers could result in discriminatory practices in administering the penalty provisions among buyers who seek or take overrun gas. Hence, while the regulations originally proposed in this proceeding may not be necessary for general application at this time, it is important that we obtain from the pipeline companies information as to their actual experience and practice in administering the overrun penalty provisions. We have, therefore, instructed the staff to prepare a notice of proposed rulemaking to add a schedule to FPC Form No. 2 for the purpose of obtaining such information.

The Commission, therefore, orders:

(A) Effective upon the issuance of this order, the proceeding in Docket No. R-242 is terminated.

(B) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

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[2] Section 260.100 adopted in Order No. 289, issued November 2, 1964.

*Published in the Federal Register on December 23, 1964 (29 F.R. 18233).

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

ROCK CASTLE GAS COMPANY, DOCKET NO. RI64-136

ORDER CONDITIONALLY ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE, AND TERMINATING PROCEEDINGS

(Issued December 17, 1964)

On October 1, 1964, Rock Castle Gas Company (Rock Castle) submitted an offer of settlement in this proceeding pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves a proposed increased rate for a sale of natural gas made to United Fuel Gas Company (United) under Rock Castle's FPC Gas Rate Schedule No. 1 in the Appalachian Field, Martin County, Kentucky. The proposed increased rate was suspended by the Commission by order issued September 13, 1963, until February 15, 1964, and has not been made effective.

Under the terms of the offer, Rock Castle proposes a settlement rate of 21¢ per Mcf rather than the proposed 23¢ per Mcf for which it filed.[1] Rock Castle's annual revenues will be approximately $1,872 less under the settlement rate than under the proposed rate which was suspended. No protests or objections have been filed to the offer.

However, Rock Castle's offer is a unilateral proposal, and the contract rate remains at 23¢ per Mcf. Therefore, we shall condition our approval of the offer to impose a moratorium of three years from the date of issuance of this order during which period Rock Castle may not file for an increase in rate under the subject rate schedule.

We desire to make it clear that our conditional acceptance of Rock Castle's offer of settlement shall not be construed as approval of any future rate increase that may be filed under the subject rate schedule, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Rock Castle's rate and rate schedule.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Rock Castle on October 1, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Rock Castle October 1, 1964, is hereby approved in accordance with the provisions of this order.

(B) Rock Castle shall file, within 30 days from the date of issuance of this order, a notice of change in rate providing for the 21¢ per Mcf rate specified in its offer of settlement. The notice of change shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Rock Castle shall file within thirty days of the issuance of this order its acceptance signed by a responsible officer of the condition hereby imposed that it may not file an increase in rate for this sale of natural gas to United within a period of three years from the date of this order.

[1] The settlement rate is not applicable to sales from additional acreage dedicated to the subject contract pursuant to a letter agreement between Rock Castle and United dated June 28, 1963. This additional acreage is tenatively covered under Supplement No. 1 to Rock Castle's FPC Gas Rate Schedule No. 1, and is involved in the pending certificate proceeding in Docket No. CI64-214.

(D) Upon notification by the Secretary of the Commission that Rock Castle has complied with the terms and conditions of the order, the rate and charge of 21¢ per Mcf at 15,325 psia, specified in its offer of settlement shall be effective as of the date of issuance of this order and the above proceeding shall be deemed terminated.

(E) The acceptance by the Commission of Rock Castle's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Rock Castle, including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP64-107

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 17, 1964)

On September 10, 1964, Texas Gas Transmission Corporation (Applicant), filed in Docket No. CP64-107, an application to further amend an order of the Commission issued May 26, 1964, 31 FPC 1292, in Docket No. CP64-107, granting a certificate of public convenience and necessity authorizing among other things the sale and delivery of natural gas to Mississippi Valley Gas Company (Mississippi Valley).

The application to amend states that the United States Gypsum Company has requested that a portion of its interruptible purchases from Mississippi Valley be converted to firm service beginning November 1, 1964, as a result of which Applicant proposes to increase the Contract Demand of Mississippi Valley to 82,500 Mcf beginning with the 1964-65 winter heating season and 85,500 Mcf for the 1965-66 winter heating season, all as more fully set forth in the application to amend.

Applicant states the proposed service will be rendered from unallocated excess capacity authorized heretofore in Docket No. CP64-107. No new facilities are required to render the increased service.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on November 7, 1964 (29 F.R. 15109).

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued May 26, 1964, in Docket No. CP64-107 be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued May 26, 1964, in Docket No. CP64-107 be and the same is hereby further amended so as to authorize Texas Gas Transmission Corporation to increase the Contract Demand of Mississippi Valley Gas Company by 1,500 Mcf, and thereby increase the total authorized Contract Demand of Mississippi Valley to 82,500 Mcf for the 1964-65 winter season and 85,500 Mcf for the 1965-66 winter season.

(B) In all other respects said order shall remain in full force and effect.

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Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP64-107

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 17, 1964)

On September 30, 1964, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP64-107 an application to amend the order of the Commission issued May 26, 1964, 31 FPC 1292, which order among other things granted Applicant a certificate of public convenience and necessity authorizing the construction and operation of certain facilities in order to increase contract demand service to then existing customers. In the instant application to amend, Applicant seeks authority to construct and operate certain facilities in Knox County, Indiana, all as more fully set forth in the application.

Specifically, Applicant seeks authority to construct and operate two side valves and meters for the establishment of two new delivery points for delivery of natural gas to Hoosier Gas Corporation (Hoosier), an existing customer of Applicant, for resale by Hoosier to the incorporated community of Edwardsport, Indiana and the rural area of Freelandville, Indiana. Annual deliveries are estimated to be 22,239 Mcf and 30,435 Mcf respectively. No increase in the contract demand of Hoosier is proposed for this service.

The cost of the facilities is estimated to be $7,770 and will be financed with current funds.

Due notice of the subject application to amend has been given by publication in the Federal Register on November 7, 1964 (29 F.R. 15109). No protest, petition to intervene, or notice of intervention has been filed herein.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued May 26, 1964, be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued May 26, 1964, in Docket No. CP64-107 be and the same is hereby amended by authorizing Applicant to construct and operate two side valves and meters for the establishment of two new delivery points for delivery of natural gas to Hoosier Gas Corporation.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED STATES DEPARTMENT OF THE INTERIOR, BONNEVILLE POWER ADMINISTRATION, DOCKET NOS. E-6887, E-6956, E-6611, E-6658, E-6905 AND E-7059

ORDER CONFIRMING AND APPROVING AMENDMENT OF RATE SCHEDULE AND EXTENDING CONFIRMATION AND APPROVAL OF RATE SCHEDULES AND RATE SCHEDULE PROVISIONS

(Issued December 17, 1964)

The Secretary of the Interior (Interior), acting on behalf of the Bonneville Power Administration (Bonneville) pursuant to the Bonneville Act (50 Stat.

731, 734–5, as amended 59 Stat. 546) and Section 5 of the Flood Control Act of 1944 (58 Stat. 887, 890) on October 15, 1964, requested that the confirmation and approval heretofore granted by Commission orders issued December 16, 1959 in Docket No. E–6887 and December 20, 1960 in Docket No. E–6956 both for periods ending December 20, 1964, be extended for one year to December 20, 1965 with respect to Bonneville Wholesale Rate Schedules A–4, C–4, E–4, R–1, H–3, and amended General Rate Schedule Provisions; and that amended Schedule F–4 be approved for a one-year period ending December 19, 1965. Also on October 15, 1964, the Secretary requested that the confirmation and approval heretofore granted by Commission orders issued in Docket Nos. E–6611, E–6658, E–6905 and E–7059 for periods all ending December 19, 1964 be extended for one year to December 20, 1965, regarding the special application of Bonneville's wholesale rates and charges contained in certain specified contracts.

The wholesale rate schedules referred to above constitute all of the general rate schedules for electric energy sold by Bonneville and relate to the following types of service:

Rate Schedule A–4, for at-site firm power. Available to purchasers at the power plant or points adjacent thereto.

Rate Schedule C–4, for transmission system firm power.

Rate Schedule E–4, a two-part rate for power purchased for resale, and for irrigation and drainage pumping use. This rate is used primarily by public bodies and cooperatives who have no generating facilities of their own.

Rate Schedule H–3, for dump energy. Available to purchasers who normally maintain electric generating facilities or have other sources of electric energy available to supply the purchaser's requirements when dump energy is not available. Also available for emergency and breakdown use and for experimental and testing purposes.

Rate Schdule R–1, applied to at-site and transmission system firm power used by railroads primarily for traction purposes.

Rate Schedule F–4, as presently approved, is a two-part rate available to purchasers of firm power delivered by Bonneville and as amended would also provide for the sale of peaking capacity.

The proposed amendment to Rate Schedule F–4 comprises a new Section 5, "Firm Capacity" and new Section 6, "Special Provisions Relating to Combination With C–4 Rate."

Section 5 provides that firm capacity may be purchased on a contract demand basis for supply during a contract year or during a contract season of May 1 through September 30. The minimum annual charge shall be as follows:

(1) Contract year service: $9.00 per kilowatt per year of the larger of the contract demand or measured demand for the contract year. Interim bills will be rendered monthly at the rate of $0.75 per kilowatt of billing demand starting with deliveries for the first month of each contract year.

(2) Contract season service: $5.00 per kilowatt per season of the larger of the contract demand or measured demand for the contract season. Interim bills will be rendered monthly at the rate of $1.00 per kilowatt of billing demand starting with deliveries for May of each contract season.

Contracts for the purchase of such firm capacity shall include provisions for the advance delivery or for return by the purchaser of energy accompanying the delivery of such capacity. Any such energy which is not supplied by the purchaser will be billed under Schedule H–3.

Section 6 provides that firm capacity may be purchased under Schedule F–4 in combination with the purchase of firm power under Schedule C–4.

Under such combination purchase, the billing demand for firm capacity under Schedule F–4 shall be the contract demand specified in the contract, which may

be increased by the purchaser on July 1 of any year by prior notice to the Administrator. Capacity deliveries under Schedule F–4 shall be deducted from total firm power peak measured and peak computed demands in determining the billing demand under Schedule C–4. Any adjustment for power factor on combination purchase deliveries shall be applied to the billing under Schedule C–4 by relating total reactive kilovolt-ampere-hours to energy deliveries under Schedule C–4.

The contract for purchase of firm capacity in combination with Schedule C–4 shall include provisions for the advance delivery or for return by the purchaser of energy accompanying the delivery of such capacity from actual generation at the purchaser's plants or by purchase of energy from sources other than contracts with Bonneville. Any such energy which is not supplied by the purchaser will be billed under Schedule H–3.

The special application of Bonneville rate schedules for which Interior has requested that approval be extended for a one-year period effective December 20, 1964, have heretofore been approved by orders of the Commission, all of which expire December 19, 1964. These orders were issued as follows:

(1) On January 21, 1960, in Docket No. E–6611, 23 FPC 119, approving rates for sale of provisional energy to any industrial customer purchasing both firm and interruptible energy. Twelve industrial firms in the metals and chemical fields are presently contracting for the purchase of provisional energy.

(2) On January 21, 1960, in Docket No. E–6658, 23 FPC 527, approving rates and charges for electric power sold under a contract with The Montana Power Company. The contract provides for the sale of power in accordance with Bonneville's Rate Schedule C–4, except that it limits the delivery of monthly energy to an 80 percent load factor. In addition, the contract provides that the parties will exchange excess and emergency energy, with net balances of exchange energy being settled at the rate specified in Rate Schedule H–3.

(3) On March 24, 1960, in Docket No. E–6905, 23 FPC 527, approving rates and charges for electric power, in addition to space heating requirements, contained in contracts with the City of Coulee Dam. On March 20, 1962, in Docket No. E–6905, 27 FPC 548, approving similar provisions in contracts with the City of Grand Coulee. The rates approved under Docket No. E–6905 are the same as those specified in Rate Schedule E–4, except the minimum billing limitation is deleted and a billing demand provision based on load factor is included in lieu of the 70 percent ratchet demand provision in Rate Schedule E–4.

(4) On December 6, 1962, in Docket No. E–7059, 28 FPC 950, approving modification of Rate Schedule E–4 contained in a contract with Public Utility District No. 1 of Okanogan County, and in similar contracts. The modification consists of a provision which precludes the possibility of dump energy sales for resale to customers having their own generating facilities being included in the determination of billing limitations of Section 4 of Rate Schedule E–4.

The Bonneville Act requires contracts for the sale of electric energy at wholesale to contain provisions for the adjustment of rates at intervals of not less than five years. Interior states that in keeping with this requirement, it had been Interior's intention to file a proposed new rate structure with revised rate provisions this year and that extensive studies had been made toward that end. Results of changes envisaged included increased revenues, a better balance between types of power and classes of customers, more flexibility of operation for utilities having their own generating facilities, a greater use of electricity, and an improved market for federal peaking power and secondary energy, large

amounts of which are now being wasted. Conferences were held with Bonneville's customers and interested parties where these matters were discussed and rate adjustments were proposed.

Following Interior's last proposal, many customers are said to have requested Bonneville to postpone for one year the adoption of higher rate schedules. They held that during the year the resolution of such matters as the Northwest-Southwest intertie and Canadian Treaty negotiations might have a material effect on the need for an increase in rates. Accordingly, an amendment which permits a general review of Bonneville rate schedules to be effective December 20, 1965, rather than December 20, 1964, was agreed to by all customers and incorporated in their contracts. The customers were advised, however, that, should the general rate adjustment be postponed, Bonneville would still file with the Commission a peaking capacity rate of $9.00 per kilowatt-year including a kilowatt-season rate of $5.00 for the period May 1–September 30, to be effective December 20, 1964. These are the rates in the amendment to Rate Schedule F–4. Interior looks to the peaking rate to assist in making the maximum use of capacity available from the federal system at a reasonable price, and says it will enable seasonal off-peak capacity from the Columbia River system to be sold to customers, particularly in the Pacific Southwest, who have summer peak loads due primarily to air-conditioning and irrigation requirements. Interior expects that sales of peaking capacity will range from 10 to 30 megawatts during the first year the peaking rate is effective and to continue to increase thereafter.

Written notice of the proposed amendments to Wholesale Rate Schedule F–4 was given to the Public Service Commission of the State of Washington and the Public Utility Commissioner for the State of Oregon and to the Governors of those States and was published in the Federal Register on November 7, 1964 (29 F.R. 15106), stating that any person desiring to comment or to make any representation with respect thereto should submit same on or before November 18, 1964, to the Federal Power Commission, Washington, D.C., 20426. No comment or representation has been received.

The Commission finds:

It is appropriate for the purposes of the Bonneville Act, and Section 5 of the Flood Control Act of 1944, that the confirmation and approval of Bonneville's existing Wholesale Rate Schedules A–4, C–4, E–4, R–1, H–3, and amended General Rate Schedule Provisions, heretofore granted, but expiring December 19, 1964, be extended and continued for a one-year period beginning December 20, 1964 and expiring December 19, 1965; that Rate Schedule F–4, as amended, be confirmed and approved for a one-year period beginning December 20, 1964 and ending December 19, 1965, and that the confirmation and approval of the special applications of Bonneville's wholesale rates and charges contained in certain specified contracts as set forth in Docket Nos. E–6611, E–6658, E–6905 and E–7059 be extended for a one-year period beginning December 20, 1964 and ending December 19, 1965.

The Commission orders:

The aforementioned wholesale rate schedules, rate schedule provisions and the special application of the Wholesale rates and charges as referred to in the above finding hereby are confirmed and approved for a one-year period beginning December 20, 1964 and terminating December 19, 1965.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION, EKLUTNA PROJECT, ALASKA, DOCKET NO. E-7045

ORDER CONFIRMING AND APPROVING RATE SCHEDULES

(Issued December 18, 1964)

The Acting Commissioner of the Bureau of Reclamation, United States Department of the Interior (Reclamation) on August 7, 1964, pursuant to the Eklutna Project Act of July 31, 1950 (64 Stat. 382; 48 U.S.C. 312), as amended, filed with the Federal Power Commission a request for confirmation and approval for a one-year period ending August 4, 1965 of rate schedules for the sale of electric power and energy generated at the Eklutna Project (Eklutna), located in the vicinity of Anchorage, Alaska. The rate schedules for which approval is requested are designated A–F3 (superseding A–F2), A–N2 and A–L2.

By order issued August 1, 1957, Eklutna Project, Alaska (18 FPC 97), the Commission confirmed and approved Rate Schedules A–F2 and related General Rate Schedule Provisions and Rate Schedules A–L2 and A–N2 for the sale of Eklutna electric power and energy during an interim period not to exceed five years from August 4, 1957. By order issued April 17, 1963, Eklutna Project, Alaska (29 FPC 770), the Commission extended its confirmation and approval of those rate schedules until August 4, 1964.

Except for the effective date, Rate Schedules A–N2 and A–L2 are identical with those of the same designation previously approved by the Commission. Proposed Rate Schedule A–F3, submitted to replace Rate Schedule A–F2, is identical with A–F2 except that an article has been added providing for auxiliary power service which contains provisions insuring that power and energy reserved in power sales contracts under that schedule will be purchased and used as a part of the customer's system power supply.

Rate Schedule A–N2 provides rates for non-firm service. It is applicable to customers normally maintaining generating facilities, or other sources of energy, sufficient to supply their requirements when dump energy is not available. Basic rates for non-firm service are: demand charge—none; energy charge—6.0 mills per kwh.

Rate Schedule A–L2 provides rates for domestic retail service. It is available at towns, camps, and installations operated in connection with construction, or operation and maintenance of Federal projects for service supplied over low voltage distribution systems owned by the United States. It is applicable to domestic or residential customers for light, heat (exclusive of house heating) and power service. Basic rates for domestic retail service for a four-week period are: demand charge—none; energy charge—first 50 kilowatt hours, 4 cents per kilowatt-hours; next 150 kilowatt-hours, 2 cents per kilowatt-hour; all additional kilowatt-hours, 1¼ cents per kilowatt-hour.

Proposed Rate Schedule A–F3 provides rates for wholesale firm power service. It is not applicable to standby or auxiliary service except that service auxiliary to other power supply will be permitted under appropriate contract terms. It provides for a monthly capacity (demand) charge of $2.25 per kw of billing demand (the highest 30-minute integrated demand during the month) and an energy charge of 6 mills per kwh. If delivery is taken by the customer at the transmission voltage a discount of 5%, representing savings of substation cost, will be allowed. If service is metered at the secondary side of the customer's

transformer, the meter readings will be increased 2% to compensate for losses. The minimum annual capacity charge is $21.60 per kilowatt for 80% of contract demand for the first year, for 90% of contract demand for the second year, and for 100% of contract demand for subsequent years.

An article has been added to this rate schedule which provides that the contractor shall have an obligation in each billing period to take and/or pay for not less than 90% of the power and energy for which the United States has obligated itself to supply.

The Bureau's request of July 18, 1962 for extending confirmation and approval of Rate Schedules A–F2, A–N2 and A–L2 was supported with a repayment study that showed the proposed rates would provide sufficient revenue to repay the total investment in the Eklutna Project allocated to power in the forty-first year of operations. The Commission, in a letter to the Secretary of the Interior dated November 9, 1962 pointed out that, if rates were established on the basis of amortizing the investment in the Eklutna Project in fifty years rather than in forty-one years, the rates could be lowered. On the basis of the reply by the Assistant Secretary of the Interior requesting temporary extension only of the existing rate schedules until August 4, 1964, pending receipt of recommendations of the President's Water Resource Policy Committee engaged in studying cost allocations and repayment practices of Federal hydroelectric projects, the Commission issued its order of April 17, 1963, approving the rate schedules until August 4, 1964.

The Bureau's current filing of August 7, 1964, does not reflect recommendations of the President's Water Resource Policy Committee since the work of that committee has not yet been completed. It does however, state that repayment studies (not furnished) have been made relative to the extension of present rate levels as well as to their downward revision. Two conclusions are said to result from these studies: first it would be financially inadvisable to reduce project rates at this time because of the uncertainty regarding the ultimate cost of damage caused by the earthquake on March 27, 1964, estimated to be more than three million dollars; second, the rate schedule for firm power service should be modified, as set forth in proposed Rate Schedule A–F3, so as to include an article on auxiliary power service, similar to that contained in the Fort Peck Rate Schedule R6–F4 (Docket No. IT–5891–Fort Peck, 16 FPC 841) which provides that the United States will be paid for not less than ninety percent of the power and energy which it is obligated to reserve for a customer.

Written notice of the request for approval of the three rate schedules was sent to state officials and other interested parties. Notice of the request was also published in the Federal Register on September 1, 1964 (29 F.R. 12486) stating that any person desiring to make comments or suggestions for Commission consideration with respect to said Rate Schedules should submit the same in writing on or before September 18, 1964. Comments and protests were received from the three customers for wholesale firm power service, namely, the City of Anchorage, Chugach Electric Association and Matanuska Electric Association. All three oppose the article concerning auxiliary power service in proposed Rate Schedule A–F3, and the City of Anchorage claims the proposed article would nullify and vitiate its contract with the Department of the Interior dated November 23, 1953. Also the two electric associations renew their request for a rate reduction based on a full 50-year "pay-out."

Copies of the letters of comment and protest from the three parties were sent to the Secretary of the Interior on September 9, 1964, and the views of the Department in response thereto were furnished the Commission in a letter dated

October 23, 1964 from Robert W. Nelson, Deputy Assistant Secretary of the Interior.

In response to the objection to the auxiliary power service article, the Department of the Interior points out that the Eklutna Project was constructed to serve primarily the City of Anchorage, the Matanuska Electric Association and the Chugach Electric Association, and the installed capacity of 30,000 kilowatts is under contract to these three customers.

Furthermore, Interior states that past operating experience at Eklutna shows indisputably that some of the customers are actually peak-loading with Eklutna project power. It is noted that the Bureau is obligated to supply energy to the City of Anchorage up to an annual load factor of 52 percent but that the City has been purchasing energy well below normal load factors. The result of this trend toward peaking Eklutna power casts doubt on whether sufficient revenues from the sale of energy will accrue so that the project investment will be amortized at the end of the 50-year period.

A similar problem arose in the marketing of Fort Peck power. There we pointed out that a large portion of hydro project costs, which are essentially of fixed costs, are collected under the energy portion of the rate and the rates may not pay out if the available energy is not sold, or is sold at the lower dump energy rates. We further noted that the auxiliary service provision insures that a customer will not peak-load or base-load on project power and thereby jeopardize the project's revenues or its commitments to others (Fort Peck Project, Docket No. IT–5981, 16 FPC 841). These observations and statements are equally applicable to the objections to the auxiliary power service article in the proposed Rate Schedule A–F3. Accordingly, we find that the proposed article is justified and consistent with the Eklutna Project Act of July 31, 1950 (64 Stat. 382; 48 U.S.C. 312).

Whether or not the proposed auxiliary power service article will nullify and vitiate the contract between the City of Anchorage and the Department of the Interior as claimed by the City but denied by the Department is a matter not subject to this Commission's jurisdiction. However, irrespective of the terms of the contract, the Eklutna Project Act requires that power generated at the project must be disposed of pursuant to rate schedules confirmed and approved by this Commission. No contract can vitiate the requirements of such rate schedules.

While we thus agree with the Department as to the appropriateness of the auxiliary service article, the level of rates may require revision to reflect more nearly the level necessary to provide a 50-year pay-out period. The marketing and repayment requirements set forth in the Eklutna Project Act of July 31, 1950, are virtually the same as those in Section 5 of the Flood Control Act of 1944, which provides that electric power and energy shall be disposed of in such a manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles, and that the capital investment allocated to power shall be amortized over a reasonable period of years. In marketing power pursuant to the Flood Control Act of 1944, the Department of the Interior has made it a general practice to base its rate schedules on a 50-year period for amortizing investment cost allocated to power. The Commission has accepted and approved a 50-year period as satisfying the statutory requirement and that the capital investment be amortized in a "reasonable period of years", and has approved rate schedules established on this basis.

The repayment study furnished by the Bureau of Reclamation in support of the rate schedules filed July 18, 1962, shows the unpaid balance of the invest-

ment in the Eklutna Project at the end of fiscal year 1964 to be $26,813,737. Further, the study shows that, if all the energy estimated to be producible by the project is sold at the present rates, the total investment would be repaid in the forty-first year and that a surplus of $11,428,233 would be accumulated at the end of the fiftieth year. The present value of this estimated future surplus would be only a fraction of this total.

We are, of course, aware of the problem raised by the damage to the project resulting from the earthquake of March 27, 1964.

We note that during the second session of the 88th Congress, bills were introduced in both the House and the Senate providing that sums expended by the Secretary of the Interior in rehabilitating the Eklutna Project from damages caused by the earthquake, shall be nonreimbursable and nonreturnable, and not subject to the pay-out provisions of the Eklutna Project Act of July 31, 1950.

If similar legislation is adopted during the forthcoming Congress, the cost of repairing earthquake damage would be excluded from project costs to be paid from power revenues and would not need to be considered in establishing an equitable rate structure. However, at the present time, neither the amount of additional cost necessary to repair the damage nor the method of reimbursement for such costs have as yet been determined.

It therefore appears that a further period of time is necessary to consider whether there will be any additional cost as a result of the earthquake damage which will be required to be repaid from revenues of the project and in the light of those circumstances the extent to which adjustments in rates should be made by applying the normal 50-year repayment period. Accordingly, we will approve the rate schedules as filed by Reclamation for a period expiring August 4, 1965 pending the consideration of these matters.

The Commission finds:

It is appropriate for the purposes of the Eklutna Project Act of July 31, 1950 (48 U.S.C. 312), as amended, that Rate Schedules A–N2, A–L2 and A–F3 filed by Reclamation, for the sale of electric power from the Eklutna Project be confirmed and approved for a period beginning with the date of this order and expiring August 4, 1965, as hereinafter provided.

The Commission orders:

The Rate Schedules A–N2, A–L2 and A–F3 of Reclamation for the sale of electric power from the Eklutna Project are hereby confirmed and approved for a period beginning with the date of this order and expiring August 4, 1965.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

AREA RATE PROCEEDING, DOCKET NO. AR61–1; CLAUDE E. AIKMAN, ET AL., DOCKET NO. G–18466, ET AL.; NORTH CENTRAL OIL CORPORATION (OPERATOR), ET AL., DOCKET NO. CI60–435, ET AL.

ORDER ON RECONSIDERATION

(Issued December 21, 1964)

On December 1, 1964, *supra*, p. 1382, an order of the Commission granted leave to Oklahoma Independent Petroleum Association (OIPA), to Philadelphia Electric Company (Philadelphia), and to Associated Gas Distributors (AGD) to file briefs as amici curiae in this proceeding. On December 1 and 2 several

producer-respondents in this proceeding filed answers opposing the filing of such briefs by Philadelphia and AGD on the ground that their interests were basically those of parties rather than disinterested amici curiae, that the content of their briefs was improper at this stage of the proceeding, and that additional time would be needed for replies. (There was no opposition to the motion of OIPA for leave to file a brief as amicus curiae.)

Upon careful reading of the answers in opposition and full reconsideration, we find nothing which would cause us to change our original determination. In view of the far-reaching effects of the precedents which may be established in this case, we believe that the movants, who sought to be heard within the period for filing briefs on exceptions, should be allowed to present their views so that we may have the benefit of all possible suggestions in this pilot proceeding.

We have not considered, in making this determination, the content of any of the briefs on behalf of the movants. Respondents assert, as a reason for rejecting Philadelphia's brief, that Philadelphia has gone outside the evidentiary record in this proceeding in the preparation of an appendix to that brief. The fact that a brief contains material which should be disregarded is not a ground for refusing to receive the brief. The Commission will not rely on extra-record factual materials unless they are properly the subject of official notice. See Rules of Practice and Procedure, Section 1.26(d). If any of the briefs on exceptions, including the amicus briefs, contain improper factual materials, the reply briefs may inform us of the impropriety. On the other hand, if any of the briefs permissibly rely upon evidence of record to reach debatable conclusions of policy then the reply briefs are the appropriate vehicle for continuing the debate. Matters raised by the briefs on exceptions should be dealt with in the replies thereto for which adequate time has heretofore been granted.

The Commission finds:

In the answers of Amerada Petroleum Corporation, Continental Oil Company, Gulf Oil Corporation, Humble Oil & Refining Company, Pan American Petroleum Corporation, Phillips Petroleum Company, The Pure Oil Company, Shell Oil Company, Sinclair Oil & Gas Company, Socony Mobil Oil Company, Inc., Texaco Inc., and Warren Petroleum Corporation to the motions by Philadelphia Electric Company and Associated Gas Distributors for leave to file briefs as amici curiae, no new facts or legal principles have been presented which would warrant any change or modification in our prior order of December 1, 1964, in this proceeding.

The Commission orders:

The order of December 1, 1964, which granted leave to Oklahoma Independent Petroleum Association, Philadelphia Electric Company, and Associated Gas Distributors to file briefs on exceptions as amici curiae in this proceeding is hereby confirmed.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CONTINENTAL OIL COMPANY, THE ATLANTIC REFINING COMPANY, TIDEWATER OIL COMPANY, CITIES SERVICE OIL COMPANY, DOCKET NO. RI64-129

ORDER AMENDING ORDER AND DENYING APPLICATION FOR REHEARING

(Issued December 21, 1964)

On November 23, 1964, the above-named respondents filed a joint application for rehearing of our order issued October 23, 1964, in the captioned proceeding[1] wherein we found and concluded, *inter alia*, that the transaction involved, namely the transfer and sale by respondents of certain leasehold interests in the Ship Shoal Field offshore Southern Louisiana to Tennessee Gas Transmission Company, constitutes a sale in interstate commerce of natural gas for resale subject to our jurisdiction under the Natural Gas Act and the requirements of subsections (c) and (e) of Section 7 of the Act. The order on which rehearing is now sought adopted the intermediate decision of the examiner in this proceeding as our own with the exception of his ultimate conclusion regarding the effect of the Fifth Circuit Court of Appeals decision in *M. H. Marr, et al.* v. *F.P.C.*, 336 F. 2d 320. As we observed therein, the mandate of the court in *Marr* had been stayed[2] at the time of our order and, pending the filing of a petition for a writ of certiorari with the Supreme Court[3] and the outcome thereof, the Commission would not accept the conclusion of the circuit court as binding.

In their application for rehearing respondents again attack the portion of the examiner's decision which supports the conclusion that the Commission has jurisdiction of the instant transaction and our failure to follow the reasoning of the *Marr* opinion. The arguments as now made are substantially the same as those contained in their brief on exceptions to the initial decision and require no elaboration of the discussion in Opinions No. 378, 378-A and 403, supporting our conclusion herein.

In addition, respondents contend that the Commission erred in its October 23, 1964, order in requiring them to make such filings as may be necessary to bring them into compliance with the provisions of the Natural Gas Act.

Ordering paragraph (B) of our order requires respondents to make the necessary compliance filings within six months of the date of issuance of the October 1964 order. This action is in the main consistent with a like requirement in Opinion Nos. 378 and 378-A wherein, rather than denying the pipeline's application outright, the Commission afforded it and the producers an opportunity to revise their contractual arrangements so as to furnish assurance that the transactions, already partially consummated, would be in the public interest.[4] Although no gas has yet begun to flow into Tennessee's lines from the Ship Shoal reserves respondents indicate in their filing that "There is no way to restore the parties to the 1960 lease sale transaction to their *status quo ante* . . . Millions of dollars in down payments and note installments have changed hands . . . The income tax hurdle, alone, is insurmountable." Respondents further state that "Exhibits 1, 2, 5 and 6, the subject matter and effectuating instruments of the

[1] Order Determining Jurisdiction on Order to Show Cause, 32 FPC 1167.

[2] The date of August 14, 1965, in the penultimate line on page 2 of the order should read August 14, 1964.

[3] *F.P.C.* v. *M. H. Marr, et al.*, No. 693, Oct. Term, filed November 16, 1964; see also *U.G.I.* v. *M. H. Marr, et al.*, No. 644, same term, filed November 2, 1964.

[4] *Tennessee Gas Transmission Co.*, Opinion No. 378, 29 FPC 249, 257-258; Opinion No. 378-A, 30 FPC 153, 156-157.

Ship Shoal transactions, do not lend themselves to initial certification as gas sales, nor to continuing regulation as rate schedules."

These allegations state the problems in meeting public interest requirements when private contractual arrangements are shaped in a manner inappropriate for obtaining necessary regulatory approval. In such a course of action the parties proceeded at their peril and they cannot now be heard to contend that the public interest should give way because of difficulties of their own making. The Commission has determined that as this transaction is now constituted it is impossible to exercise effective regulatory control over this attempted introduction of vast quantities of natural gas into interstate commerce.[5] Our requirement in paragraph (B) was intended to recognize the respondents' situation to the extent consistent with the public interest and to give them further opportunity to make filings of appropriate rate schedules and applications for certificates of public convenience and necessity. We did not intend to order the parties to execute a particular kind of contract or force them to arrive at any agreement whatsoever. In order to make our meaning clearer we shall revise finding (4) and ordering paragraph (B) as shown below.

The Commission further finds:

The assignments of error and grounds for rehearing set forth in the application for rehearing filed in this proceeding present no facts or principles of law which would warrant any change in the Commission's order issued October 23, 1964, except as specified below.

The Commission orders:

(A) Finding paragraph (4) of our order issued October 23, 1964, in this proceeding is amended to read:

(4) It is appropriate in the administration of the Natural Gas Act that opportunity be afforded for further filings on the part of respondents.

(B) Ordering paragraph (B) of our order issued October 23, 1964, in this proceeding is amended to read:

(B) Continental Oil Company, The Atlantic Refining Company, Tidewater Oil Company and Cities Service Oil Company are granted opportunity until six months after the date of issuance of this order to make filings of appropriate rate schedules and applications for certificates of public convenience and necessity and to take such further steps as may be necessary to bring them into compliance with this order, the public interest and the Natural Gas Act.

(C) The application for rehearing filed by respondents on November 23, 1964, is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and David S. Black.

THE DAYTON POWER AND LIGHT COMPANY, COLUMBUS AND SOUTHERN OHIO ELECTRIC COMPANY, DOCKET NO. E-7189

ORDER AUTHORIZING SALE OF FACILITIES

(Issued December 21, 1964)

The Dayton Power and Light Company (Dayton) and Columbus and Southern Ohio Electric Company (Columbus), filed a joint application on November 9,

[5] ". . . It is difficult to envision how we could exercise our regulatory authority within the framework of such an arrangement." 30 FPC 759, 767.

1964, for an order pursuant to Section 203 of the Federal Power Act requesting authorization for the acquisition by Dayton from Columbus and the sale by Columbus to Dayton of a certain electric transmission line interconnecting the systems of the Applicants.

Dayton is incorporated under the laws of Ohio and doing business in the State of Ohio with its principal business office at Dayton, Ohio. Dayton is engaged in the production, transmission, distribution and sale of electric energy in 24 counties in southwestern Ohio. It supplies electric energy at wholesale to 19 municipal systems and five rural cooperative systems, and is also interconnected with Cincinnati Gas & Electric Company, Columbus and Southern Ohio Electric Company, Ohio Edison Company, and Ohio Power Company.

Columbus is incorporated under the laws of Ohio and doing business in the State of Ohio with its principal business office at Columbus, Ohio. Columbus is engaged in the production, transmission, distribution and sale of electric energy in 25 counties in south central Ohio. It supplies electric energy to four municipal systems and to five rural cooperative systems and is interconnected with Ohio Edison Company, Ohio Power Company, Ohio Valley Electric Corporation, and The Dayton Power and Light Company.

On October 20, 1964, Dayton and Columbus entered an Agreement whereby Dayton has agreed to acquire and Columbus has agreed to sell a 138,000 volt wooden H-frame transmission line which extends from Columbus' Delaware Substation No. 240, located at Liberty and Slack Roads, Delaware, Ohio (Delaware Sub) to Dayton's Darby Substation near Marysville, Ohio. The facilities to be transferred include all the wooden poles and conductors together with all related equipment and appurtenances beginning with and including the deadend insulator assembly attached to Columbus' Delaware Substation, thence, westerly from said insulator assembly to and including the deadend insulator assembly attached to Dayton's Darby Substation, together with all rights-of-way with respect to said line lying between the two substations. The sole purpose of the line is to interconnect the systems of Dayton and Columbus.

For the transfer of the transmission line, Dayton will pay and Columbus will receive $574,897 in cash. This amount includes $571,697 for the line itself and $3,200 for property tax applicable to the line. The consideration of $571,697 for the line itself compares with the line's depreciated original cost of $561,679. On the books of Dayton, an electric plant acquisition adjustment of $10,018 will be created and this will be eliminated by a debit to Account 426, Other Income Deductions. On the books of Columbus, a net gain of $1,518, after provision for Federal Income Tax liability associated with the tax gain on the sale, will be credited to Account 421, Miscellaneous Nonoperating Income.

Applicants represent that the principal benefit from the line at the present time, is to provide substantial emergency capacity to the Dayton system and some emergency capacity to the Columbus system. In addition, the line is available to provide a path for other interchange transactions between the companies. The electrical characteristics of the Applicants' systems are such that the benefits from the interconnection now flow to a greater extent to Dayton than to Columbus and will continue to do so in the future. Inasmuch as Dayton is not buying firm power across the line or paying the carrying charges on the investment on the line, although Dayton is now receiving and will continue to receive, the major benefit from the line, the Applicants believe that it is in the public interest that Dayton should own the line.

Applicants further represent that the proposed transaction will result in no change in any contract for the purchase, sale or interchange of electric energy other than possible amendment to the Agreement dated January 11, 1963, between

Dayton and Columbus, on file with the Commission, to reflect the change in ownership of the facilities, the subject of this application. There would be no change in rate schedules as such.

Written notice of the application was given to the Public Utilities Commission of Ohio and to the Governor of the State of Ohio. On November 20, 1964, the Public Utilities Commission of Ohio authorized the proposed purchase and sale. Notice was also published in the Federal Register on November 20, 1964 (29 F.R. 15590), stating that any person desiring to be heard or to make any protests with reference to said application, should on or before December 4, 1964, file with the Federal Power Commission, Washington, D.C., 20426 petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No petitions or protests or requests to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Columbus, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described in the Commission's order issued May 9, 1962, *Columbus and Southern Ohio Electric Company, Ohio-Midland Light & Power Company and South Central Rural Electric Cooperative, Inc.*, Docket No. E-7036 (27 FPC 922).

(2) Dayton, a corporation organized and existing under the laws of the State of Ohio, owns and operates facilities, among others, for the transmission and sale at wholesale of electric energy which is generated in Kentucky and Indiana and consumed in Ohio, all of which facilities are in addition to, and do not include facilities used for the generation of electric energy, facilities used in local distribution, or only for the transmission of electric energy in intrastate commerce or facilities for the transmission of electric energy consumed wholly by the transmitter, and Dayton is therefore, a public utility within the meaning of that term as used in Section 203 of the Federal Power Act.

(3) By the proposed transaction, Columbus will dispose of part of its facilities subject to the jurisdiction of the Commission which have a value in excess of $50,000 and Dayton in acquiring such facilities will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Columbus, another person, all within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(4) The proposed sale of facilities by Columbus and the proposed acquisition of these facilities by Dayton, as described above upon the terms and conditions set forth in the application and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

(5) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed sale by Columbus and the proposed acquisition by Dayton of the aforementioned transmission line facilities and related rights-of-way, all as described above, are authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) The Applicants shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted by the Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP64-255 (PHASE I)*

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 21, 1964)**

On April 28, 1964, as supplemented on June 29, 1964, September 1 and 24, 1964, and October 1, 5 and 6, 1964, Northern Natural Gas Company (Applicant) filed in Docket No. CP64-255 (Phase I) an application pursuant to Section 7 (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline facilities in order to provide initial natural gas service to the Mesabi Iron Range Area of Minnesota, all as more fully set forth in the application, as supplemented (Phase I), in this proceeding.

Specifically, Applicant proposes to construct and operate approximately 31.5 miles of mainline loops in Iowa and Kansas and an additional 12,800 compressor horsepower at existing stations in Kansas, Iowa and Nebraska. Additionally, Applicant will extend its mainline some 48 miles into the Mesabi Area and construct and operate approximately 116 miles of branchlines, together with necessary regulating and metering stations, in Minnesota. These proposed facilities will enable Applicant to sell and deliver an additional 31,116 Mcf of natural gas per day.

Applicant proposes the following estimated third year peak day sales and deliveries and the same are hereinafter authorized:

Distribution	*Mcf*
Iron Ranges Natural Gas Company	5,823
Peoples Division of Applicant:	
Village of Hoyt Lakes	700
Erie Mining Company	14,500
Oglebay-Norton-Ford	5,700
Village of Hibbing, Minnesota	1,180
City of Virginia, Minnesota	980
Total	28,883

The above figures do not take into account unallocated mainline capacity of 2,233 Mcf per day which may subsequently be used for service to the Hanna Mining Company. Applicant has not as yet entered into a contract for service to Hanna. Hanna is to advise Applicant not later than January 1, 1965, as to whether it will construct a plant and purchase natural gas. Applicant will not

*This application, as supplemented, is divided into two Phases. This order pertains exclusively to Phase I of said application, as supplemented.

**Rehearing denied January 29, 1965, 33 FPC 126.

construct and operate the measuring facilities (estimated to cost $22,150) required for service to Hanna until such service has been authorized; the certificate hereinafter issued should not be construed to include authorization for the construction and operation of the measuring facilities for Hanna.

The total estimated cost of the facilities hereinafter authorized is $13,821,450, which cost will be financed initially with short-term borrowings. Permanent financing will be by the issuance of sinking fund debentures.

The communities of Hibbing and Virginia, Minnesota, have not as yet executed service agreements with Applicant; accordingly, Applicant should be required to file service agreements with said communities reflecting the precise volumes hereinafter authorized. Further, the application indicates that the contract demands with the two industrial customers range from 11,500 Mcf per day to 14,500 Mcf per day for Erie Mining Company and 4,000 Mcf per day to 5,700 Mcf per day for Oglebay-Norton-Ford. Applicant is requesting herein authorization to serve the higher volumes. The application indicates further that these industrial customers shall advise Applicant of the precise contract demand within a specified time after commencement of the use of natural gas in their respective plants. Accordingly, Applicant should file a petition to amend the subject order to authorize any lower contract demand for these customers should the precise contract demand be lower than the maximum volumes hereinafter authorized to be transported and delivered to Erie Mining (14,500 Mcf per day) and Oglebay-Norton-Ford (5,700 Mcf per day).

Several petitions to intervene and notices of intervention have been filed herein. None of said petitioners object to the grant of the certificate or request formal hearing in this proceeding. Inasmuch as the shortened procedure is being used herein, no further action on said petitions and notices appears necessary.

After due notice, no other petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 18, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplements and exhibits (Phase I), submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding (Phase I), are to be used in the transportation and/or sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and/or sales of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportations and/or sales of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's

compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) Within sixty days from the date of issuance of this order Applicant should file with the Commission service agreements with the communities of Virginia and Hibbing reflecting the precise volumes of 980 Mcf per day for Virginia and 1,180 Mcf per day for Hibbing hereinafter authorized.

(7) Applicant should file a petition to amend the subject order to authorize any lower contract demand for Erie Mining Company and Oglebay-Norton-Ford should the precise contract demand to be subsequently determined be lower than the maximum volumes hereinafter authorized to be transported and delivered to Erie Mining (14,500 Mcf per day) and Oglebay-Norton-Ford (5,700 Mcf per day).

(8) An excess mainline capacity of 2,233 Mcf per day should be reserved for service to the Hanna Mining Company provided Hanna advises Applicant on or before January 1, 1965, that it will construct a plant and enter into a contract to purchase natural gas from Applicant.

(9) This certificate should not entitle the industrial customers to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct and operate the proposed facilities and to sell, transport and deliver natural gas as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding (Phase I), upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sales, transportation and deliveries of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

(D) Within sixty days from the date of issuance of this order Applicant shall file with the Commission service agreements with the communities of Virginia and Hibbing reflecting the precise volumes of 980 Mcf per day for Virginia and 1,180 Mcf per day for Hibbing as authorized in paragraph (A) above.

(E) Applicant shall file a petition to amend the subject order to authorize any lower contract demand for Erie Mining Company and Oglebay–Norton–Ford should the precise contract demand to be subsequently determined be lower than the maximum volumes authorized by paragraph (A) above to be transported and delivered to Erie Mining (14,500 Mcf per day) and Oglebay–Norton–Ford (5,700 Mcf per day).

(F) An excess mainline capacity of 2,233 Mcf per day shall be reserved for service to the Hanna Mining Company provided Hanna advises Applicant on or before January 1, 1965, that it will construct a plant and enter into a contract to purchase natural gas from Applicant.

(G) This certificate shall not entitle the industrial customers to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in their requirements at the expense of other firm customers desiring to acquire additional gas to meet any future increases in their requirements.

[LETTER-ORDER FOR INTERIM PAYMENT OF HEADWATER BENEFITS]

Docket No. E-6684 December 21, 1964*

VIRGINIA ELECTRIC & POWER COMPANY
P.O. Box 1194
Richmond, Virginia, 23209

GENTLEMEN: Within 60 days of the date of this bill, please remit to the Federal Power Commission the charges listed below as an interim payment for headwater benefits provided by the Philpott and John H. Kerr reservoirs of the Department of the Army of the United States during the period August 1, 1955, through December 31, 1962, to the following project:

River Basin	Project	
	Name	License No.
Roanoke	Roanoke Rapids	2009

Headwater benefits assessment	$559,990.00
FPC administrative costs through April 10, 1964	33,900.00
Total	$593,890.00

This is an interim billing for payments pursuant to Section 10(f) of the Federal Power Act and Section 11.31 of Regulations under the Act. The amount billed for headwater benefits is taken from your letter of July 27, 1964, to the Federal Power Commission, commenting on the proposed staff report of April 1964. No offset may be allowed for reregulation benefits (*South Carolina Electric & Gas Company* v. *F.P.C.*, CA4, No. 9091, November 9, 1964).

The above billing is not to be considered as a final billing for the period specified or as acceptance of the Company's computations or basis of computation. It is an interim billing, to be supplemented at the time a final determination is made by the Commission.

By direction of the Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

MONTANA-DAKOTA UTILITIES CO., DOCKET NO. CP63-351

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 22, 1964)

On June 24, 1963, Montana-Dakota Utilities Co. (Applicant) filed in Docket No. CP63-351 an application pursuant to Section 7(c) of the Natural Gas Act

*Rehearing denied February 11, 1965, 33 FPC 200. Affirmed, *Virginia Electric & Power Co.* v. *F.P.C.*, 351 F. 2d 408 (1965).

for a certificate of public convenience and necessity authorizing the construction and operation of approximately 1.4 miles of 4½-inch pipeline in Bowman County, North Dakota, together with a measuring and regulating station at the terminus of the proposed facility, all as more fully described in the application.

Applicant proposes to render gas service through the proposed facilities to the industrial plant of Kermac Nuclear Fuels Corporation for use in the production of uranium concentrates for the Atomic Energy Commission in volumes estimated at 550 Mcf on peak day demand and 103,680 Mcf annually.

The estimated cost of the proposed facilities is $19,900, which will be financed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 18, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Montana-Dakota Utilities Co., a Delaware corporation having its principal place of business in Minneapolis, Minnesota, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 22, 1946, in Docket Nos. G–220 and G–402 (5 FPC 64).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the subject facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant, Montana-Dakota Utilities Co. to construct and operate the subject facilities for the purpose stated, all as more fully described in the applications herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SIERRA PACIFIC POWER COMPANY, DOCKET NO. E-7195

ORDER AUTHORIZING ISSUANCE OF PROMISSORY NOTES

(Issued December 22, 1964)

Sierra Pacific Power Company (Applicant), a corporation organized under the laws of the State of Maine and doing business in the States of Nevada and California, with its principal business office in Reno, Nevada, filed an application on December 1, 1964, as amended on December 8, 1964, for authorization pursuant to Section 204 of the Federal Power Act to issue unsecured, short-term Promissory Notes in a principal amount not to exceed $12,000,000 outstanding at any one time.

The proposed notes payable to such bank or banks from which Applicant may borrow funds will be issued for periods not exceeding 12 months from the date of original issue or renewal thereof, as the case may be and will have maturity dates not later than December 31, 1965. Said notes will bear interest at the rate per annum not in excess of one-quarter of one percent over the prime rate in effect in New York City at the time of the borrowing or renewal of the loans. By order issued December 13, 1963, 30 FPC 1513 (Docket No. E-7134), Applicant was authorized to issue up to $12,000,000 short-term notes for periods not exceeding 12 months from the date of original issue or renewal thereof, as the case may be, such notes to have maturity dates not later than December 31, 1964. The Applicant has discharged all notes issued under the Commission's order of December 13, 1963, and it now has outstanding notes of $3,000,000 issued under Section 204(e) of the Act.

The proposed application would authorize the issuance of short-term Promissory Notes in the aggregate principal amount up to but not exceeding $12,000,000 including the notes for $3,000,000 issued under Section 204(e) of the Act, with maturity dates not later than December 31, 1965.

The Applicant proposes to apply and use the net proceeds obtained from the unsecured Promissory Notes, pending permanent financing to reimburse Applicant for construction expenditures and together with cash from operations to carry out Applicant's construction programs contemplated and now in progress for 1964 and 1965. These programs will require approximately $13,033,500 in 1964 and $13,945,000 in 1965 and will provide for the expenditure of approximately $10,082,400 for electric facilities and $9,726,000 for its gas and water facilities. Principal items in Applicant's electric program are: $4,206,400 in 1964 and $2,600,000 in 1965 for the Tracy Steam Unit #2; $216,000 in 1965 for Tracy Steam Unit #3; $1,241,000 for Geothermal Plant near Battle Mountain; 4,000 in 1964 and $585,000 in 1965 for the Purchase Bolster Plant; $480,000 for the Tracy-Steamboat 120 kv line; $262,900 in 1964 for the Mayers 120 kv Substation and 14.4 kv feeders; $135,200 in 1964 for the Tracy Substation Additions and the Wadsworth line; $140,000 in 1965 for the Buckeye Substation; $956,200 in 1964 and $180,000 in 1965 for various distribution substations and improvements to transmission and distribution system; $815,000 for an office building in Reno, Nevada.

Written notice of the application has been given to the Public Service Commission of Nevada and the Public Utilities Commission of California, and to the

Governor of each of those States. Notice has also been given by publication in the Federal Register on December 12, 1964 (29 F.R. 17055), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before December 21, 1964, with the Federal Power Commission, Washington, D.C., 20426. No protest, petition, or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described and set forth in the Commission's order issued May 14, 1959, *In the Matter of Sierra Pacific Power Company*, Docket No. E–6873 (21 FPC 684).

(2) The proposed issuance of Promissory Notes in the aggregate principal amount of $12,000,000 all as described above will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of Promissory Notes in the aggregate principal amount of $12,000,000 all as described above, will be in excess of 5 percent of the par value of the other securities of Applicant, and, therefore, will not be exempt by virtue of Section 204(e) from the requirements of Section 204(a) of the Act.

(4) Applicant is not organized and operating in a State, under the laws of which the security issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(5) The proposed issuance of Promissory Notes will be exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of Paragraph 34.1a(a)(2) thereof.

(6) The proposed issuance of securities, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

(7) The period of public notice given in this matter is sufficient.

The Commission orders:

(A) The proposed issuance of Promissory Notes in the aggregate principal amount of $12,000,000 outstanding at any one time, whether an original issue or a renewal note, upon the terms and conditions and for the purposes set forth in the application, all as described above, is hereby authorized, subject to the provisions of this order.

(B) This authorization is expressly conditioned upon the final maturity of all notes to be issued pursuant thereto being not later than December 31, 1965.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost or any other matter whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply and guarantee or obligation on the part of the United States in respect to any security to which this order relates.

OPINION NO. 445–A

SUN OIL COMPANY, ET AL., DOCKET NO. G–8592, ET AL.

OPINION AND ORDER DENYING APPLICATIONS FOR REHEARING

(Issued December 22, 1964)

Syllabus

1. It is well settled that Commission does not determine price line at highest price. P. 1498.
2. Commission *rejects* contention it has collaterally attacked *South Georgia* in determining price line here. P. 1499.
3. Since large volumes of gas are moving under *South Georgia* sales, they cannot be wholly ignored without doing injustice to producers. P. 1499.
4. While past sales are taken into account in determining price line, they do not justify granting of exception to producer merely because proposed sale is made under similar circumstances or adjacent to sale made under certificates already granted. P. 1499.
5. Commission *stays* certain provisions of prior order and *denies* applications for rehearing.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

O'CONNOR, *Commissioner:*

General American Oil Company of Texas, on November 17, 1964; Union Producing Company, on November 23, 1964; and Pan American Petroleum Corporation, California Oil Company (Calco), Humble Oil & Refining Company with Texaco Inc., and the Public Service Commission of the State of New York, on November 25, 1964, have filed applications under Section 19 of the Natural Gas Act for rehearing of our Opinion No. 445 and Order, issued October 26, 1964, 32 FPC 1183, in the above-entitled proceedings. Motions for stay have been filed by Humble, Texaco, Pan American, Calco, and General American.

In Opinion No. 445 and Order we granted permanent certificates of public convenience and necessity under Section 7 of the Natural Gas Act to a number of producers for sales of gas from fields in the State of Mississippi conditioned on a price of 20.6 cents per Mcf at 15.025 psia, including an allowance for tax reimbursement, and we provided for refunds and for a moratorium on filing increases above 24 cents per Mcf until January 1, 1968. Most of the issues set forth in the applications for rehearing have already been considered and discussed in Opinion No. 445. Therefore, further discussion can be limited to a few points.

The producers contend that in determining the price line we have, in effect, ignored the 20.25- and 21.5-cent base prices, that is exclusive of taxes, for gas sold from the Dexter and Cranfield fields. As stated in Opinion No. 445, we did not ignore them, but we did give them less weight for the reasons stated. It is clear that if these sales were completely excluded the highest base price in the Mississippi area would be 20 cents. It is well settled that we do not determine the price line at the highest price. Therefore, we have necessarily given some consideration to the Dexter and Cranfield sales in prescribing an in-line base price of 20 cents. Furthermore, if these sales were excluded, the weighted average of the other sales considered in this proceeding would have been only 18.16 cents compared to the substantially higher base price of 20 cents.

The producers contend further that we have collaterally attacked a final Commission order by failing to give full weight to the decision in *South Georgia Natural Gas Co.*, 22 FPC 211 (August 7, 1959), where the Commission approved the price for the Cranfield sales along with sales at the same price in the South Louisiana area. We fully recognize that the *South Georgia* order is a valid order of the Commission issuing certificates for certain sales to Southern Natural Gas Company at 21.5 cents exclusive of tax. We are not collaterally attacking this order in arriving at a determination of the price line in the present proceeding, which involves different sales, but the question here relates to the effect to be given *South Georgia*. Because of the development of the law and administrative policy since the *South Georgia* case was decided, we probably would not reach the same conclusion were it before us again. However, the sales approved in *South Georgia* represent an economic reality in the area. Large volumes of gas are moving under them. Contrary to the contents of the New York Commission, they cannot wholly be ignored without doing injustice to the producers. We have therefore determined the in-line price, exclusive of tax allowance, to be 20 cents per Mcf.

Union contends that its proposed sale in the present proceeding relates to additional acreage immediately adjacent to that covered by an existing permanent certificate issued on May 1, 1959, and therefore there is no reason for arriving at a different price for the sale proposed here. As we have already indicated, sales were certificated in the past under somewhat different standards than prevail today. While these sales are taken into account in determining the price line, they do not justify the granting of an exception for a producer merely because his proposed sale is made under similar circumstances or adjacent to sales made under certificates already granted. Compare *The Superior Oil Co.*, 32 FPC 241, Opinion No. 437, Docket No. G–6067, July 23, 1964.

Several of the producers point out that in determining the tax component of the "floor" used in computing refunds with respect to Humble, G–19200 (original application); Calco, G–19345; and Pan Am. CI60–128, we failed to take into account the 1/10 mill tax imposed by the State Oil and Gas Board. Therefore, our floor figure appearing in paragraph (E) should be changed from 21.27632 cents to 21.28632 cents to reflect this additional tax. Furthermore, to be consistent with our rounding of the in-line price, we think it is reasonable to round this figure to 21.3 cents.

It has come to our attention that in certain respects our Opinion No. 445 and Order does not conform to our order of October 1, 1964, approving a rate settlement for Sun Oil Company in Docket No. G–8288, *et al.*, 32 FPC 894. In the present proceeding there are involved Sun Sales in G–19015 (Rate Schedule 111), CI62–156 (R.S. 137), and CI63–283 (R.S. 152). In the settlement order the prices in the three dockets, settled at 21.5 cents per Mcf, were specifically made subject to the present proceeding, and therefore must conform to Opinion No. 445. The settlement, however, provides for a moratorium only until August 1, 1967, for all of the rate schedules involved in the settlement in contrast to the moratorium until January 1, 1968, with a 24-cent ceiling we have provided in the present proceeding. The settlement further provides, with respect to Rate Schedule Nos. 111, 137, and 152, that the refund period shall run from the date of issuance of the final order in Docket No. G–8592 retroactively only to the order approving the settlement (October 1, 1964). We shall accordingly amend the ordering clauses of Opinion No. 445 to make them conform to the Sun settlement with respect to the moratorium and the refund period.

The producers variously have asked for stays of paragraphs (B), (C), (D), (E), (F), (G), and (H) of our previous order. Paragraph (B) conditions the certificates with respect to price; (C) provides the moratorium; (D) provides

for filing new rates; (E) provides for refunds; (F) provides for defering the question of refunds where there is no refund condition in the temporary certificate; (G) provides for reporting of refunds and, as amended below, for a limitation on the refund period with respect to Sun; and (H) provides a certificate condition with respect to take-or-pay provisions in the producer contracts. There is no reason to stay paragraphs (B), (C), (F), and (H). Paragraphs (D), (E), and (G) have already been stayed thirty days by notice of the Secretary and will be stayed further until the completion of review proceedings.

The Commission further finds:

The assignments of error and grounds for rehearing set forth in the applications for rehearing filed in this proceeding present no fact or legal principles which would warrant any change or modification in the Commission's Opinion No. 445 and Order except as specified below.

The Commission orders:

(A) The applications for rehearing filed by General American, Pan American, Calco, Humble, Texaco, Union, and P.S.C. of New York are hereby denied.

(B) The amount of "21.27632 cents" appearing in paragraph (E) is amended to "21.3 cents."

(C) Paragraph (C) is amended to read as follows:

(C) Each certificate issued in paragraph (A) is further conditioned to provide for a moratorium on the filing of all price increases in excess of 24 cents per Mcf, inclusive of tax reimbursement until January 1, 1968, but in the case of Sun Docket Nos. CI62–156, CI63–283, and G–19015, the moratorium imposed by the settlement agreement in Docket No. G–8288 shall apply.

(D) The following shall be added to the present paragraph (G):

with respect to Sun in Docket Nos. CI62–156, CI63–283, and G–19015, the period covered by any refunds shall commence October 1, 1964.

(E) The completion of the acts and compliance with the requirements set forth in ordering paragraphs (D), (E), and (G) of the Order accompanying Opinion No. 445 are hereby stayed for a period of 30 days after conclusion of judicial review of said Opinion or until the Order otherwise becomes final, provided, however, that with respect to all amounts that would be refundable under the provisions of paragraphs (E) and (G) as amended herein, each applicant shall execute and file within 60 days an agreement and undertaking to refund all such amounts with interest at 7 percent per annum from the date of receipt to the date of payment, upon affirmation of the Order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION AND UNITED NATURAL GAS COMPANY, DOCKET NO. CP65–109

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 22, 1964)

On October 26, 1964, Transcontinental Gas Pipe Line Corporation (Transco) and United Natural Gas Company (United) hereinafter referred to as Applicants filed a joint application in Docket No. CP65–109 for a certificate of public

convenience and necessity pursuant to Section 7(c) of the Natural Gas Act authorizing the exchange of volumes of natural gas between the respective applicants through the existing interconnection facility between their respective pipeline systems at a point in the Wharton Storage Pool, Potter County, Pennsylvania, and through future unspecified interconnections, all as more fully set forth in the application. No new connection facilities are proposed to be constructed to effectuate the exchange of gas contemplated by Applicants.

Applicants state that the purpose of the proposed exchange is to insure the continuity of deliveries of natural gas to their respective customers during emergencies.

Inasmuch as Applicants have only one existing interconnection between their respective systems and inasmuch as no new facilities are proposed herein, the proposed exchange will be limited to that which can be made through the existing facilities.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 18, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicants, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas and United Natural Gas Company, a Pennsylvania corporation having its principal place of business in Oil City, Pennsylvania, are "natural-gas companies" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The exchange of volumes of natural gas through existing facilities, as hereinbefore described and as more fully described in the application, constitutes the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the operation of said facilities and exchange of natural gas by the Applicants is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to provisions of the Natural Gas Act and the requirements, rules and regulations thereunder.

(4) The operation of the existing facilities and the exchange of natural gas between the applicants in the manner proposed are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicants to operate existing facilities as hereinbefore described, all as more fully described in the application, and to exchange natural gas as proposed, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon the Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The proposed exchange of natural gas shall be made only through the existing interconnection between Applicants' natural gas pipeline system in Potter County, Pennsylvania.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP65-112

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND DISMISSING APPLICATION

(Issued December 22, 1964)

On October 26, 1964, Transwestern Pipeline Company (Applicant) filed in Docket No. CP65-112 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to continue the sale for resale of natural gas to Pioneer Natural Gas Company (Pioneer) for a period ending September 30, 1966.

Applicant states that gas is needed during this period by Pioneer to serve the irrigation and residential requirements of small farm customers located in Parmer County, Texas, and that it has ample gas supplies to perform this service.

Applicant further shows that by letter order issued July 24, 1962, in Docket No. CP63-19 it received a temporary certificate to sell natural gas to Pioneer for resale to the domestic and agricultural customers for a period ending on September 30, 1964.

The volume of gas to be sold for resale to Pioneer for the purposes stated above is estimated at a maximum of 10,000 Mcf per day on a "best efforts" basis and a maximum of 500,000 Mcf on an annual basis. No facilities are to be constructed by Applicant.

A temporary certificate was issued in Docket No. CP65-112 on November 5, 1964.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been received.

At a hearing held on December 18, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 10, 1959, in Docket No. G-14871, *et al.* (22 FPC 391).

(2) The sale of natural gas hereinbefore described, as more fully described in the application in this proceeding, will be made in interstate commerce, subject to the jurisdiction of the Commission, and said sale and operation of facilities therefor by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The continued sale and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned. The pending application in Docket No. CP63-19 is moot and should be dismissed.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued authorizing Applicant to sell and deliver to Pioneer Natural Gas Company up to 10,000 Mcf of natural gas per day, with a maximum of 500,000 Mcf of natural gas per annum, for resale to domestic and agricultural customers in Parmer County, Texas, for a period ending on September 30, 1966.

(B) The application of Transwestern Pipeline Company on file with the Commission in Docket No. CP63-19 seeking a certificate of public convenience and necessity authorizing the sale of gas by Applicant to Pioneer Natural Gas Company for a limited period ending September 30, 1964, is hereby dismissed.

(C) The certificate issued by paragraph (A) above is conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black

MONTHLY STATEMENT OF NATURAL GAS PIPELINE COMPANIES—REVISION OF FPC FORM NO. 11, DOCKET NO. R-262

ORDER NO. 291

REVISING MONTHLY STATEMENT FORM NO. 11

(Issued December 23, 1964)*

1. By notice of proposed rulemaking issued May 19, 1964, and published in the Federal Register of May 23, 1964 (29 F.R. 6807), the Commission proposed to revise the reporting requirements of certain of the larger natural gas pipeline companies by revising FPC Form No. 11, submission of which is now required monthly by Section 260.3 of the Commission's regulations, and by requiring the early reporting of some of the Form No. 11 information in a new Form No. 11A. Upon further consideration, the Commission has decided to withdraw its proposal for the new Form. For the reasons given herein we are promulgating the revision of FPC Form No. 11.

2. Existing Form No. 11 is required of all Class A and B natural gas pipeline companies and is a monthly report, due 30 days after the end of the reported month, covering certain revenue, expense, and gas volume data. We believe that reports by more than half of the companies now reporting may be discontinued and reporting may be confined to those 31 Class A and B companies selling, storing, and transporting about 90% of the natural gas subject to Commission rate regulation. At the same time, to facilitate individual regulation and to guide Commission policy formulation, the Commission plans to obtain in revised Form

*Published in the Federal Register on December 31, 1964 (29 F.R. 19237).

11 certain additional data which cannot be determined from the present report, such as current wellhead and city gate prices for interstate pipeline gas and accrued revenues and expenditures of pipelines under producer and pipeline rate increases not yet approved by the Commission. The total information to be derived from revised Form 11 should enable the Commission to appraise more accurately for its regulatory needs such facts as the current level of natural gas activity, the current consumption of and prices charged for gas sold by pipelines, seasonal variations in use of capacity by customer category, the effect of storage upon the monthly peak demand, and the extent of fluctuations in receipts of gas by pipelines from the various sources. In view of the greater detail required by the revised Form 11, the period for reporting is being changed from 30 days to 40 days.

3. Comments were received from 19 of the pipeline companies affected, in addition to the Independent Natural Gas Association of America, and from the California Public Utilities Commission, one consulting firm, one brokerage company, and one private individual. There was some criticism of the additional administrative burden entailed; on the other hand, there were useful comments and suggestions which have been adapted or incorporated in the forms and regulations. Thus, peak day delivery figures in Table 4 are being limited to the winter months and such other months in which they are measured by the company. Definitions have been supplied for such terms as "imports", and "off-peak", and Table 5 identifies the monthly reporters and other interstate pipelines.

The Commission finds:

In view of the foregoing and upon consideration of all relevant matters presented, it is necessary and appropriate in carrying out the provisions of the Natural Gas Act that FPC Report Form No. 11 be revised and promulgated in form as hereinafter ordered.

The Commission, acting pursuant to the Natural Gas Act, as amended, particularly Sections 10 and 16 thereof (52 Stat. 826, 830; 15 U.S.C. 717i, 717o), *orders:*

(A) FPC Form No. 11 is revised as set out in Attachment A hereto.

(B) Section 260.3, Subchapter G of Chapter I, Title 18 of the Code of Federal Regulations is amended to read as follows:

§ 260.3, Form No. 11, Natural gas pipeline company monthly statement.

(a) The form of the monthly statement for natural gas companies designated therein, entitled FPC Form No. 11 is prescribed for the Month beginning December 1964, and thereafter.

(b) Each natural gas company, as defined in the Natural Gas Act, whose combined gas sales for resale and gas transported or stored for a fee exceeded 50 million Mcf at 14.73 psia (60° F.) in the previous calendar year shall prepare and file with the Commission for the month beginning December 1964, and for each month thereafter, two copies of Monthly Statement, FPC Form No. 11. Such copies shall be filed within 40 days after the end of the reported month and shall be signed by the Chief Accounting Officer of the reporting company, but is not required to be under oath.

(C) The title of this proceeding shall read as set forth in the caption above.

(D) Companies presently filing existing Form 11 which are not required to file the new Form 11, herein promulgated, shall continue to report on the form heretofore in use through the reporting month of December 1964.

(E) This amendment shall become effective upon issuance of this order.

(F) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOUTHERN UNION PRODUCTION COMPANY, DOCKET NO. RI65-287

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued December 23, 1964)

Southern Union Production Company (Supco) on November 23, 1964, filed an application for rehearing[1] of the Commission's order issued October 23, 1964 in the above-entitled proceeding which suspended a proposed increase from 13¢ to 14.0593¢ per Mcf[2] for sales to Southern Union Gathering Company, an affiliate of Supco, from the San Juan Basin area under its Rate Schedule No. 3. Supco requests that the suspension period be shortened from five months to one day.

In support of its request, Supco asserts that permanent certificate authorization in Docket No. CI61-1265 was not granted until September 16, 1964, despite the fact that Supco filed its application on June 3, 1963, because of the then prevailing Commission policy toward permanent certification of sales involving affiliates. Supco further states that during the interim period it was prohibited under the terms of its temporary certificate from filing for contractually authorized rate increases with respect to the acreage involved here, even though a higher rate of 14.0617¢ was in effect subject to refund during this period for sales from acreage dedicated under the basic contract. Supco claims this price differential unduly discriminates between similar wells producing substantially the same quality gas.

Contrary to Supco's assertion, permanent authorization for the instant sale was not delayed because of any Commission policy against certificating sales to affiliates. The reason for the delay was the failure of Supco to agree prior to July 6, 1964, to accept permanent authorization at the guideline initial rate ceiling of 13¢ per Mcf. In the absence of such an agreement it would have been necessary to set the matter for formal hearing. The prohibition in Supco's temporary against filing for rate increases was imposed because of the Commission policy of including such a condition when the initial rate sought by applicant was above the guideline initial rate ceiling set forth in the Commission's Statement of General Policy No. 61-1, as was the situation in Supco's case. Had Supco promptly submitted its agreement to accept the initial ceiling rate, Supco would have received permanent authorization at a much earlier date and relieved itself of the prohibition against rate increase filings imposed in the temporary. Under these circumstances we conclude that Supco has not shown sound justification for shortening the suspension period herein. We shall therefore deny Supco's motion for reconsideration.

The Commission orders:

For the reasons set forth above, Supco's motion for reconsideration is hereby denied.

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[1] An application for rehearing of an interlocutory order, such as involved here, may not properly be filed [Section 1.30(e) of the Rules of Practice and Procedure (18 CFR 1.30(e))]. As requested by Supco in the alternative, the instant tender has been considered as a motion for reconsideration pursuant to Section 1.12 of the Commission's Rules of Practice and Procedure.

[2] The proposed increase relates only to gas produced from acreage added by Supplement Nos. 20 and 23 to Supco's Rate Schedule No. 3.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNION PRODUCING COMPANY, DOCKET NOS. G-13811 AND G-18354, ET AL[1]

ORDER APPROVING RATE SETTLEMENT PROPOSAL, SEVERING AND TERMINATING PROCEEDINGS AND PRESCRIBING REFUNDS

(Issued December 23, 1964)

There is before us for consideration a Motion for Approval of Settlement Proposal, Termination of Rate Proceeding, and for Shortened Procedure Certification filed on December 18, 1964, by Union Producing Company (Union) encompassing the rates for 22 of Union's currently effective FPC Gas Rate Schedules, for which there are 122 pending proposed rate increases. In summary, the settlement proposal as filed by Union provides:

(1) Settlement rates, including tax reimbursement, based upon cost of service studies utilized by the parties to these proceedings in accordance with our Opinion Nos. 414 and 414-A, 31 FPC 41, 503.

(2) Union waives the right to file for contractually authorized increased rates until December 1, 1967, for all of the rate schedules involved in the settlement. However, Union reserves the right to file for any increased rates, if contractually authorized, up to the applicable area-rate levels established by any order or rule of the Commission, or to file for any contractually authorized increase in tax reimbursement; provided, that by agreeing to this reservation neither the staff nor any other party thereto prejudices its contention that Union's production should not be treated differently from production by the producing arm of a pipeline.

(3) Refunds with interest at the applicable rates, under rate schedules where collection was made subject to refund, in accordance with the Commission's Opinion Nos. 414 and 414-A for the period June 15, 1961 to and including December 31, 1962, with applicable interest, and, of the difference between the revenues actually collected subject to refund and those which would have been collected at the settlement rate, in each instance, commencing with January 1, 1963, to December 1, 1964 for all of Union's rate schedules.

(4) Exclusion from the settlement proposal of two sales for which previous settlement proposals have been approved.

(5) Union will, within ten days after this order becomes final, file application for dismissal of its petition in the United States Court of Appeals for the Fifth Circuit (Cause No. 21339) by which it seeks review of our Opinion Nos. 414 and 414-A.

As heretofore indicated, refunds for the period from June 15, 1961, through December 31, 1962, are those required by our Opinion Nos. 414 and 414-A. For subsequent periods the parties utilized cost of service studies to determine refunds to be made by Union and the gas purchase costs for sales by Union to its affiliate, United Gas Pipe Line Company. Rates for sales by Union to United were designed to afford Union revenues consistent with such costs.

For all of the reasons set forth in our order in Humble Oil & Refining Company, Docket Nos. G-9287 and G-9288, *et al.*, 32 FPC 49, order issued July 8, 1964, we shall require Union to retain the amounts of refund ordered herein to purchasers other than United and to report thereon as hereinafter ordered. Our

[1] The additional dockets involved herein are set forth in Appendices A, B, and C, attached hereto.

order issued today in connection with United's settlement adequately provides for disposition of refunds by Union to United. Applicable interest shall be paid on all of the refunds through November 30, 1964. Such refunds will be approximately $3,350,000 plus interest. Union's future revenues will be decreased approximately $1,060,000 annually as a result of the settlement.

As to the other purchasers of natural gas from Union who come under our jurisdiction (who are entitled to only 3% of the refunds provided for herein) we shall require Union to retain such monies, with no further interest obligation, pending further order of this Commission.

Union, in its proposal, assigns a rate of 20¢ per Mcf of gas for a sale made by it to its affiliate, United, in the Maxie-Pistol Ridge Field in the State of Mississippi. The initial rate under Union's FPC Gas Rate Schedule No. 92 for this sale was 15¢ per Mcf and it might appear that by approving Union's settlement proposal we are hereby granting it an exception to our area rate ceilings as they have been fixed, and amended. However, that is not so. The instant settlement is based upon cost of service determinations made by the several parties to the proceedings who participated in the settlement conferences, and the assignment of the various rates to the rate schedules involved herein was made by Union so as not to disrupt its historical contract pattern, and is approved by us for that reason.

The settlement proposal includes rates for which issuance of related permanent certificates is pending, some of which are for sales presently being made under temporary certificates.[2] We shall set such applications for abridged hearing in accordance with Section 7 of the Natural Gas Act, providing that the settlement rates shall be the initial rates.

We believe that the principles underlying the present settlement proposal are consistent with the public interest and the provisions of the Natural Gas Act.

Our action herein should not be construed as constituting approval of any future rate increases, if any, that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in future proceedings, including area rate or similar proceedings, involving Union's rates and rate schedules.

The Commission finds:

The proposed settlement of the subject proceedings on the basis described, herein, as more fully set forth in the Settlement Proposal filed by Union on December 18, 1964, is in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act, that it be approved and made effective as hereinafter ordered, and good cause exists for approving the settlement rates, for severing and terminating certain proceedings and providing for refunds.

The Commission orders:

(A) The settlement of these proceedings on the basis of the settlement proposal, filed by Union on December 18, 1964, is approved.

(B) The applicable settlement rates set out in Appendix A hereto are approved, and such rates shall be effective as of December 1, 1964, except that the settlement rates under Union's FPC Gas Rate Schedule Nos. 70 and 81 shall be effective January 1, 1965, and under its Rate Schedule No. 210 shall be effective January 18, 1965.

(C) The approved settlement rates shall be applicable during the moratorium period herein provided for to all sales of natural gas from all acreage dedicated as of the date of issuance of this order under each of the rate schedules cur-

[2] See Appendix B attached hereto.

rently on file with the Commission whether such sales are made by Union, its successors or assignees.

(D) Union shall compute the difference between the rates collected subject to refund and the rate not subject to refund for the period from June 15, 1961 to and including December 31, 1962, together with interest as specified in each docket. Additionally, it shall compute the difference between the rate collected subject to refund and the related settlement rates or rate not subject to refund whichever rate is the greater for the period from January 1, 1963 to December 1, 1964, together with applicable interest in each docket. Union shall within 45 days from the date of this order submit a report to the Commission, and serve a copy on each of the purchasers involved, setting out by purchasers the amount of refunds related to each rate schedule (showing separately the principal and applicable interest), the bases used for such determination and the periods covered.

(E) Union shall retain the amounts shown in the report required under paragraph (D) above, subject to further order of the Commission directing the disposition of those amounts, *provided*, however, Union shall within 90 days from the date of this order, (1) refund with interest as specified in each docket computed to December 31, 1964, the difference between the rates collected subject to refund in accordance with Paragraph (D) hereinabove, to the date of this order for all of such of Union's Rate Schedules, where the rates were collected subject to refund for sales of natural gas to United and (2) report to the Commission in writing, the amount of refunds made to United showing separately the amount of principal and interest so paid, and the bases used for such determination, together with releases from United showing receipt of the refunds in conformity with the settlement proposal as approved herein.

(F) If Union elects to commingle the retained refunds with its general assets and use them for its corporate purposes, it shall pay interest thereon at the rate of 6% per annum on all funds thus available from February 5, 1965, to the date on which they are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission.

(G) If Union elects to deposit the retained refunds in a special escrow account, Union shall tender for filing on or before February 5, 1965, an executed Escrow Agreement, conditioned as set out below accompanied by certificate showing service of a copy thereof upon each of its jurisdictional customers. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Union and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(1) Union, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such Agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable only for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the trust account for the quarterly period.

(H) The pending certificates proceedings set out in Appendix B hereto shall not be terminated on the basis of the approval of the settlement proposal, but shall be determined after hearing in accordance with Section 7 of the Natural Gas Act.

(I) Within 60 days from the date of this order, Union shall make such filings under its rate schedules as are required to make effective the terms of the settlement proposal.

(J) Upon full compliance by Union with all the terms and provisions of this order, the Section 4(e) proceedings listed in Appendix A hereto, and the Section 5(a) proceeding in Docket No. G–18354 shall terminate.

(K) Upon termination of the Section 4(e) proceedings listed in Appendix C hereto, in accordance with Paragraph (J) above, said proceedings shall be severed from the consolidated proceedings in Docket Nos. AR61–2, AR64–1, and AR64–2, respectively; the Section 7(c) proceedings listed in Appendix B are hereby severed from their respective consolidated proceedings, and the consolidation order issued April 29, 1959, in Docket No. G–13811, *et al.*, is rescinded.

(L) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Union, the Commission staff, or any affected party hereto, in any proceedings now pending, including area rate or similar proceedings, or hereafter instituted by or against Union or any other companies, person or parties affected by this order.

APPENDIX A

UNION PRODUCING COMPANY

FPC Rate Schedules—Docket Nos. G–13811, et al. and G–18354

Rate schedule No.	Field (area)	Purchaser	Docket No.		¢/Mcf at area pressure base (inclusive of tax reimbursement)		
			Certificate	Section 4(e) rate increase	Not subject to refund	Rate in effect Dec. 1, 1964	Proposed settlement rate
	Texas RRC District No. 2—14.65 psia						
63	Burnell-North Pettus	United Gas	G–13633	R163–85	9.72288	14.0	14.0
78	Greta-Tom O'Connor	do	G–13633	G–13811, G–14352, G–17606, R160–54.	8.1232	15.5	14.0
80	Heard Ranch	Trunkline Gas Co	G–13633		14.6	14.6	14.6
93	East McFaddin	United Gas	G–13633		14.7125	14.7125	14.7125
94	do	do	G–13633		14.6	14.6	14.6
95	North McFaddin	do	G–13633 [1]	C–14553	8.2277	14.7125	14.0
96	do	do	G–13633	G–14553	8.2277	14.7125	[2] 14.0
196	Refugio	do	G–13633		5.3306	5.3306	[3] 5.3306
202	San Domingo	Texas Eastern	G–13633		13.8733	13.8733	13.8733
236	Greta	United Gas	G–19514	R160–54	[4] 15.0	15.5	15.0
238	Hynes Ranch	do	CI60–509		13.2002	13.2002	13.2002
[5] 245	Fox	do	G–13633		13.2002	13.2002	13.2002
	Texas RRC District No. 3—14.65 psia						
231	Kain	Coastal Trans. Corp	G–16232		[4] 17.5	17.5	16.0
	Texas RRC District No. 4—14.65 psia						
[6] 1–27	Agua Dulce	United Gas	G–13633		14.0	14.0	14.0
[6] 28	do	do	G–13633				
29–40	do	do	G–13633		14.0	14.0	14.0
70	East Edinburg-San Carlos	Trunkline Gas Co	G–13633		12.696	12.696	[7] 13.35
81	Hidalgo	Coastal States	G–13633		12.6864	12.6864	[8] 13.1248
201	St. Charles Bay	Transcontinental	G–13633		8.001795		(9)
220	Palo Blanco	Unit Gas Co	G–13823	G–16725, G–19822	9.9	10.3	[10] 10.3
227	Shepherd	South Tex. Nat. Gas	G–17087		[4] 16.0	16.0	16.0
[11] 246	Agua Dulce						
[11] 247	do						

	Texas RRC District No. 6—14.65 psia							
[8] 44–55	Bethany	United Gas	G–13633		10.8876	10.8876	10.8876	
56	do	do	G–13633		10.8876	10.8876	[13] 10.8876	
57	do	do	G–13633		10.8876	10.8876	10.8876	
58	do	do	G–13633		10.8876	10.8876	10.8876	
59	do	do	G–13633		10.8876	10.8876	10.8876	
60	do	do	G–13633		10.8876	10.8876	10.8876	
61	do	do	G–13633		10.8876	10.8876	10.8876	
64	Carthage	do	G–13633		10.8876	10.8876	10.8876	
65	do	do	G–13633 [15]		10.8876	10.8876	10.8876	
[11] 79	Haynes							
82	Joaquin	do	G–13633		10.8876	10.8876	10.8876	
197	Rodessa, Tex	do	G–13633		10.8684	10.8684	10.8684	
[11] 198	do	do						
211	Waskom	do	G–13633		10.8876	10.8876	10.8876	
212	do	do	G–13633		10.8876	10.8876	10.8876	
213	do	do	G–13633		10.8876	10.8876	10.8876	
214	do	Arkansas La. Gas Co	G–13633		6.8364	6.8364	6.8364	
240	Willow Springs	United Gas	CI61–335		10.8876	10.8876	10.8876	
241	North Jacksonville-Barkley	do	CI61–1041	R163–28	9.6216	10.8876	10.8876	
242	Mt. Selman	do	CI61–1040		10.8876	10.8876	10.8876	
243	Tecula	do	CI61–1039		10.8876	10.8876	10.8876	
251	Platt	Texas Eastern	CI63–714		12.0	12.0	12.0	
	North Louisiana—15.025 psia							
66	Colquitt	Arkansas La. Gas Co	G–13633		13.453	13.453	13.453	
67	Cotton Valley	United Gas	G–13633		13.05076	13.05076	13.05076	
[14] 71	Floyd							
72	Floyd (Epps)	Kelly, Frank, Jr., et al	G–13633	G–13820, G–20432	*16.75	17.75	[13] 16.75	
76	Greenwood-Waskom	United Gas	G–13633		12.25	12.25	12.25	
77	do	do	G–13633		12.5252	12.5252	12.5252	
84	Lake Bistineau	do	G–13633		12.5252	12.5252	12.5252	
86	Lisbon	do	G–13633		12.5252	12.5252	12.5252	
87	do	Hassie Hunt Trust	G–13633		13.2302		[16] 13.2302	
88	Logansport	United Gas	G–13633		12.5252	12.5252	12.5252	
89	do	do	G–13633		12.5252	12.5252	12.5252	
90	do	Southern Natural	G–13633		13.82	13.82	13.82	
91	do	do	G–13633		13.82	13.82	13.82	
[8] 97–108	Monroe	United Gas	G–13633	R163–256	7.0	11.0	11.0	
109	do	do	G–13633	R163–300	7.0	11.0	11.0	
[8] 110–120	do	do	G–13633	R163–256	7.0	11.0	11.0	
121	do	do	G–13633		7.0			(34)
[8] 122–149	do	do	G–13633	R163–256	7.0	11.0	11.0	
150	do	do	G–13633	R164–276	7.0	11.0	11.0	
[8] 151–162	do	do	G–13633	R163–256	7.0	11.0	11.0	
[8] 163–166	do	do	G–13633	R163–257	7.0	11.0	11.0	
[8] 167–180	do	do	G–13633	R163–256	7.0	11.0	11.0	
181	do	do	G–13633	R163–257	7.0	11.0	11.0	

See footnotes at end of table.

APPENDIX A—*continued*

FPC Rate Schedules—Docket Nos. G–13811, et al. and G–18354—Continued

Rate schedule No.	Field (area)	Purchaser	Docket No.		¢ Mcf at area pressure base (inclusive of tax reimbursement)		
			Certificate	Section 4(e) rate increase	Not subject to refund	Rate in effect Dec. 1, 1964	Proposed settlement rate
	North Louisiana—15.025 psia—Continued						
[6] 182–190	Monroe	United Gas	G–13633	RI63–256	7.0	11.0	11.0
191	do	Ashland Oil	G–13633		5.5988	5.5988	[17] 5.5988
192	do	do	G–13633		5.5988	5.5988	[17] 5.5988
193	do	do	G–13633		6.0487	6.0487	[18] 6.0487
194	do	do	G–13633		5.5988	5.5988	[17] 5.5988
197	Rodessa, La	United Gas	G–13633		12.5252	12.5252	12.5252
199	Ruston	Arkansas La. Gas Co	G–13633		13.72	13.72	13.72
200	Ruston-Unionville	Southwest Gas Prod. Co	G–13633		13.033	13.022	13.033
206	Sibley	United Gas	G–13633		12.5252	12.5252	12.5252
207	Sligo	do	G–13633		12.5252	12.5252	12.5252
208	do	do	G–13633		12.5252	12.5252	[19] 12.5252
208	Sligo (Barksdale)	do	G–13633, Supp. 12		14.5252	14.5252	[20] 14.5252
210	Sugar Creek	do	G–13633		11.7688	11.7688	[21] 13.05076
[22] 219	Sentell	Arkansas La. Gas Co	G–13633		13.9613	13.961	13.961
[22] 219	do	do	G–13633		13.295	13.295	[23] 13.295
[24] 221	Cotton Valley	La. Nevada	G–14306		11.55076	11.55076	11.55076
226	Mt. Olive	Claiborne Gaso. Co	G–15396		*18.25	18.25	18.25
230	Lisbon	Texas Gas Trans. Corp	G–18193		*18.75	18.75	18.75
233	Calhoun	Arkansas La. Gas Co	G–19450		*18.5	18.5	18.5
249	Holly Ridge	American La. P.L. Co	CI61–318				
	South Louisiana—15.025 psia						
83	Kent Bayou	United Gas	G–13633		10.497	10.497	[24] 10.497
[25] 215	Lirette	do	G–13633	G–13811	9.097	18.75	18.75
[26] 216	Bay Baptiste	do	G–13633	G–13811	9.097	18.75	18.75
217	Second Bayou	American La. P.L. Co	G–13684		*19.5	19.5	19.5
[27] 218	Bourg	United Gas	G–13633	G–14114	10.75	20.25	18.75
223	Deer Island	do	G–14124		*21.75	21.75	21.25
225	Bayou Rambio	do	G–13788		*22.05	22.05	21.25
[28] 228	DeLarge	do	C–13633	G–17589	10.497	22.05	18.75
[29] 229	Dulac	do	G–13633	G–17589	10.497	22.05	18.75
[29] 234	Gibson	do	G–13633	G–20204	10.497	23.30	18.75
254	Eugene Island—Block 53	do	CI64–1358		11.2462	11.2462	11.2462

	Mississippi—15.025 psia						
41	Ansley	Marshall R. Young Drilling Co.	G-13633		*17.0	16.0	17.0
42	Baxterville	United Gas	G-13633	G-18689	11.979	22.88298	14.0
92	Maxie-Pistol Ridge	do	G-13633	G-13811, G-20085	*15.0	23.0	20.0
195	Muldon	Texas Eastern Transmission Corp.	G-13633	RI60-54, RI62-9	*19.0	19.8	19.0
209	Soso	United Gas	G-13633	G-18689	11.979	22.88298	14.0
224	Dexter (Original Area)	Southern Natural Gas Co.	G-15077 [31]		*21.55	21.55	20.6
[32] 235	Sandy Hook	United Gas	G-13633	G-20431	11.979	18.0	14.0

*Initial rate.
[1] Does not include oil well gas added by Supplement 7, which is included in Exhibit B.
[2] Abandoned. Notice of termination filed 8-11-61.
[3] Rate stated at 14.65 psia. Contract price is 6.0768¢ at 16.7 psia.
[4] Rate Schedule No. 245 superseded Rate Schedules Nos. 73 and 74.
[5] Rate Schedules have been combined for reporting as contracts are identical as to prices, etc.
[6] No production since prior to 6-7-54. FPC rescinded on 3-18-60 the prior acceptance of this rate schedule.
[7] Increase to 13.35¢ effective 1-1-65, Supplement 17 to Rate Schedule No. 70.
[8] Change in rate filing made 10-26-64 for price increase to 13.1248¢, to be effective 1-1-65.
[9] Application for abandonment filed 3-16-60.
[10] Abandonment authorized by FPC order issued 1-12-62 in Docket CI61-1609. Production ceased on 8-9-60. Last effective rate was 10.3¢ less downward Btu adjustment of 9.1%. Docket G-19822 consolidated in Docket AR64-2, et al.
[11] Rate schedule filed on percentage type contract was canceled. Gas is sold under plant operator's rate schedule.
[12] Abandoned. Notice of termination filed 4-23-62.
[13] Does not include oil well gas added by Supplement 12, which is included in Exhibit B.
[14] Rate schedule canceled in October 1957, effective 2-2-55.
[15] Does not include downward Btu adjustment applied monthly. 1.0¢ for gathering to be deducted.
[16] Abandoned. Notice of cancellation accepted 6-15-59 in Docket G-18893.
[17] Rate stated at 15.025 psia. Contract price is 6.223¢ at 16.7 psia.
[18] Rate stated at 15.025 psia. Contract price is 6.723¢ at 16.7 psia.
[19] Gas sold at wellhead.
[20] Gas sold at outlet of gasoline plant.
[21] Change in rate filing made 12-18-64 for price increase to 13.05076 to be effective 1-18-65.
[22] Rate Schedule No. 219 superseded Rate Schedules Nos. 204 and 205.
[23] Cancelled. Gas sales to Louisiana Nevada since 3-21-60 have been made under CVOC (Operator) Rate Schedule No. 1.
[24] Notice of termination filed 9-26-63.
[25] Rate Schedule No. 215 superseded Rate Schedule No. 85.
[26] Rate Schedule No. 216 superseded Rate Schedule No. 43.
[27] Rate Schedule No. 218 superseded Rate Schedule No. 62.
[28] Rate Schedule No. 228 superseded Rate Schedule No. 68.
[29] Rate Schedule No. 229 superseded Rate Schedule No. 69.
[30] Rate Schedule No. 234 superseded Rate Schedule No. 75.
[31] Does not include acreage added by Supplement 1, which is included in Exhibit B.
[32] Rate Schedule No. 235 superseded Rate Schedule No. 203.
[33] Applicable to Sibley Unit only.
[34] Order permitting abandonment issued 6-14-63 in Docket G-7825 et al.

APPENDIX B

UNION PRODUCING COMPANY

FPC Rate Schedules—Docket Nos. G–13811, et al. and G–18354

PENDING CERTIFICATE APPLICATIONS INCLUDED IN PROPOSED SETTLEMENT

Rate schedule No.	Field (area)	Purchaser	Docket No.		¢/Mcf at area pressure base (inclusive of tax reimbursement)		
			Certificate	Section 4(e) rate increase	Not subject to refund	Rate in effect Dec. 1, 1964	Proposed settlement rate
	Texas RRC District No. 2—14.65 psia						
95	North McFaddin	United Gas	G–13633 [1]			14.7125	14.0
252	Strauch Wilcox-San Domingo	do	CI64–1192 [2]			15.615	14.0
253	West Tuleta	do	CI64–1192 [2]			16.615	14.0
	Texas RRC District No. 6—14.65 psia						
65	Carthage	do	G–13633 [3]			10.8876	10.8876
	North Louisiana—15.025 psia						
232	Calhoun	do	G–19209			20.25	18.75
248	South Downsville	do	CI62–1104		*18.75	18.75	18.75
	South Louisiana—15.025 psia						
225	Bayou Rambio	do	G–13788 [4]				21.25
239	Hollywood (Houma)	do	CI60–622		*22.25	22.25	18.5
	Mississippi—15.025 psia						
222	Maxie-Pistol Ridge	do	G–14370	G–20085	*20.0	23.0	20.0
224	Dexter	Southern Nat. Gas Co.	G–15077 [5]		*20.0	21.5	20.6

*Initial Rate.
[1] Applicable only to oil well gas added by Supplement 7.
[2] No deliveries—Certificate application pending in Docket CI64–1192.
[3] Applicable only to oil well gas added by Supplement 12.
[4] Applicable only to contract amendment filed as Supplement 6.
[5] Applicable only to acreage added by Supplement 1.

APPENDIX C

UNION PRODUCING COMPANY

Docket Nos. G–13811, et al, and G–18354 4(e) Dockets Requested to be Terminated

Docket No.	Rate schedule No.	Docket No.	Rate schedule No.
G–13811	78	G–20432	72
G–13811	92	RI60–54	78
G–13811	215	RI60–54	195
G–13811	216	RI60–54	236
G–13820	72	RI62–9	195
G–14114	218	RI63–28	241
G–14352	78	RI63–85	63
G–14553	95	RI63–256	97–108
G–14553	96	RI63–256	110–120
G–16725	220	RI63–256	122–149
G–17589	228	RI63–256	151–162
G–17589	229	RI63–256	167–180
G–17606	78	RI63–256	182–188
G–18689	42	RI63–256	190
G–19689	209	RI63–257	163–166
G–19822	220	RI63–257	181
G–20085	92	RI63–257	189
G–20085	222	RI63–300	109
G–20204	234	RI64–276	150
G–20431	235	RI65–399	81

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKETS NOS. RP61–18, RP63–1, AND RP65–1

ORDER APPROVING RATE SETTLEMENT AND REQUIRING RETENTION OF CERTAIN REFUNDS

(Issued December 23, 1964)

The settlement proposals in the above-identified dockets relate to all presently pending rate proceedings, before the Commission and the United States Circuit Court of Appeals for the Fifth Circuit, arising from proposed increases in rates and charges tendered for filing by United Gas Pipe Line Company (United), pursuant to Section 4 of the Natural Gas Act.

By leave of the Presiding Examiner in Docket No. RP65–1, the formal hearings then in progress in that docket were recessed on November 19, 1964, to permit all parties actively participating in such proceedings to engage in settlement conferences. Upon the successful conclusion of such negotiations, on December 16, 1964, United, the Commission's Staff, United's pipeline customers, as well as the distributor customers and noncustomer interveners taking part in such formal proceedings unanimously agreed to the provisions of the settlement on the record. The Presiding Examiner, acting upon the motion of such parties, admitted into evidence as Exhibit No. 20–1, a Stipulation and Agreement (appended hereto)* setting forth a proposed settlement of these proceedings, and certified the record and such proposal to the Commission for its consideration.

Docket No. RP61–18 covers the period from June 15, 1961, through June 30, 1962, and the period from July 1, 1962, through December 31, 1962. The parties to this proceeding entered into a stipulation and agreement on February 16,

*Omitted in printing.

1962, which was approved by a Commission order issued on March 12, 1962, 27 FPC 504. That settlement agreement required the submission of post-audit reports by United and provided procedures for disposing of objections thereto. An informal conference on the issues thus raised was held on November 14, 1962, but failed to resolve all outstanding issues. Subsequently, the Commission issued an order on January 7, 1963, 29 FPC 36, authorizing United to make refunds in the principal amount of $4,837,232, of which some $228,498 was to be retained pending the resolution of a previously reserved issue relating to the design of United's PLC rates.

The proposed settlement would resolve all remaining controversies in this docket and contemplates additional refunds of $602,303 for the earlier rate period ending June 30, 1962, and $2,194,396 for the later period ending December 31, 1962. These refunds would be made without interest, except for interest received on supplier refunds. The proposed settlement also perpetuates United's existing obligations, under the earlier settlement agreement governing Docket No. RP61–18, to flow through supplier refunds (including Union[1]) applicable to gas purchases made between June 15, 1961, and December 31, 1962. Finally, United will pay the previously withheld principal amount of $228,498 to Mississippi River Fuel Corporation and Texas Eastern Transmission Corporation, together with interest at the rate of 7 percent per annum through November 30, 1964. The settlement agreement appears to represent a reasonable compromise of the disputed issues raised by the post-audit in Docket No. RP61–18.

Docket No. RP63–1 covers the rate periods from January 1, 1963, through August 31, 1964, and from September 1, 1964, through January 31, 1965. Rates for this period have been finally determined by the Commission in its Opinions and Orders (No. 428, 31 FPC 1180, 428–A and 428–B, 32 FPC 687, 879) entered in this docket. United's appeal therefrom is presently pending in the Fifth Circuit.

The proposed settlement contemplates that United will make refunds of the excess jurisdictional revenues collected from January 1, 1963, to February 1, 1965 (when the settlement rates in Docket No. RP65–1 will become effective) in accordance with the cost-of-service, allocation and rate design principles and methods prescribed by the Commission in Docket No. RP63–1. United, Texas Gas Transmission Corporation, Texas Eastern Transmission Corporation, and Natural Gas Pipeline Company of America will withdraw and obtain the dismissal of their respective appeals from such Commission opinions taken to that Circuit Court except insofar as such appeals relate to the Commission's use of a consolidated effective tax rate instead of the applicable statutory tax rate for the purpose of computing the federal income tax allowance component in United's cost-of-service and to the Commission's order compelling United to hold and retain monies to be refunded pending a determination of equitable entitlement thereto as between United's pipeline customers subject to the regulatory powers of this Commission and distributors regulated by State Commissions. The policy underlying this order permits, however, the immediate release of refunds payable by United to state-regulated distributor customers which purchase gas directly from United.

United would refund a principal amount of $16,279,830 for the rate period ending August 31, 1964, together with interest at the rate of 7 percent per annum through November 30, 1964.

Until February 1, 1965, United will continue to bill its jurisdictional customers at the RP63–1 substitute rates, which became effective on January 1, 1963, and

[1] As used herein, "Union" refers to Union Producing Company.

are presently in force. However, on or before March 31, 1965, United shall refund to its jurisdictional customers all revenues collected under the substitute rates which are above the level of proper compliance rates, determined in accordance with Opinion No. 428.[2] Such refund shall be determined for each customer by applying the differential between such rates to the actual volumes of gas taken between September 1, 1964, and January 31, 1965. United is obligated to invest such excess revenues as are actually received from its jurisdictional customers during this refund period in short term debt obligations of the United States Government and to also refund the interest thereby earned.

United's existing obligation in Docket No. RP63–1, under Opinion No. 428, to pass on gas supplier refunds is continued during the period when the future settlement rates will remain in effect. It shall flow through the jurisdictional portion of refunds received, or to be received, from producers (including Union) not yet flowed through which are within the scope of its obligations under Article V of the Stipulation and Agreement and applicable to gas purchases between January 1, 1963, and January 31, 1965. Since the future settlement rates, in Docket No. RP65–1, take effect only on February 1, 1965, United shall also flow through, by way of refunds, the jurisdictional portion of producer rate reductions which have not already been refunded or reflected in those prospective rates and are within the scope of its obligations under Article V of the Stipulation and Agreement and applicable to gas purchases between September 1, 1964, and February 1, 1965.

The refunds United will make under the settlement agreement, for the RP63–1 rate period, exceed those proposed in its compliance filing of October 17, 1964. The compliance filing proposed to offset earnings deficiencies in the Central Zone under the rates prescribed by the Commission for the year 1963 against refunds otherwise due. No such offset has been made in the computation of the settlement refunds. These refunds have been determined in compliance with the cost-of-service, allocation, rate design and rate adjustment principles and method underlying Opinion No. 428, with a relatively minor exception as to the date to which interest thereon would be payable. On the other hand, the dismissal of all pending appeals taken from Opinion No. 428 is a substantial benefit to jurisdictional customers stemming from the Stipulation and Agreement.

Docket No. RP65–1 covers the future rate period beginning on February 1, 1965 which represent the date when the increased rates filed by United, on July 15, 1964, will supersede the presently effective substitute rates filed by United, on December 19, 1962, thereby transforming Docket No. RP63–1 from a future rate period to a past rate period. United has tendered for filing, pursuant to the settlement agreement, revised tariff sheets to be effective on February 1, 1965. Each of the rate schedules reflected in such revised tariffs represents, on the basis of a single-part unit average rate per Mcf, a reduction below the level applied for by United in Docket No. RP65–1. Such settlement rates are also, on the same basis of computation, significantly below the presently effective rates in Docket No. RP63–1. In addition, such settlement rates are subject to later reduction to pass on consolidated tax savings having substantial impact on United's annual jurisdictional revenues if the pending litigation now before the Fifth Circuit results in a final decision, on the merits, sustaining the Commission's legal power to use a federal tax rate lower than the statutory rate in order to reflect actual tax savings realized by the filing of a consolidated tax return in the cost-of-service. The question of the proper consolidated tax rate to be used in Docket No. RP65–1 has been reserved for later determination, by the Com-

[2] As set forth in Appendix F to the Stipulation and Agreement.

mission, in further proceedings in that docket. The future settlement rates are based on the cost-of-service, allocation, and rate design principles and methods underlying Opinion No. 428 as applied to a new test period reflecting more recent operating experience during the two year interval between the respective test periods in Docket Nos. RP63–1 and RP65–1, with only minor exceptions. Similarly, the flow through conditions of the proposed settlement adhere to the substance and pattern of the ordering clauses of Opinion No. 428 except that the settlement agreement permits an offset of supplier price increases against the purchased gas cost reduction to be flowed through by reductions in United's cost-of-service and also to be reflected in lower jurisdictional rates.

Apart from the foregoing considerations, some of the benefits under the settlement such as the moratorium on rate increase filings and an end to prolonged and costly litigation, would not be available to the parties if this docketed proceeding continued through the hearing and decision process.

The bases for the proposed settlement are the post-audit cost of service reports filed in Docket No. RP61–18; the evidence in Docket Nos. RP63–1 and RP65–1 (including detailed rate filings under Section 154.63) and the Commission's Opinions and Orders entered in Docket No. RP63–1.

The principal provisions of the settlement agreement are summarized in part, as follows:

(1) Effective February 1, 1965 United's jurisdictional rates will be reduced to the level of the revised tariff sheets set forth in Appendix B of the attached Stipulation and Agreement.

(2) United agrees that it will not make any rate filing which would increase, to be effective prior to February 1, 1967 after having given effect to the expiration of any statutory suspension period, any rate or rates initially or subsequently established under the Stipulation and Agreement.

(3) The future settlement rates in Docket No. RP65–1 are based upon a cost-of-service reflecting the application of a 48 percent statutory tax rate. The issue of whether such tax rate or any lesser consolidated effective tax rate which may later be determined by the Commission, in further proceedings, should be used for the purpose of calculating United's federal income tax allowance in its settlement cost-of-service in Docket No. RP65–1 has not been disposed of by agreement of the parties, but, rather, has been reserved and made subject to the final judgment and decision to be entered on the merits of United's petition for review of the Commission's Opinion Nos. 428, 428–A and 428–B now pending in the Fifth Circuit and therein docketed as *United Gas Pipe Line Company* v. *F.P.C.*, Nos. 21872 and 21958. If such litigation eventuates in a final and nonappealable decision, by the court of last resort, which is adverse to United's position on this question, United is obligated to make such reductions in the rates initially or subsequently established under the settlement agreement in Docket No. RP65–1 as the Commission may order, within 60 days after a final determination of the effective tax rate to be utilized in that docket. In addition to this obligation to reduce prospectively such future settlement rates, United is also obligated to refund to its jurisdictional customers any amounts collected between February 1, 1965, and the effective date of such prospective rate reductions which are in excess of the amounts which would have been collected if such changed rates had been in effect on February 1, 1965 together with simple interest at the rate of 7 percent per annum thereon. Such refunds shall be made within 30 days from the date when any prospective rate reduction United is obliged to make under Article VII of the stipulation and agreement becomes final and non-appealable. In addition, United is also obligated to make such prospective rate reductions and refunds in the event that it voluntarily withdraws or fails to prosecute the petitions for review in the above-captioned appeals.

The agreement further provides that the question of whether a consolidated effective tax rate should be used in determining the federal income tax allowance component of United's cost-of-service in Docket No. RP63–1 shall be subject to and shall be governed by the final judgment and decision thereon to be entered in the pending review proceedings before the Fifth Circuit.

(4) The future settlement rates, in Docket No. RP65–1, provided for in this settlement agreement reflect a working capital allowance in the rate base which includes accumulated gas prepayments balances of $22,659,478. If such prepayments are finally allowed, by the Internal Revenue Service, as tax deductions for the year when the prepayment was made, United shall recalculate and reduce such working capital allowance by reflecting as a credit thereto the appropriate federal income tax related to said accumulated gas prepayment. In such event, United is obligated to reduce prospectively the rates initially or subsequently established, in Docket No. RP65–1, and also to make refunds in Docket No. RP63–1 for the period from January 1, 1963 to January 31, 1965 and in Docket No. RP65–1 during the life of the future settlement rates, as initially established or subsequently established under the Stipulation and Agreement. Such rate reductions and refunds shall reflect the jurisdictional portion of the reduction in cost-of-service resulting from such crediting. Such prospective rate reductions shall be made effective the first day of the month following the month through which refunds have been computed and paid or February 1, 1965 whichever is later.

If such gas prepayments are not allowed, as tax deductions for the year when the prepayment was made, but the gas prepayments balance on United's books is reduced below $22,659,478 by make-up or forfeiture of the prepaid gas and the allowance thereof as tax deductions in the year of such book balance reduction, United is obligated to reduce the future settlement rates initially or subsequently established under this Stipulation and Agreement in the manner provided for in Article VI thereof. No such rate reduction need be made prior to February 1, 1966. However, the future settlement rate shall be reduced prospectively from and after February 1, 1966 to reflect any such reduction in the gas prepayments balance on United's books as of December 31, 1965 below the $22,659,478. In the same manner, United is also obligated to reduce its rates prospectively from and after February 1, 1967 to reflect any such reduction in the gas prepayments balances on its books as of December 31, 1966 below the $22,659,478 or such lower balance as may have been previously reflected in reduced rates, effective on February 1, 1966, except that if United has filed increased rates to become effective February 1, 1967, this latter rate reduction shall not be required.

(5) If the federal tax rate imposed on corporate income earned during the calendar years 1965 and/or 1966 is increased or decreased, as compared to the statutory federal tax rate of 48 percent underlying the future settlement rates in Docket No. RP65–1, United shall file incremental rates to pass on such tax savings and may file incremental rates to recoup such additional tax expenses. Such incremental rates will be designed to reflect only the effect of increases and decreases in federal income tax rates and shall become effective on the date when the changed tax rate takes effect.

(6) If United receives any purchased gas cost reduction on or after February 1, 1965 with respect to any rates of producers on file with the Commission which are included in the cost-of-service underlying the future settlement rates, initially or subsequently established under the Stipulation and Agreement, or has received any purchased gas cost reduction prior to February 1, 1965 which has not been used to reduce that cost-of-service, United shall reduce its jurisdictional rates to reflect such reduced costs to the extent that such reduced costs

are not offset by increases in the cost of gas to United as provided in Section 6 of Article V thereof.

Therefore, if, as a result of final Commission decisions (including judicial review where sought) there is a purchased gas cost reduction (*i.e.*, resulting from a reduction in the aforesaid contingent rates of United's gas suppliers) and United's current weighted average cost per Mcf of gas purchased under rate schedules on file with the Federal Power Commission is decreased below a cost of gas of 17.39¢ per Mcf at 14.9 psia or the cost of gas computed by reducing the 17.39¢ per Mcf figure by the amount of the weighted average unit cost reduction obtained by dividing the total purchased gas cost reduction (which occasioned the preceding United rate reduction determined under Section 6 of Article V) by the annual purchase volume related thereto, whichever is less, which lesser cost is hereinafter referred to as the "base cost" of gas, United shall reduce its jurisdictional rates to reflect such reductions if the current weighted average cost is less than the base cost.

The amount of the reduction in United's cost of service shall be determined by multiplying the difference in such unit cost by the volumes of gas purchased under rate schedules on file with the Federal Power Commission during the twelve-month period ending with the month in which the last producer rate decrease has become effective, but such amount shall not exceed the annualized effect of the rate reductions for the producer or producers involved.

United is not obligated to flow through supplier price reductions resulting from any Commission orders entered in proceedings conducted under Section 5(a) of the Natural Gas Act. In addition, it is not obligated to flow through any Union rate reductions in Docket No. RP65–1 since its allowable gas costs for purchases made from that affiliated supplier have been based on the latter's actual cost-of-service, rather than its filed rates.

(7) If United receives, or has received, any rate refunds from producers or suppliers with respect to gas purchases included in the purchased gas expense component of the cost-of-service allowed, respectively, in Docket Nos. RP63–1 and RP65–1, which refunds are applicable to gas purchases made after January 1, 1963 and not yet flowed through, United is obligated to flow through the jurisdictional portion of such supplier refunds and any interest thereon received by it.

Refunds received from Union shall be flowed through with respect to gas purchases made between January 1, 1963 and January 31, 1965. However, United may retain refunds received from Union with respect to gas purchases made after February 1, 1965 since the future settlement rates in Docket No. RP65–1 reflect reductions in Union's filed rates, determined on an actual cost basis, and the treatment of Union as the integrated production arm of United.

(8) Article III of the Stipulation and Agreement provides that the settlement is specifically conditioned upon the Commission's approval of the payment of refunds due jurisdictional customers in Docket No. RP63–1 for the period between September 1, 1964 and January 31, 1965, on or before March 31, 1965, without any further proceedings as to such payment by United to its customers and that United shall not be obligated to pay interest on the amounts so refunded. The Agreement recites that such refunds are payable by virtue of the agreement of all parties that the RP63–1 substitute rates made effective on January 1, 1963 shall continue in effect until superseded by the settlement rates in RP65–1 on February 1, 1965. Absent such a stipulation, the reduced rates prescribed by the Commission in Opinion Nos. 428 and 428–A would have been in effect during this period.

The Stipulation and Agreement also expressly provides that the foregoing condition does not apply to supplier refunds and/or rate reductions applicable

to gas purchases made during the period from September 1, 1964 through January 31, 1965 which are to be flowed through by United under Article V thereof.

(10) The Stipulation and Agreement is also expressly conditioned upon the Commission's approval of all of the terms and conditions thereof, and upon the Commission's approval of a settlement of all of Union's pending rate proceedings.

In addition to the foregoing provisions the Stipulation and Agreement contains the following requests and reservations:

(1) United and those of its customers joining in the Stipulation and Agreement by expressing their concurrence therewith on the record in Docket No. RP65–1 have requested, in Article II thereof, that the Commission permit United to make the refunds provided for in that Article, excluding any portion of such refunds representing frozen supplier refunds applicable to United, within 30 days after the date of the issuance of a Commission order approving that Stipulation and Agreement. Article II deals with refunds payable in Docket No. RP61–18 and with the rate period extending from January 1, 1963 to August 31, 1964 in Docket No. RP63–1. The parties to the agreement making this request have further requested the Commission to release such frozen supplier refunds in order that United may thus immediately pay all refunds called for by Article II directly to such customers.

Neither the Staff nor any of the other parties participating in Docket No. RP65–1 have joined in this request and it does not constitute, in our Opinion, a term or provision of the Stipulation and Agreement. Nevertheless, we recognize that if we provide for the retention of refunds payable by United we shall be imposing a requirement upon the requesting parties which they have not voluntarily assumed in the subject settlement agreement.

(2) The Commission is also requested to waive compliance by United with the requirements of the Commission's general rules and regulations, to the extent necessary to effectuate all of the provisions of the agreement.

(3) A reservation has been made to the effect that the Stipulation and Agreement shall not constitute an agreement by the private parties to the agreement on rate making principles and methods employed or underlying the determination of the dollar amounts specified in the distribution thereof, but is only a dollar settlement of United's pending rate proceedings.

The Commission finds:

(1) The settlement of these rate proceedings upon the basis of the Stipulation and Agreement (identified as Exhibit No. 20–1), as above-discussed and summarized, is reasonable, proper, and in the public interest in carrying out the provisions of the Natural Gas Act and the proposed rate settlement based thereon should be approved and made effective subject to the terms and conditions hereinafter ordered.

(2) The rates and charges filed by United in Docket No. RP65–1 and contained in Second Revised Sheet No. 9–A; Fifth Revised Sheet No. 99; Seventh Revised Sheet Nos. 34, 35, 44, and 45; Eighth Revised Sheet Nos. 8 and 14; Ninth Revised Sheet Nos. 4, 6, 10, 12, 21, 23, 25, 27, 28, 30, and 32, have not been shown to be just and reasonable or otherwise lawful under the provisions of the Natural Gas Act, and should be disallowed and denied as hereinafter ordered.

(3) Good cause exists for the Commission to waive its applicable rules and regulations under the Natural Gas Act, in order that the tariff sheets included as Appendix B of the Stipulation and Agreement may become effective on February 1, 1965.

(4) The request of United and those of its customers joining in the Stipulation and Agreement, by expressing their concurrence therewith on the record in Docket No. RP65–1, that the Commission shall authorize United to refund immediately

and directly to such customers the amounts of any refunds due under Article II thereof, upon approval of said settlement agreement by the Commission, and their further request that the Commission release, all frozen supplier refunds otherwise payable to United should be denied and all such refunds, as well as the supplier refunds and/or rate reductions applicable to gas purchases made between September 1, 1964 and January 31, 1965 which are to be flowed through to jurisdictional customers by United under Article V thereof, and not subject to the condition in Paragraph (b) of Article III shall be subject to the terms and conditions hereinafter ordered respecting the retention of such refunds and converted supplier rate reductions flowed through by way of refunds.

The Commission orders:

(A) The proposed increased rates filed by United and referred to in finding clause (2), above, are hereby disallowed and denied.

(B) The settlement of these proceedings upon the basis set forth in the Stipulation and Agreement, as hereinabove discussed and summarized, is hereby approved and made effective as proposed therein subject to the terms and conditions hereinafter ordered.

(C) United shall, within 15 days from the date of this order, submit in triplicate a report to the Commission and serve a copy on each of its customers identifying each such customer which does not have rate schedules and tariffs on file with this Commission, relating to the transportation or sale of natural gas subject to its regulatory authority under the Natural Gas Act and is either a State regulated distributor or an ultimate consumer of the gas purchased, from United, which said purchases generated the refunds involved. Any customer of United believing that it has been improperly omitted from the listing contained in such report, shall file a request for classification as a State regulated distributor or ultimate consumer of natural gas within 30 days thereafter. The Commission will review the data contained in such report and such requests and authorize United to pay any and all refunds owing to customers so classified, under the terms of the Stipulation and Agreement and this order, and promptly direct United to make appropriate refund payments to all eligible customers. Pending such Commission authorization, or any further order of the Commission directing the disposition of refunds thus determined to pipeline customers, United shall retain all amounts shown in Appendix A of the attached Stipulation except those subject to paragraph (b) of Article III under the terms and conditions specified in ordering paragraphs (H) and (I) of Opinion No. 428–A, entered in Docket No. RP63–1 on September 2, 1964.

(D) As further refunds become due and payable, under the terms of the Stipulation and Agreement and this order, United shall within 20 days after the computation of such refunds is made, submit in triplicate a report to the Commission and serve a copy on each of the purchasers involved setting out by purchasers and dockets the amount of refund related to each rate schedule (showing separately the principal and applicable interest), the basis used for such determination and the periods covered. United shall likewise include in such report the listing described in ordering paragraph (C), above, and, also, retain the amount shown in such report on the terms and conditions specified in that paragraph.

(E) United shall comply with each of the provisions of the Stipulation and Agreement and of this order.

(F) The 30 day notice provision of Section 154.22 of the Commission's Regulations under the Natural Gas Act is hereby waived and the revised tariff sheets included in the Stipulation and Agreement (Exhibit No. 20–1) as Appendix B shall become effective as of February 1, 1965, subject to the terms and condi-

tions of this order and of the Stipulation and Agreement, if tendered for filing by United within 7 days from the date of this order.

(G) Upon compliance with the terms and conditions of this order, the proceedings in Docket No. RP65–1 are hereby terminated, except with respect to such further proceedings as may be required to determine the appropriate consolidated effective tax rate to be utilized in fixing an income tax allowance for the purposes of that docket and such further proceedings as may be required to determine the identity of the person or persons equitably entitled to the refunds to be made hereunder by United, subject to the terms of the Stipulation and Agreement as to all parties assenting thereto, by agreeing on the record or by failure to object within the time hereinafter provided.

(H) Upon compliance with the terms and conditions of this order, the proceedings in Docket No. RP63–1 are hereby terminated, subject to the terms of the Stipulation and Agreement as to all parties assenting thereto, by agreeing on the record or by failure to object within the time hereinafter provided.

(I) Within 30 days from the date United makes refunds pursuant to this order and the Stipulation and Agreement, the pending appeals in the United States Court of Appeals for the Fifth Circuit in the hereinabove identified litigation shall be withdrawn to the extent provided in Article VIII thereof, without prejudice to the positions taken by the petitioners therein.

(J) United shall, over the signature of a responsible officer, file with the Commission within 7 days from the date of this order, in writing and under oath, an original and one copy of its acceptance or rejection of the terms and conditions of this order.

(K) Within 7 days from the date of this order, any person which is a party to the proceedings in Docket No. RP61–18, or Docket No. RP63–1, or Docket No. RP65–1 shall file written objections to the stipulation and agreement and/or to this order.

(L) Within 7 days from the date of this order any customer which is not a party within the purview of Paragraph (K) above and is affected thereby may file written objections to the stipulation and agreement and/or to this order.

(M) Except for ordering paragraphs (J), (K), and (L), the provisions of this final order shall become effective only in the event that they are not modified or superseded by further order of the Commission entered prior to December 31, 1964.

(N) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by the Commission, United, the Commission staff, or any affected party herein, in any proceeding now pending or hereafter instituted by or against United or any other companies, persons, or parties affected by this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

UNITED STATES DEPARTMENT OF THE INTERIOR, SOUTHEASTERN POWER ADMINISTRATION, DOCKET NO. E–7188

ORDER CONFIRMING AND APPROVING RATES AND CHARGES

(Issued December 23, 1964)

Pursuant to Section 5 of the Flood Control Act of 1944 (59 Stat. 887), the Assistant Secretary of the Interior (Secretary), on behalf of the Southeastern

Power Administration (SEPA) on October 16, 1964 filed a request for confirmation and approval of Wholesale Power Rate Schedule CR–1 applicable to the sale of power generated by Dale Hollow, Center Hill, Wolf Creek, Cheatham, and Old Hickory Projects. On November 3, 1964, the Secretary filed an amendment to this request.

The proposed rate schedule encompasses and supersedes Wholesale Power Rate Schedule OHC–1 applicable to the sale of power from the Old Hickory and Cheatham Projects heretofore approved by the Commission by order issued July 23, 1963, Docket No. E–6999, 30 FPC 398, and is in substitution of the rates and charges for the sale of power generated by Wolf Creek, Dale Hollow and Center Hill Projects which were disapproved by the Commission by order issued May 20, 1958, Docket No. E–6645, 19 FPC 774. The Secretary requests approval of the proposed rate schedule for a period ending June 30, 1969. All of the power and energy generated by the five projects mentioned above is sold to the Tennessee Valley Authority (TVA).

The revenue and repayment studies heretofore submitted by the Secretary in 1958 in Docket No. E–6645, relative to the application of the proposed rate schedule for the sale of power and energy generated by the Wolf Creek, Dale Hollow and Center Hill Projects, were based on an incremental allocation of costs to power and an interest rate of 2% per annum on the investment allocated to power. The revenue and repayment studies submitted by the Secretary on October 16, 1964, and as amended November 3, 1964, contemplated a single rate schedule for the five projects. These studies are based on the Separable Costs-Remaining Benefits method of cost allocation with respect to the Old Hickory and Cheatham Projects, and are based on the incremental method of cost allocation to power with respect to the Wolf Creek, Dale Hollow and Center Hill Projects. The interest rate of 2.5% on the power investment, which has heretofore been applicable to the Old Hickory and Cheatham Projects is made applicable in the study to the Wolf Creek, Dale Hollow and Center Hill Projects. The increased costs resulting from the application of the 2.5% interest charge instead of the 2% with respect to the Wolf Creek, Dale Hollow and Center Hill Projects for the period prior to June 30, 1964, were computed. The study contemplated that the repayment of such costs with interest compounded annually will be deferred until all other costs are amortized.

There is no change in annual charges applied to the repayment of the investment in the Old Hickory and Cheatham Projects heretofore submitted in the repayment studies upon which the rates and charges were approved by the Commission in Docket No. E–6999. In our previous order rejecting the rates filed for the three other projects, alone, we held that the incremental method of cost allocation should not be utilized and that the use of a 2% interest rate was inappropriate. On further study of the problem, we have concluded that the Secretary's utilization of this method of cost allocation with respect to these projects is proper under the applicable laws. The Secretary now adopts a 2.5% interest rate for these projects.

The revenue and repayment studies now before the Commission show that the Wholesale Power Rate Schedule CR–1, which is attached hereto and made a part of this order,* applied to the sale of power and energy produced by the five projects mentioned above, will produce revenue which, together with revenue collected to date, in sufficient to repay the investment allocated to power within 50 years from the time that the investment in each project became revenue producing, with the exception of the deferred interest costs associated with the Wolf Creek, Dale Hollow, and Center Hill Projects mentioned above.

*Omitted in printing.

The Commission finds:

The proposed rates and charges of SEPA for the wholesale sale of electric power and energy from the Wolf Creek, Dale Holow, Center Hill, Cheatham and Old Hickory Projects, as set forth in Wholesale Power Rate Schedule CR–1, referred to above, for a period beginning with the date of the issuance of this order and terminating June 30, 1969 will not be inconsistent with the provisions of the Flood Control Act of 1944.

The Commission orders:

The proposed rates and charges for wholesale sale by SEPA to TVA of electric power and energy from the Wolf Creek, Dale Hollow, Center Hill, Cheatham and Old Hickory Projects, as set forth in Wholesale Power Rate Schedule CR–1, attached hereto and made a part hereof, are hereby confirmed and approved for a period beginning with the date of issuance of this order and ending June 30, 1969.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ARIZONA PUBLIC SERVICE COMPANY, DOCKET NO. E–7181

ORDER DISMISSING APPLICATION PURSUANT TO SECTION 203 OF THE FEDERAL POWER ACT

(Issued December 24, 1964)

Arizona Public Service Company (Public Service) incorporated under the laws of the State of Arizona, doing business in the States of Arizona and New Mexico, with its principal place of business in Phoenix, Arizona, filed an application on September 11, 1964, pursuant to Section 303 of the Federal Power Act, requesting an order authorizing the sale of certain steam and electric generating facilities to Southwest Forest Industries, Inc. (Southwest) or in the alternative, Applicant seeks a disclaimer of jurisdiction in regard thereto.

Southwest is a corporation engaged in the lumbering and wood products business and operates a lumber mill at McNary, Arizona. Southwest presently purchases its steam and electric energy requirements from Public Service.

The facilities to be sold are located at McNary, Arizona and consist of a 7,900 kw steam-electric generating unit, boiler plant equipment, accessory electrical equipment, and miscellaneous power plant facilities. No transmission or substation equipment is included in the proposed sale.

The application recites that the consideration will be $75,000 which amount was determined by negotiation as set forth in an agreement between the parties dated April 1, 1964. Applicant states that the sale of facilities will eliminate the use of inefficient and outmoded plant with consequentially high relative operating and maintenance cost, substituting in place thereof, lower cost power from Applicant's normal generation sources.

Section 201(b) of the Federal Power Act exempts generating facilities from the Commission's jurisdiction except as specifically provided in Parts II and III of the Act. Section 203 makes no exception to this exemption regarding the disposition of facilities. The facilities proposed to be sold in this matter are confined to electric generating facilities and their disposition by the Applicant is, therefore, not subject to the requirements of Section 203 and thus the application should be dismissed.

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Written notice of the application has been given to the Arizona Corporation Commission and to the Governor of that State. Notice of the application was also given by publication in the Federal Register on September 24, 1964 (29 F.R. 13285), stating that any person desiring to be heard or to make any protest with reference to the application should file with the Commission a petition or protest on or before October 5, 1964. No protest or petition or request to be heard has been received.

The Commission finds:

(1) Public Service is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued July 6, 1961, in *Arizona Public Service Company*, Docket No. E-6961 (26 FPC 36).

(2) Southwest is not a public utility within the meaning of that term as used in the Federal Power Act.

(3) The facilities to be disposed of by Public Service are used only for the generation of steam and electric energy and as such are not subject to the requirements of Section 203 by virtue of Section 201(b) of the Act.

The Commission orders:

The application of Public Service filed in the above-entitled matter be and the same is hereby dismissed for want of jurisdiction of this Commission pursuant to Section 203 of the Federal Power Act.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. G-3216

ORDER GRANTING IN PART AND DENYING IN PART PETITION FOR WAIVER AND DECLARATORY ORDER

(Issued December 24, 1964)

On October 8, 1964, Pan American Petroleum Corporation (Pan American) filed in Docket No. G-3216 a petition for waiver of Commission Order Nos. 232,[1] 232-A,[2] and 242 [3] with respect to certain pricing provisions contained in a certain gas sales contract and the issuance of a declaratory order clarifying the applicability of such orders. For the reasons hereinafter stated, said petition will be granted in part and denied in part.

On December 26, 1963, Pan American filed an application, pursuant to Section 7(c) of the Natural Gas Act, requesting that its certificate in Docket No. G-3216 [4] be amended so as to authorize sales of natural gas to United Fuel Gas Company from certain additional acreage located in the South Pecan Lake, *et al.*, Fields, Cameron Parish, Louisiana. Pan American proposes to sell the gas from the additional acreage under the terms of the original contract, as amended, in Docket No. G-3216. The original contract is dated May 27, 1952, and is on file with the Commission as part of Pan American's Rate Schedule No. 173. The supplemental letter dedicating the additional acreage in accordance with Article IV, Paragraph

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[1] 26 F.R. 1983, March 8, 1961, 25 FPC 379.
[2] 26 F.R. 2850, April 6, 1961, 25 FPC 609.
[3] 27 F.R. 1356, February 14, 1962, 27 FPC 339.
[4] Certificate issued October 28, 1954.

(9) of the original contract is dated December 2, 1963.[5] On July 17, 1964, Pan American requested temporary authorization to commence the sale from the additional acreage described above and, on September 9, 1964, by letter order, such authorization was granted upon condition, *inter alia*, that Pan American file an amendment to the December 2, 1963, letter eliminating therefrom the pricing provisions, incorporated therein by reference to the May 27, 1952, basic contract, that are proscribed by Section 154.93 of the Commission's Regulations. Section 154.93 of the Regulations as amended by Order Nos. 232, 232–A and 242 defines the permissible price changing provisions of gas sales contracts submitted as proposed rate schedules. Section 154.93 of the Regulations provides for the following permissible contract rate changing provisions:

(a) Provisions that change a price in order to reimburse the seller for all or any part of the changes in production, severance, or gathering taxes levied upon the seller;

(b) Provisions that change a price to a specific amount at a definite date; and

(c) Provisions that, once in five-year contract periods during which there is no provision for a change in price to a specific amount (paragraph (b) of this section), change a price at a definite date by a price redetermination based upon, but not higher than, a producer rate or producer rates *which are subject to the jurisdiction of the Commission are not in issue in suspension or certificate proceedings*. . . . (Emphasis added.)

Paragraph (2) of Article V of the May 27, 1952, Contract, as amended, provides for a 0.5¢ per Mcf increase in the base price should the dedicated reserves exceed 750,000 MMcf and 0.5¢ per Mcf for each 250,000 MMcf of additional reserves.[6]

Paragraph (3) of Article V of the May 27, 1952, Contract, as amended, provides for a price redetermination within six months prior to April 1, 1966, for each year of the three-year period ending April 1, 1969, and within six months prior to the end of each five-year period thereafter. Although no periodic escalation is provided during this period, the redetermination is based upon three highest prices in the area but without the limitations set forth in Section 154.93(c), *i.e.*, that the prices must be for jurisdictional sales and not in issue in suspension or certificate proceedings.

Paragraph (5) of Article XVIII of the May 27, 1952, contract constitutes what is generally known as a favored-nation provision.

Pan American does not request waiver of the proscription of the favored-nation provision but states that unless the price redetermination provision of Paragraph (3) of Article V of the basic contract is applicable to the additional acreage dedicated by the letter of December 2, 1963, ". . . no orderly procedure exists for changing the contract price applicable to such acreage, and Pan American is involuntarily relegated to the remedy of unilateral price changes."[7] Pan American further states that the price re-negotiation and re-determination provision, if allowed, cannot result in the proliferation of rate filings or the complicated Commission hearings on contract price disputes, or the unreason-

[5] Designated Supplement No. 18 to Pan American's F.P.C. Gas Rate Schedule No. 173.

[6] Since the dedicated reserves were determined to have been in excess of 750,000 MMcf (but less than 1,000,000 MMcf) prior to initial deliveries, the 0.5¢) per Mcf reserve incentive was part of the initial price under the basic contract.

[7] Petition p. 3. Pan American does not state under what authority it could make unilateral rate changes.

able disruption of rates, recited by the Commission as the basis for issuance of Orders Nos. 232, 232–A and 242.

Finally, Pan American states that it is uncertain as to whether or not Section 154.93 of the regulations proscribes the reserve-incentive-pricing provision contained in Paragraph (2) of Article V of the basic contract. The contention is made that such pricing provision performs valid economic functions by encouraging and facilitating the development of natural gas reserves and the commitment of such reserves to the existing sale.

Pan American requests an evidentiary hearing on these matters.

We are not persuaded by Pan American's arguments for a waiver of Section 154.93 of our Regulations to allow the price redetermination provision. Nor has Pan American stated any good reason for holding an evidentiary hearing on these matters. We have determined that indefinite pricing provisions of this nature are not in the public interest and our conclusion has been sustained by the Supreme Court. *F.P.C.* v. *Texaco Inc.*, 377 U.S. 33 (1964). In its petition herein the substance of Pan American's arguments is that if waiver is not granted, the contract will have no price increasing provisions related to the additional acreage. The simple answer to that argument is either amend the agreement to include permissible price changing provisions or execute a new contract for the sale of gas from the additional acreage.

The reserve-incentive-pricing provision in Paragraph (2) of Article V does not come within the permissible rate-changing provisions of Section 154.93 of the Regulations. However, since the reserve-incentive-pricing provision does not appear to be contrary to the public interest as are favored-nations and other indefinite pricing provisions in general, we shall grant a waiver of Section 154.93 insofar as it would otherwise prohibit the acceptance of the contract (and certificate application based thereon) containing Paragraph (2) of Article V. This provision appears to perform a valid function and does not depend upon indefinite actions taken by other parties to activate it. Only Pan American, by dedicating additional reserves, can cause the contract price to increase. In this regard it is somewhat the converse of provisions in contracts which reduce the contract price if the reserves turn out to be less than a specified amount. It is also analogous to provisions which adjust the price should the delivery pressure vary from a stated pressure. It has been the Commission's practice to accept contracts containing these analogous provisions although they too, technically, do not conform to Section 154.93 of the Regulations. Of course, as in the case of any permissible escalation clause, to the extent that such clauses bring the total price above our appropriate ceilings, we shall not certificate the sale at such price and would suspend rate increases pending determination of the just and reasonable rate.

The Commission orders:

(A) Section 154.93 of the Regulations Under the Natural Gas Act is hereby waived so as not to prohibit the filing and the effectiveness of Paragraph (2) of Article V of the May 27, 1952, contract between Pan American Petroleum Corporation and United Fuel Gas Company as part of a rate schedule amendment and certificate application.

(B) For the reasons set forth hereinabove, the petition for waiver and declaratory order filed by Pan American Petroleum Corporation on October 8, 1964, is hereby denied, except insofar as it is granted hereinabove.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

UNITED FUEL GAS COMPANY, DOCKET NO. G–20270; ATLANTIC SEABOARD CORPORATION, DOCKET NO. G–20272

ORDER ACCEPTING REVISED TARIFF SHEETS FOR FILING, ACCEPTING REVISED TARIFF SHEETS AND REPORT OF REFUNDS AND RATE REDUCTIONS CONDITIONALLY, MODIFYING ORDERS APPROVING RATE SETTLEMENTS AND DIRECTING WITHHOLDING CERTAIN REFUNDS IN ESCROW

(Issued December 24, 1964)*

On November 20, 1964, United Fuel Gas Company (United) and Atlantic Seaboard Corporation (Seaboard) filed revised tariff sheets[1] to effectuate reductions in their rates, proposed to be made effective as of October 1, 1964, and also filed reports of their computations of rate reductions and refunds of excess charges and of gas supplier refunds, all pursuant to paragraphs (B) and (C) of the Commission's Opinion No. 430, issued June 2, 1964, 31 FPC 1342 as modified by Opinion No. 430–A, issued October 14, 1964, 32 FPC 1106. The proposed reduced rates are set forth in Appendix A hereto together with the increased rates proposed by Respondents which have been in effect subject to refund since April 5, 1960.

United's report indicates that its total refunds to jurisdictional customers covering the period April 5, 1960, through September 30, 1964, will amount to $59,951,266. This amount is the aggregate of three sums of principal due on September 30, 1964, and interest thereon to November 30, 1964: (1) $40,745,548 arising from successive computations of rate reductions (18 in number) which give effect to the stipulated cost of service adjustments approved in these proceedings and a succession of gas supplier rate reductions, (2) $18,240,759 resulting from flow-through of gas supplier refunds, and (3) $964,959 representing interest earned on investment of gas supplier refunds. The amounts of principal and interest included in "(1)", above, have been reduced by United's taking appropriate credits for interim refunds made on September 18, 1962.

Seaboard's report indicates that the total refunds and interest due its jurisdictional customers covering the period April 5, 1960 through September 30, 1964 amount to $28,048,411. This amount is the aggregate of three sums of principal to on September 30, 1964, and interest thereon due November 30, 1964: (1) $20,678,777 arising from successive computations of rate reductions (23 in number) which give effect to the stipulated cost of service adjustments approved in these proceedings, (2) $7,024,711 resulting from gas supplier refunds, and (3) $344,923 representing the straight flow-through of interest received from United earned on investment of gas supplier refunds. The amounts of principal and interest included in "(1)", above, have been reduced by Seaboard's taking appropriate credits for interim refunds made on September 18, 1962.

United's increased rates which have been effective subject to refund since April 5, 1960, included a proposed annual increase of $14,614,488 based upon sales for the test year ended June 30, 1959. By order issued March 20, 1962,

* Rehearing denied January 28, 1965, 33 FPC 123.

[1] *United*—Fifth Revised Sheet No. 7, Third Revised Sheet No. 8, Third Revised Sheet No. 9, Sixth Revised Sheet No. 22, Fifth Revised Sheet No. 27 and Fifth Revised Sheet No. 33, all to United's FPC Gas Tariff, Eighth Revised Vol. No. 1.

Seaboard—Fifth Revised Sheets Nos. 7, 12, 16–A, 16–C, 17–A & 17–C. Fourth Revised Sheets Nos. 8, 9, 13, 14, 16–D, 17–D, 26 & 28. Third Revised Sheets Nos. 10, 15, 16–F & 17–F. Sixth Revised Sheets Nos. 22 & 24, all to Seaboard's FPC Gas Tariff, Seventh Revised Volume No. 1.

27 FPC 538, in Docket No. G-20270, the Commission approved a settlement agreement and provided for limited hearing of the issues finally determined in Opinion Nos. 430 and 430–A. The settlement agreement provided for annual reductions in United's cost of service in the amount of $8,949,300 for the period April 5, 1960 through April 30, 1961, and in the amount of $8,325,000 for the succeeding year ending April 30, 1962. These reductions were based upon sales for the twelve months ended March 31, 1960, adjusted to reflect increased purchased gas costs for the second of the two periods. However, due to the pending rate design issues, no rate reductions have yet been made in United's rates, although by order of September 14, 1962, United was permitted to make interim refunds in the amount of $16,636,214 plus interest, covering the rate period April 5, 1960, through May 31, 1962.

Seaboard's increased rates which have been effective subject to refund since April 5, 1960, included a proposed annual increase of $4,383,000 based upon sales for the test year ended June 30, 1959. By order issued December 29, 1961, 26 FPC 945, as amended in order issued February 19, 1962, in Docket No. G–20272, 27 FPC 369, the Commission approved a settlement agreement and provided for limited hearing of the issues finally determined in Opinion Nos. 430 and 430–A. The settlement agreement provided for annual reductions in Seaboard's cost of service in the amount of $926,000 for the period April 5, 1960 through April 30, 1961, and in the amount of $662,000 for the succeeding year ending April 30, 1962. These reductions were based upon sales for the twelve months ended March 31, 1960, adjusted to reflect increased purchased gas costs for the second of the two periods. However, due to the pending rate design issues, no rate reductions have yet been made in Seaboard's rates, although by order of September 14, 1962, Seaboard was permitted to make interim refunds in the amount of $7,749,331 plus interest, covering the period April 15, 1960, through May 31, 1962.

In their letters transmitting the tariff sheets and reports United and Seaboard make several ancillary proposals: (1) Since the reduced rates filed herein will, if accepted, become effective as of October 1, 1964, they be permitted to recompute their customers October bills and credit the November bills with the indicated reductions, (2) That the respective gas supplier refund flow-through obligations of United and Seaboard be modified by the Commission to provide that they are not obligated to pass on such refunds until the amounts have accumulated to $500,000 and $150,000, respectively, in lieu of the lesser amounts now contained in their settlement agreements heretofore approved by the Commission, (3) That their respective obligations to reflect gas supplier rate reductions also be modified, so that they shall not be required to pass on such reductions until the accumulated annual effect is equal to or greater than one-tenth of one cent per Mcf, (4) That both United and Seaboard be exonerated from paying more interest on gas supplier refunds than that received from such suppliers and passed on with the refunds to their customers, (5) That the responsibility for interest accruals on refunds generated by cost of service and rate reductions be discontinued as of November 30, 1964, the final date to which interest has been computed in the filed refund reports, citing the loss of time and expense of making additional computations.

The Respondents' letter of transmittal state that they are incurring substantial interest costs and they have requested each customer served with a copy of the reports and rate filings to advise the Commission by November 27, 1964, that such customers have no objection to said reports and refund and rate proposals and that they do not intend to seek court review of the Commission's Opinion Nos. 430 and 430–A.

Responses have been received from all customer companies with the exception of Zebulon Gas Association, Inc., E. L. Lusher and Luther Lusher.[2] No customer or intervener has raised objections regarding the computation of refunds or rate reductions, and the responses contain no objection to United's or Seaboard's ancillary proposals. In filed responses, Washington Gas Light Company (Washington Gas) and Lynchburg Gas Company (Lynchburg Gas) expressed neither agreement nor disagreement with the rate reductions and refund computations. Washington questioned the propriety of Seaboard's filing of revised tariff sheets to reflect a reduction in its CDS–PR Rate Schedules,[3] saying that it considered those schedules "terminated" by the decision of the court in the *Lynchburg* case.[4] Lynchburg filed a protest to the same effect, requesting that the Commission reject such filings. It should be sufficient to answer Washington's position and Lynchburg's request by pointing out that the court remanded Opinion No. 368, 28 FPC 860 and the PR rate schedule issue to the Commission for further proceedings, and the proper disposition of those schedules is a pending matter before the Commission in Docket No. G–16401, *et al.* Without prejudgment of the issues in the proceedings and until the Commission takes further action, it is appropriate for Seaboard to file a reduction in the rate levels contained in the PR rate schedules corresponding to that in other rate schedules, subject, of course, to the Commission's further order in Docket No. G–16401, *et al.* We will so provide.

In paragraph (E) of Opinion No. 430 we provided that all jurisdictional natural gas companies which receive refunds as a consequence of our orders herein, either directly or indirectly from Respondents, shall pass on all such refunds to their jurisdictional customers. Further, we provided that if any such customer natural gas company objects to such requirement, it shall be afforded a hearing before being required to pass on such refunds if it files a protest with the Commission. Shenandoah Gas Company on November 24, 1964, filed a letter protesting the applicability to it of the requirements of paragraph (E) of the opinion. In support of its protest, it stated that it has not passed on the increased rates which have been the subject of these proceedings, and, in addition, it has not earned a reasonable rate of return during the period in question from its sales of gas subject to this Commission's jurisdiction, to its one customer in that category, Martinsburg Gas and Heating Company (Martinsburg Gas). The latter company, on December 18, 1964, filed an answer to Shenandoah's protest claiming the right to have these refunds be passed on it.

The sales by Seaboard to Shenandoah are made under a single service agreement in which both Washington Gas and Shenandoah, its affiliate, buy gas under a single contract demand. Under these circumstances Seaboard renders composite billing to Washington and Shenandoah. Therefore, it would not be appropriate to require Seaboard to withhold Shenandoah's portion of the refunds until we have given consideration to Shenandoah's protest against the requirements of paragraph (E) of Opinion No. 430. However, by letter filed December 21, 1964, Washington Gas offers to hold in escrow and report to the Commission the portion of the refunds applicable to Shenandoah's purchases from Seaboard; and states it has no objection to Respondents' refund and rate reduction proposals provided refunds are made before January 1, 1965.

Respondents' reports of refunds and rate reductions have been found to be in substantial compliance with the requirements and provisions of Opinion Nos. 430

[2] Public Service Commission of West Virginia filed a letter stating that it has no objection to the refund and rate proposals and does not intend to contest Opinion Nos. 430 and 430–A.

[3] Seaboard's FPC Gas Tariff Seventh Revised Volume No. 1: Third Revised Sheets Nos. 16F and 17F, Fourth Revised Sheets Nos. 16D and 17D, and Fifth Revised Sheets Nos. 16A, 16C, 17A and 17C.

[4] *Lynchburg Gas Company* v. *F.P.C.*, 336 F. 2d 942, (decided June 26, 1964, in CADC No. 17738).

and 430–A, with the exception discussed below, and the revised tariff sheets and rate reductions contained therein have been found to be appropriate and in compliance with our opinion and order and should be accepted for filing, with provisional acceptance of the CDS-PR rate schedules as indicated above.

In its report of refunds and rate reduction computations, United lists Bluefield Gas Company (Bluefield Gas) as its customer, but [5] shows that, according to its view, inasmuch as Bluefield Gas was not billed for the increased costs herein, no refunds should be made or passed on to Bluefield Gas. United explains that on October 1, 1963, it acquired Amere Gas Company, (Amere) an affiliate, which had formerly purchased gas from Seaboard and sold gas to Bluefield Gas, and that United had assumed Amere's FPC Gas rate applicable to the latter sales. Except for the merger, Amere would have been required to pass on applicable refunds to Bluefield as required by paragraph (E) of Opinion No. 430. In view of the merger, it would appear that United should be required to report the refunds which would be applicable to Amere's and its own sales to Bluefield Gas and, in the absence of justification for withholding such refunds, should be required to make refunds to Bluefield in accordance with our refund flow-through policy directed in said paragraph (E).

Respondents' requests that they be exonerated from interest accruals on rate reduction refunds after November 30, 1964, should be denied. No substantial justification for changes in Respondents' obligations in this respect has been shown. Respondents' requests that they be permitted to credit billings to reflect the rate reduction effective as of October 1, 1964, is reasonable and should be granted. However, since billings for the October and November deliveries have presumably both been rendered, Respondents should also credit interest computed in the same manner as utilized in their refund reports and file supplemental reports with the Commission of the amounts of principal and interest so paid, within 30 days after such bills have been rendered. Additionally, Respondents' requests to be relieved of any obligation to pay additional interest upon gas supplier refunds appears to have overlooked the fact that their respective settlement agreements, as approved by prior Commission orders, already provide for such exoneration from additional interest.

Respondents' proposals to modify their settlement agreements, as now approved by the Commission, to provide that gas supplier refund and rate reduction flow-throughs be activated by larger accumulations are reasonable and similar to provisions common to such ancillary provisions in many other natural gas company settlements. Moreover, most of Respondents' customers who have responded indicated acceptance of the proposed modifications and none has objected to them.

The Commission orders:

(A) The plans of refunds and rate reductions filed by United and Seaboard on November 20, 1964, are hereby accepted as being in substantial compliance with the Commission's Opinion No. 430 as modified by Opinion No. 430–A, subject to the conditions and provisions of this order.

(B) The revised tariff sheets, as described above, filed by United and Seaboard on November 20, 1964, pursuant to Opinion No. 430 and Opinion No. 430–A, are hereby accepted for filing; *provided* that all such tariff sheets which contain provisions relating to the Partial Requirements, or PR, rate schedules, are accepted conditionally, subject to further order of the Commission in the proceedings in Docket No. G–16401, *et al.*

(C) Respondents are hereby permitted to credit billings to reflect the rate reduction effective as of October 1, 1964, and thereafter until the reduced rates are utilized for billing purposes; *provided* that Respondents shall also credit

[5] Footnote "(a)" to schedule A–2

interest at 7 percent per annum computed in the same manner as utilized in their refund reports and shall within 30 days after bills have thus been credited file reports with the Commission and interested State commissions of the amounts of refund principal and interest so credited.

(D) Respondents' requests that they be exonerated from interest accruals after November 30, 1964, on refunds generated from rate reductions, are hereby denied.

(E) United's and Seaboard's respective gas supplier refund flow-through obligations are hereby modified to provide that the Respondents are not obligated to pass on such refunds until the amounts have accumulated to $500,000 and $150,000, respectively, in lieu of the lesser amounts now contained in their settlement agreements approved by prior orders issued herein; and United's and Seaboard's obligations to reflect gas supplier rate reductions are hereby modified to provide that they shall not be required to pass on such reductions until the accumulated annual effect is equal to or greater than one-tenth of one cent per Mcf.

(F) Seaboard is hereby directed to refund all amounts due Washington Gas and Shenandoah to Washington Gas and the latter is hereby directed to hold in escrow, subject to our further order, the portion of such refunds which is due Shenandoah; and Washington Gas is further directed to file a report with the Commission (and serve copies upon Shenandoah, Martinsburg Gas and interested State commissions) within 30 days of the receipt of such refunds showing the computations and amounts due Shenandoah, subject to Commission approval.

(G) United is hereby directed to report to the Commission within 45 days of the date of this order the portion of the refunds being made by both Seaboard and United which are applicable to the sales by Amere and United to Bluefield Gas Company, and is further directed to make refunds to Bluefield Gas of the appropriate portion of such refunds in accordance with paragraph (E) of Opinion No. 430, or if it objects, to file a protest with the Commission within 15 days of the date of this order and to serve copies thereof upon Bluefield Gas and interested State commissions.

APPENDIX A

UNITED FUEL GAS CO. AND ATLANTIC SEABOARD CORP., COMPARISON OF JURISDICTIONAL RATES

	Rates effective Apr. 5, 1960	Rates effective Oct. 1, 1964
United Fuel:		
CDS-1:		
Demand	$2.25	$1.98
Commodity	31.04¢	28.81¢
AOS-1: Commodity	38.44¢	35.32¢
SGS-1: Commodity	50.00¢	45.09¢
SGS-2: Commodity		45.65¢
ES-1: Commodity	50.00¢	45.09¢
Atlantic Seaboard:		
CDS-1:		
Demand	$3.25	$2.66
Commodity	32.18¢	31.09¢
CDS-2:		
Demand	$3.00	$2.43
Commodity	29.91¢	29.39¢
CDS-PR-1:		
Demand	$3.25	$2.66
Commodity	32.18¢	31.09¢
CDS-PR-2:		
Demand	$3.00	$2.43
Commodity	29.91¢	29.39¢
AOS-1: Commodity	42.86¢	39.90¢
AOS-2: Commodity	39.77¢	37.38¢
IS-1: Commodity	38.00¢	36.00¢
IS-2: Commodity	35.00¢	33.00¢

APPENDIX B

UNITED FUEL GAS COMPANY

Summary of Refund to Jurisdictional Customers Covering Period Apr. 5, 1960, through Sept. 30, 1964, With Interest Through Nov. 30, 1964, In Accordance with FPC Opinion 430–A and Order Issued Oct. 14, 1964, After Deducting Interim Refund* Including Applicable Gas Supplier Refunds And Rate Deductions

Line No.		Total refund		
		Principal	Interest	Total
1	Atlantic Seaboard Corp.	$18,261,967.83	$1,812,159.81	$20,074,127.64
2	Bluefield Gas Co.			
3	Columbia Gas of Kentucky, Inc.	914,850.53	92,234.63	1,007,085.16
4	Consumers Gas Utility Co.	7,423.38	815.75	8,239.13
5	Gas Transport, Inc.	18,257.97	250.87	18,508.84
6	Inland Gas Company, Inc.	35.68	5.22	40.90
7	Kentucky Gas Transmission Corp.	11,367,173.71	1,144,502.06	12,511,675.77
8	E. L. Lusher	699.14	88.40	787.54
9	Luther Lusher	846.38	124.11	970.49
10	The Manufacturers Light & Heat Co.	8,427,053.00	936,710.03	9,363,763.03
11	The Ohio Fuel Gas Co.	14,468,995.97	1,609,503.53	16,078,499.50
12	The Ohio Valley Gas Co.	519,119.43	46,334.29	565,453.72
13	The Portsmouth Gas Co.	286,552.39	34,648.82	321,201.21
14	Union Oil and Gas Inc.	356.43	2.83	359.26
15	Zebulon Gas Association, Inc.	528.82	24.69	553.51
16	Total	54,273,860.66	5,677,405.04	59,951,265.70

* Made on Sept. 18, 1962.

APPENDIX C

ATLANTIC SEABOARD CORP.

Summary of Refund to Jurisdictional Customers Covering Period Apr. 5, 1960, Through Sept. 30, 1964, With Interest Through Nov. 30, 1964, In Accordance With FPC Opinion 430–A and Order Issued Oct. 14, 1964. After Deducting Interim Refund* Including Applicable Gas Supplier Refunds and Rate Deductions

Line No.		Total refund		
		Principal	Interest	Total
1	Amere Gas Utilities Co.	$292,768.81	$44,635.22	$337,404.03
2	Baltimore Gas and Electric Co.	5,905,390.16	562,619.90	6,468,010.06
3	Blue Ridge Gas Co.	15,630.38	828.99	16,459.37
4	The City of Charlottesville, Va.	262,279.50	29,004.14	291,283.64
5	Commonwealth Natural Gas Corp.	4,323,608.27	441,235.07	4,764,843.34
6	Cumberland and Alleghany Gas Co.	440,495.71	58,210.92	498,706.63
7	Lynchburg Gas Co.	211,681.67	22,610.66	234,192.33
8	The Manufacturers Light & Heat Co.	2,085,243.34	257,158.39	2,342,401.73
9	Roanoke Gas Co.	464,226.88	44,414.33	508,641.21
10	Virginia Gas Distribution Corp.	1,511,155.07	150,271.65	1,661,426.72
11	Washington Gas Light Co. and Shenandoah Gas Co.	9,876,057.02	1,047,631.51	10,923,688.53
12	Zebulon Gas Association, Inc.	1,150.72	193.37	1,353.09
13	Total	25,389,596.53	2,658,814.15	28,048,410.68

*Made on Sept. 18, 1962.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. RI64-738

ORDER CONDITIONALLY ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF CONTRACTUAL AMENDMENT, ACCEPTING RATE FILING AND TERMINATING PROCEEDING

(Issued December 28, 1964)

On November 23, 1964, Pan American Petroleum Corporation (Pan American) submitted an offer of settlement in this proceeding pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves a proposed favored-nation increase in rate from 13.0¢ to 14.0256¢ per Mcf at 15.025 psia for Pan American's jurisdictional sale of natural gas under its FPC Gas Rate Schedule No. 4 to Montana-Dakota Utilities Co. from the Manderson Unit Area, Big Horn County, Wyoming.

In its offer of settlement, Pan American proposed to eliminate from its contract comprising the subject rate schedule all price escalations and indefinite price provisions except those clauses which provide for reimbursement of future tax increases, in return for the acceptance of a life-of-contract[1] settlement rate of 14.0256¢ per Mcf and termination of the proceeding in Docket No. RI64-738. Concurrently therewith, Pan American submitted a notice of change, hereby designated Supplement No. 6 to Pan American's FPC Gas Rate Schedule No. 4, to effectuate the settlement offer.

The current rate of 13.0¢ per Mcf, now in effect subject to refund in Docket No. RI64-738, was suspended for one day because it is a "fractured" rate, being lower than the contractually authorized rate, unaccompanied by a waiver of the right for a further rate increase above the area ceiling. Although the proposed settlement rate is also a "fractured" rate, the waiver of contractual rights as proposed in the settlement offer provides a settlement consistent with the Seventh and Ninth Amendments to the Statement of General Policy No. 61-1. As no protests or objections have been filed to the subject offer, we accepted the offer of settlement subject to the provisions of this order by telegram dated December 23, 1964, in order to provide an effective date of December 24, 1964, for said Supplement No. 6. No refund of monies is due.

We desire to make it clear that our conditional acceptance of Pan American's offer of settlement, the condition being the requirement that it file a contractual amendment effecting its settlement proposals, is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Pan American's rate and rate schedule.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Pan American on November 23, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

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[1] The term of the contract is for twenty years from the date of initial delivery, such date being February 13, 1953.

The Commission orders:

(A) The offer of settlement filed with the Commission by Pan American on November 23, 1964, is hereby approved in accordance with the provisions of this order.

(B) Pan American shall file, within forty-five days from the date of issuance of this order, an executed contractual amendment eliminating, from its contract dated December 15, 1953, comprising its Rate Schedule No. 4, all price escalations and indefinite price provisions, except for provisions for future tax reimbursements as provided in the offer of settlement.

(C) Upon notification by the Secretary of the Commission that Pan American has complied with the provisions of this order, Supplement No. 6 to Pan American Petroleum Corporation's FPC Gas Rate Schedule No. 4 is accepted for filing to become effective as of December 24, 1964, and the proceeding in Docket No. RI64–738 is terminated.

(D) The acceptance by the Commission of Pan America's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Pan American, including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

AREA RATE PROCEEDING (HUGOTON-ANADARKO AREA), DOCKET NO. AR64–1, ET AL.; AREA RATE PROCEEDING (TEXAS GULF COAST AREA), DOCKET NO. AR64–2, ET AL.

ORDER DENYING MOTIONS FOR RECONSIDERATION OF ORDER DECLINING TO ISSUE SMALL PRODUCER REPORT FORM

(Issued December 29, 1964)

By order of November 4, 1964, 32 FPC 1266, the Commission declined to issue a draft report form (Form 20) designed for response by producers who are subject to these new area rate proceedings and whose 1962 company-wide jurisdictional sales were under 10,000,000 Mcf; we did, however, make copies of Form 20 available as a trial aid to small producers or others who wanted to gather data from small producers and, if the data appeared material and representative for substantial numbers of producers or substantial volumes of gas, to present the data in these proceedings.

On December 2, 1964, Oklahoma Independent Petroleum Association (OIPA) and 17 respondents[1] filed a motion for reconsideration urging that we require Form 20 to be answered by medium size producers (those with 1962 IDC of $250,000 or more or with 1962 jurisdictional sales of 500,000 to 10,000,000 Mcf); that would cover the 17 moving respondents plus about eight to 33 more producers in Oklahoma. OIPA says they have the data and want to answer the

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[1] Amax Petroleum Corporation, Big Chief Drilling Company, Butcher & Carey, Cleary Petroleum, Inc., Davon Drilling Company, Davon Oil and Gas Company, Earlsboro Oil & Gas Co., Inc., Gas Futures, Ltd., Hughes Seewald, King-Stevenson Gas and Oil Company, Little Nick Oil Company, Mid-America Minerals, Inc., Petroleum Corporation of Texas, Seneca Oil Company, Jas. F. Smith, Statex Petroleum, Woods Petroleum Corporation.

report, but will not gather the data privately because the results may be found unrepresentative.

On December 7, 1964, Marathon Oil Company, *et al.*[2] also filed a motion for reconsideration urging that Form 20 be mandatory for "all producers making jurisdictional sales of natural gas, regardless of the size of such producers" or, alternatively, that the Commission terminate further collection and compilation of data obtained through the all-areas questionnaire issued to major producers on October 30, 1964, and prohibit the use of the data. These major producers accuse the Commission of a prejudgment in favor of exempting small producers because we declined to require Form 20 to be answered. We have not yet judged the exemption issue for these or any other proceedings.

We adhere to the view set out in our order of November 4, 1964.

The Commission finds:

No facts or principles of law have been presented by OIPA, *et al.* or Marathon Oil Company, *et al.* in their motions for reconsideration which either were not fully considered by the Commission prior to its order issued November 4, 1964, or, having now been considered, warrant further hearing, modification, reconsideration or revocation.

The Commission orders:

The motions for reconsideration filed herein by OIPA, *et al.* and Marathon Oil Company, *et al.* are hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ARKANSAS POWER & LIGHT COMPANY, DOCKET NO. E-7190

ORDER AUTHORIZING ACQUISITION OF FACILITIES

(Issued December 29, 1964)

Arkansas Power & Light Company (Applicant), incorporated under the laws of the State of Arkansas and doing business in the States of Arkansas, Tennessee, Missouri and Louisiana, with its principal place of business office at Little Rock, Arkansas, filed an application on November 10, 1964, for an order pursuant to Section 203 of the Federal Power Act, requesting authority to acquire certain electric facilities from the City of North Little Rock, Arkansas (City).

Applicant is a public utility engaged in the generation, transmission, purchase, distribution and sale of electric energy. Substantially all of its operations are in the State of Arkansas, where it renders electric service in 61 of the 75 counties in the State. In addition, it serves 5 customers in Missouri, 75 in Tennessee and 266 in Louisiana. The Applicant, along with Louisiana Power & Light Company, Mississippi Power & Light Company and New Orleans Public Service Inc., make up the operating companies of Middle South Utilities, Inc., a holding company.

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[2] Sinclair Oil & Gas Company, Continental Oil Company, Texaco Inc., Gulf Oil Corporation, Socony Mobil Oil Company, Inc., Shell Oil Company, Warren Petroleum Corporation, Cities Service Oil Company, Humble Oil & Refining Company, Phillips Petroleum Company.

The City is a municipal corporation organized and existing under the laws of the State of Arkansas. The City owns and operates an electric distribution system within its city limits and a limited area outside its limits allocated to it by the Arkansas Public Service Commission. All of its electric distribution facilities to be sold are located in the Maumelle Industrial Area which contains approximately 5,213 acres. The Maumelle Industrial Area is about five miles from the corporate limits of the City and is located entirely within the service area allocated to the Applicant by the Arkansas Public Service Commission.

The property which the Applicant proposes to acquire consists of an overhead electric distribution system constructed by the United States Government in connection with an Ordnance Plant which was deactivated in 1945. The Plant was maintained on a standby basis by a contractor for the United States Army until June 8, 1961, at which time the entire Ordnance Plant and all lands, including the electric distribution system were sold as surplus property to the Perry Equipment Corporation. The lands and some improvements, as well as the electric distribution facilities, were acquired on December 1, 1961, by the City for development into an industrial park.

By an agreement dated June 11, 1964, as amended by an agreement dated October 12, 1964, the City has agreed to sell and Applicant has agreed to acquire all the electric distribution facilities owned by the City in the Maumelle Industrial Area for a cash consideration of $79,219. The Applicant has determined that the original cost of the property to be acquired is $149,912.95. The deduction of the consideration of $79,219 from the original cost of $149,912.95 leaves $70,693.95, "which amount is considered by the Company to be reasonably representative and adequate for accrued depreciation existing in the facilities at the date of acquisition." The $70,693.95 is equivalent to 47.2% of the total original cost of $49,912.95.

The Applicant represents that it is in the public interest for the Company to acquire the electric distribution properties of the City in the Maumelle Industrial Area because the Applicant has transmission and distribution facilities in the immediate vicinity which are adequate to serve the load growth of the area, and it is anticipated that the electric requirements of the Area will within a reasonable period increase and the Applicant is in a better position to serve these demands and requirements.

The Applicant further represents that after the acquisition of the subject electric distribution facilities, it will continue the interconnection of the facilities with its interconnected system. The consummation of the proposed transaction will not affect any contract for the purchase, sale, or interchange of electric energy.

Written notice of the application has been given to the Public Service Commission of the State of Arkansas and to the Governor of that State. Notice was published in the Federal Register on November 24, 1964 (29 F.R. 15791), stating that any person desiring to be heard or to make any protest with reference to the application, should on or before December 7, 1964, file petitions or protests with the Federal Power Commission, Washington, D.C., 20426. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as

heretofore described and set forth in the Commission's order issued June 16, 1961, *Arkansas Power & Light Company*, Docket No. E–6989 (25 FPC 1151).

(2) By the proposed acquisition of facilities, Applicant will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of the City, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of facilities by Applicant, as described above, on the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

(4) The period of public notice given in this matter is reasonable.

(5) Applicant, a subsidiary company of Middle South Utilities, Inc., a registered holding company, is not, with respect to the proposed transaction, as described above, subject to any requirement of the Public Utility Holding Company Act of 1935 or a rule, regulation or order thereunder, and is, therefore, not exempt from the requirements of Section 203 of the Federal Power Act by reason of Section 318 thereof.

The Commission orders:

(A) The proposed acquisition by Applicant of the aforementioned distribution facilities, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application, subject to the provisions of this order.

(B) Applicant shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees. This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(C) This authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body, and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted by this Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ATLANTIC SEABOARD CORPORATION, DOCKET NO. CP64–117, ET AL.

FINDINGS AND ORDER AMENDING ORDER ISSUED JUNE 24, 1964

(Issued December 29, 1964)

By Commission order of June 24, 1964, 31 FPC 1581, in Docket No. CP64–117 Atlantic Seaboard Corporation (Atlantic) was issued a certificate of public convenience and necessity authorizing the construction, acquisition and operation of certain facilities in order to activate and operate a proposed storage field in Randolph and Pocahontas Counties, West Virginia. Said order also terminated

the certificates of certain companies from whom Atlantic proposed to acquire the necessary acreage for the storage field in the beforementioned West Virginia counties.

By letter of August 27, 1964, Tidewater Oil Company (Tidewater) advised that its sales authorized in Docket No. G–14148 have terminated since the gas sold was produced from part of the acreage to be acquired by Atlantic for its proposed storage project authorized in Docket No. CP64–117. The certificate issued in Docket No. G–14148 was not one of those terminated by the order of June 24, 1964; accordingly, said order should be amended to terminate, along with those certificates thereinbefore terminated, Tidewater's certificate in Docket No. G–14148.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued June 24, 1964, in Docket No. CP64–117 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued June 24, 1964, in Docket No. CP64–117 be and the same is hereby amended to terminate the certificate heretofore issued in Docket No. G–14148, all as hereinbefore described.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

CONTINENTAL OIL COMPANY (OPERATOR), DOCKET NO. RI64–36

ORDER ACCEPTING DECREASED RATE FILINGS AND TERMINATING PROCEEDING

(Issued December 29, 1964)

Continental Oil Company (Operator) (Continental), on November 23, 1964, tendered for filing two proposed rate decreases from 16.3570¢ per Mcf to 16.0¢ per Mcf reflecting discontinuance of collection of 0.357¢ per Mcf tax reimbursement for sales of residue gas to Transwestern Pipeline Company (Transwestern) from Continental's El Mar and Maljmar Gasoline Plants in Lea County, New Mexico. These sales are made under the terms of the contracts dated March 25, 1960, which comprise Continental's Rate Schedules Nos. 177 and 178, respectively. Continental's gas supply for these sales is raw gas that it purchases from a number of suppliers under percentage-type contracts.

The tax changes involved herein were filed by Continental on July 1, 1963, to reflect partial reimbursement for the increase in the New Mexico Emergency School Tax from 2.0 to 2.55%, effective April 1, 1963. The increases, being only tax changes, were subsequently suspended in Docket No. RI64–36 for only one day. Continental now states that it has been collecting the above suspended tax in error, and in this connection it has filed a letter agreement dated November 3, 1964, between Continental and Transwestern, which clarifies the tax liability under the contracts involved. In essence, the error apparently arose from Continental's mistaken belief that it was responsible to reimburse its suppliers for the above tax under the percentage-type contracts. The amount of such reim-

bursement was in turn the amount that Transwestern reimbursed Continental. Continental in reviewing these contracts, discovered that no such tax liability existed under its suppliers' contracts, except one, which Continental proposes to ignore in view of the small amount involved. Continental has reimbursed Transwestern a total of $17,654.92, as full settlement for the tax reimbursement collected in error.

In view of the fact that the refund is the result of Continental receiving reimbursement for tax payments to which it was not entitled and the refund and related rate change are to correct an error, Transwestern should be permitted to retain the full amount of the refund. Continental's two proposed rate decreases should be accepted for filing and permitted to become effective as of December 24, 1964, the date following the date of expiration of the required statutory notice, and the rate suspension proceeding in Docket No. RI64–36 should be terminated.

The Commission finds:

It is necessary and proper in carrying out the provisions of the Natural Gas Act and the Regulations thereunder to accept Continental's two proposed rate decreases to become effective as of December 24, 1964, the first day after expiration of the statutory notice, and to terminate the rate suspension proceedings in Docket No. RI64–36.

The Commission orders:

Continental's two rate decreases designated in the Appendix hereof are accepted for filing to become effective as of December 24, 1964, and the rate suspension proceedings in Docket No. RI64–36 is hereby terminated.

262-497—67——100

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual decrease	Date filing tendered	Effective date	Cents per Mcf		Rate in effect subject to refund in docket Nos.
								Rate in effect	Proposed increased rate	
RI64-36	Continental Oil Co. (operator) P.O. Box 2197, Houston 1, Tex.	177	[1] 3	Transwestern Pipeline Co. (El Mar Gasoline Plant, Lea County, N. Mex.) (Permian Basin area).	$7,426	11-23-64	12-24-64 [2]	[3] 16.3570	[4] 16.0	RI64-36
	Continental Oil Co. (operator) --	178	[1] 3	Transwestern Pipeline Co. (Maljmar Gasoline Plant, Lea County, N. Mex.)	7,700	11-23-64	12-24-64 [2]	[3] 16.3570	[4] 16.0	RI64-36

[1] Includes buyer's release and statement of tax reimbursement received.
[2] The stated effective date is the first day after expiration of the required statutory notice.
[3] Tax reimbursement decrease.
[4] Pressure base is 14.65 psia.
[5] Includes partial reimbursement for full 2.58% New Mexico Emergency School Tax.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

DUKE POWER COMPANY, DOCKET NO. E-7185

ORDER AUTHORIZING ACQUISITION OF FACILITIES

(Issued December 29, 1964)

Duke Power Company (Duke), a corporation organized under the laws of the State of North Carolina, filed an application on October 1, 1964, for an order pursuant to Section 203 of the Federal Power Act, requesting authorization to acquire the electric distribution facilities of Pisgah Mt., Electric Company (Pisgah).

Duke is engaged principally in the business of generating, purchasing, transmitting, distributing and selling electric energy in all or part of 37 counties in North Carolina and 15 counties in South Carolina. It also operates transportation systems in 4 towns and water supply systems in 3 towns. It is interconnected with and interchanges electric energy with a number of neighboring electric systems and supplies the entire requirements of a large number of municipal and cooperative electric systems.

Pisgah is a small electric utility engaged in the business of distributing electric energy to retail consumers in parts of Lincoln and Gaston Counties in North Carolina. Its system extends southward from near Lincolnton, North Carolina along U. S. Highway 321 and intersecting roads to just south of the Lincoln-Gaston County line. It has no generating capacity and for a number of years has purchased energy from Duke to meet its requirements. It now serves about 650 customers which it classifies as rural-residential and commercial.

Duke and Pisgah entered into an agreement on November 12, 1963, for Duke to acquire the electric facilities owned and operated by Pisgah. The facilities consist primarily of a distribution system serving about 650 consumers. Approximately 30 miles of three-phase 4,160 volt lines and numerous single-phase 2,400 tap lines are included in the system. These lines extend from Duke's Lincolnton-Maine Substation southward, generally along U. S. Highway 321 and side roads to Long Shoals.

Duke, in payment for Pisgah's facilities will issue 4,000 shares of its Common Stock to Pisgah. Pisgah, in turn, will distribute Duke's 4,000 common shares to its two stockholders, Mr. James C. Kiser, its President, and Mr. F. D. Kiser, its Secretary. Duke's Common Stock is traded on the New York Stock Exchange. For the purpose of the acquisition, Duke has acquired the 4,000 shares of its Common Stock on the market at $63 per share. Duke's total cost of its stock was $252,298.

According to the application, Pisgah's facilities to be acquired by Duke have an original cost of $115,064, an accumulated provision for depreciation of $49,965, and an original cost depreciated of $65,099. Duke's Common Stock consideration, therefore will result in the creation of an electric plant acquisition adjustment of $187,199 (consideration of $252,298 less original cost depreciated of $65,099). Duke has stated that the acquisition adjustment of $187,100 will be eliminated by a debit to Earned Surplus.

According to the application, Pisgah, which for the past several years has purchased all of its electric power requirements from Duke, is now experiencing low voltage on the ends of some of its lines, and that Pisgah's system needs rebuilding to the higher voltage used by Duke. Duke represents that Pisgah, with its

limited financial resources, would have difficulty raising the additional capital necessary to finance this rebuilding. Duke further represents that this transaction will not affect any contract for the purchase, sale or interchange of electricity except that Applicant's schedule of rates on file with the North Carolina Utilities Commission will be placed into effect with respect to Pisgah's electric power customers with the resulting decrease in cost of electric power to virtually all such customers.

Written notice of the application was given to the North Carolina Utilities Commission and to the Governor of that State. By order dated June 9, 1964, the North Carolina Public Utilities Commission approved this transaction. Notice was also published in the Federal Register on October 15, 1964 (29 F.R. 14205), stating that any person desiring to be heard or to make any protest with reference to said application, should on or before October 30, 1964, file with the Federal Power Commission, Washington, D.C., 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No petitions or protests or requests to be heard in opposition to the granting of the application have been received.

The Commission finds:

(1) Duke, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued December 29, 1955, *Duke Power Company*, Docket No. E–6652 (14 FPC 1163).

(2) By the proposed transaction, Duke will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Pisgah, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of facilities by Duke, as described above, upon the terms and conditions set forth in the application and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

(4) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed acquisition by Duke of the aforementioned distribution facilities, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Duke shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted by the Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ROGER MILLIKEN, ET AL., DOCKET NO. RI65-195

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, AND TERMINATING PROCEEDING

(Issued December 29, 1964)

On October 21, 1964, Roger Milliken, *et al.* (Milliken) submitted an offer of settlement in this proceeding pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offer involves a proposed increased rate for sales of natural gas made to United Gas Pipe Line Company (United) by Milliken. The offer relates to a sale made under Milliken's FPC Gas Rate Schedule No. 2 in Fox Field, Refugio County, Texas (Texas R.R. Com. District #2). The proposed increased rate of 15.1920¢ per Mcf was suspended by order of the Commission until April 19, 1965.

Under the terms of the offer, Milliken proposes to eliminate the future periodic escalations of 1¢ occuring on November 19, 1969 and 1974, from its rate schedule, and to establish a 15.0¢ per Mcf rate for the subject sale. Under its proposal Milliken retains the right to file rate increases to cover future tax increases. No protests or objections have been filed to the offer.

The proposed settlement is consistent with the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61-1, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, and its acceptance would serve the public interest.

While Milliken has agreed unilaterally to waive the periodic escalations in its contract, we think it more appropriate as required herein that Milliken execute a contract amendment with its purchaser, United, to effectuate the proposed elimination.

However, we desire to make clear that acceptance of Milliken's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservation of the right to file increases to cover future tax increases as provided in its offer of settlement, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Milliken's rate and rate schedule.

The Commission finds:

The proposed settlement of the above-designated proceeding, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Milliken on October 21, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Milliken on October 21, 1964, is hereby approved in accordance with the provision of this order.

(B) Milliken shall file, within 30 days from the date of issuance of this order, a notice of change in rate providing for the 15.0¢ per Mcf rate for the instant sale and an executed contractual amendment to its FPC Gas Rate Schedule No. 2,

eliminating the periodic escalation provisions therefrom as specified in its offer of settlement. The notice of change and contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Upon notification by the Secretary of the Commission that Milliken has complied with the terms and conditions of the order, the rate and charge of 15.0¢ per Mcf, specified in its offer of settlement, shall be effective as of the date of issuance of this order, and the above designated proceeding shall be deemed terminated.

(D) The acceptance by the Commission of Milliken's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Milliken including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP64-18

ORDER AMENDING ORDER ISSUED JULY 24, 1964

(Issued December 29, 1964)

On September 29, 1964, Panhandle Eastern Pipe Line Company (Petitioner) filed in Docket No. CP64-18 a petition to further amend the Commission's order issued July 24, 1964, as amended by order issued in said docket on October 21, 1964, 32 FPC 349—by increasing the volume of summer contract demand for natural gas to The Gas Service Company (Kansas) during the months of June, July and August up to 2,100 Mcf from 1,900, 1,700 and 1,700 Mcf respectively.

Petitioner states that it has adequate system capacity and adequate gas reserves to provide for the increased contract demand volume.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publication in the Federal Register on November 14, 1964 (29 F.R. 15303). No protest, petition to intervene or request for hearing has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued July 24, 1964, as amended on October 21, 1964, in Docket No. CP64-18 be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order of July 24, 1964, as amended, in Docket No. CP64-18 be and the same is hereby further amended by authorizing Petitioner to increase the volumes of natural gas during the summer months of June, July and August up to 2,100 Mcf from the lesser volumes now specified, all as heretofore described and as set forth in the petition.

(B) In all other respects said order, as amended, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE PURE OIL COMPANY, DOCKET NO. CI65-485

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING FPC GAS RATE SCHEDULE FOR FILING

(Issued December 29, 1964)

On November 20, 1964, The Pure Oil Company (Applicant) filed in Docket No. CI65-485, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to El Paso Natural Gas Company at an initial price of 16.0¢ from the Red Hills Area, Lea County, New Mexico, all as more fully set forth in the application.

Concurrently with the subject application Applicant submitted a copy of the related contract which will hereinafter be accepted for filing as Applicant's FPC gas rate schedule.

After due notice, no petition or notice to intervene or protest to the granting of the application has been received.

At a hearing held on December 22, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The sale of natural gas hereinbefore described, as more fully described in the application herein, will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sale by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The sale of natural gas by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the related contract submitted by Applicant should be accepted for filing and designated as Applicant's FPC gas rate schedule.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued, upon the terms and conditions of this order, authorizing the sale by Applicant of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary for such sale, all as hereinbefore described and as more fully described in the application and exhibits in this proceeding.

(B) The certificate granted in paragraph (A) above is not transferable and

shall be effective only so long as Applicant continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(C) The grant of the certificate issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Applicant. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contract herein involved. Nor shall the grant of the certificate aforesaid for service to the particular customer involved imply approval of all of the terms of the contract, particularly as to the cessation of service upon termination of said contract, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificate aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sale of natural gas subject to said certificate.

(D) The related contract dated November 18, 1964, submitted by Applicant is accepted for filing and designated as The Pure Oil Company FPC Gas Rate Schedule No. 86 to be effective on the date of initial delivery.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross and David S. Black.

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NOS. RP61-19 AND RP62-7; NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. RP63-6

ORDER APPROVING PROPOSED SETTLEMENT

(Issued December 30, 1964)

Midwestern Gas Transmission Company (Midwestern), on November 12, 1964, filed an application for rehearing and reconsideration of Opinion No. 444, and accompanying order issued October 13, 1964, 32 FPC 993, in these proceedings. As part of its application, Midwestern also submitted a proposal for final disposition of cost of service issues. Midwestern states therein that in the interest of bringing the cost of service aspects of these proceedings to any early conclusion and of avoiding further litigation of these matters, including judicial review with respect to Opinion No. 444, it is proposing a basis for settling these remaining cost of service issues. On December 11, 1964, *supra*, p. 1406, the Commission issued an order granting rehearing for purposes of more adequate consideration of Midwestern's tender.

Following discussions between members of the Commission Staff and representatives of Midwestern, the settlement proposal was modified in certain aspects, and telegrams were sent to all parties in these proceedings setting out the terms of the modified proposal. The only objection to that modified proposal was filed by the City of Chicago. Thereafter, a conference was held among representatives of the City of Chicago, Midwestern, and the Commission Staff, at which the following terms of settlement of these proceedings were agreed to:

(1) Midwestern will put into effect as of October 13, 1964, the rates and charges set forth on pages 1 and 2 of Appendix B to its application for rehearing filed November 11, 1964, and will refund to its customers the difference between the amounts collected under the existing rates and those set forth on the aforementioned pages (appended hereto).

(2) Effective January 1, 1965, Midwestern's jurisdictional rates, referred to in paragraph (1) above, will be reduced to reflect the decrease in the Federal income tax rate from 50 percent to 48 percent. Midwestern will file appropriate tariff sheets, subject to approval of the Commission, not later than January 25, 1965.

(3) Midwestern will refund to its jurisdictional customers the amount of $3,569,600 of accumulated deferred taxes in the following manner: Midwestern shall segregate the portions of such amount applicable to its Northern and Southern systems separately; it shall then distribute such refund to each customer upon the basis of the ratio that the total revenues received from such customer bears to the total revenue received from that system, both such revenues to be cumulated from the date on which Midwestern first began the use of liberalized depreciation, through December 31, 1963.

(4) Midwestern shall flow through to its customers in the Southern System all rate reductions and refunds received from Tennessee Gas Transmission in FPC Docket Nos. G–11980, G–17166 and G–19983, and any refunds or rate reduction made by Tennessee to reflect the decrease in Federal income tax rate to 48 percent, until such time as Midwestern's rates are revised as a result of a proceeding under either Section 4 or 5 of the Natural Gas Act.

(5) Midwestern will not file under Section 4 of the Act to make any increase in rates effective prior to April 1, 1966, other than a rate change to reflect a change in the official Canadian dollar rate of exchange as provided in ordering paragraph (E) of Opinion No. 444.

(6) The question remanded to the examiner for hearing by ordering paragraph (D) of Opinion No. 444 shall proceed to hearing in accordance with the procedures to be prescribed either by the Commission or the Presiding Examiner. The adjustment, if any, to Midwestern's rates to reflect the Commission's final disposition of this issue, as referred to in said paragraph (D), shall be effective as of October 13, 1964. All parties reserve whatever rights they may have to seek review of any final Commission order on this issue.

(7) This settlement shall not constitute or be deemed to constitute an agreement on rate-making principles or methods underlying the determination of the dollar amounts herein contained, but is only a dollar settlement of Midwestern's pending rate proceedings covered by this settlement. This settlement shall in no way prejudice the rights of any party to these proceedings in any other court or Commission proceeding involving rate levels or refunds.

(8) Except as modified in the above seven paragraphs, Opinion No. 444 remains final and binding.

The aforegoing terms of settlement revise the modified proposal submitted to the parties by telegram, as mentioned above, in two aspects. First, the required flow through by Midwestern of refunds and rate reductions received from Tennessee is enlarged to include refunds and rate reductions, if any, reflecting the decrease in the Federal income tax rate. Second, the hearing referred to the examiner by paragraph (D) of Opinion No. 444 will not be dismissed as contemplated in the original settlement offer, but will proceed to hearing as contemplated by that Opinion. The practical effect of these revisions could result only in further benefit to Midwestern's customers and ultimate consumers as compared with the modified settlement to which the parties to the proceedings, other than the City of Chicago, did not object.

The Commission is of the view that the terms of the settlement as set out above are in the public interest and should be approved.

The Commission finds:

The settlement of the proceedings in Docket Nos. RP61–19 and RP62–7 on the basis of the terms of settlement set out above, is reasonable, proper and in the public interest in carrying out the provisions of the Natural Gas Act, and should be approved and made effective subject to the terms and conditions hereinafter ordered.

The Commission orders:

(A) Midwestern shall make the refunds required by paragraphs (1) and (3) above, on or before January 1, 1965, and within 15 days thereafter shall report to the Commission, in writing under oath, the amount of the refund made to each customer, together with a detailed statement showing the method of calculation of such refunds, shall submit a release from each of its customers with respect to such refunds, and shall serve a copy of such report upon each of its customers, and upon the interested State commissions.

(B) The refunds and rate reductions required by paragraph (4) above shall be made in accordance with the methods set out in ordering paragraph (B) of Opinion No. 444.

(C) On or before January 25, 1965, Midwestern shall file appropriate revised tariff sheets, subject to approval of the Commission, to reflect the rates and charges to be effective as of January 1, 1965, as provided in paragraph (2) above.

(D) Midwestern shall comply with each of the provisions of the settlement, set out above, and of this order.

(E) Upon compliance with the terms of the settlement and the terms and conditions of this order, the proceedings at Docket Nos. RP61–19 and RP62–7 are hereby terminated, except as provided in paragraph (6) above and except, further, as to the rate design issues in the above-captioned consolidated proceedings, as stated in Opinion No. 444.

(F) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by the Commission, Midwestern, the Commission Staff, or any other party affected by this order, in any proceeding now pending or hereinafter instituted by or against Midwestern or any other companies, persons or parties affected by this order.

APPENDIX B

MIDWESTERN GAS TRANSMISSION COMPANY SOUTHERN SYSTEM RATES BASED ON PROPOSAL FOR FINAL DISPOSITION OF COST OF SERVICE ISSUES TWELVE MONTHS ENDED JUNE 30, 1962

Line No.	Column 1 Particulars	(2) Total	(3) Demand	(4) Commodity
1	Total cost of service	$42,920,169	$14,858,619	$28,061,550
2	Billing determinants—Mcf at 14.73 psia		4,800,000	127,552,500
3	Rates:			
4	CDX-1		3.10	22.00¢
5	CD-1		3.10	22.00¢
6	SR-1			[1] 47.45¢
7	SI-1			[2] 27.10¢

S NOTES:
[1] Reflects a 40% load factor rate.
[2] Reflects a 200% load factor rate.

APPENDIX B

MIDWESTERN GAS TRANSMISSION COMPANY NORTHERN SYSTEM RATES BASED ON PROPOSAL FOR FINAL DISPOSITION OF COST OF SERVICE ISSUES TWELVE MONTHS ENDED JUNE 30, 1962

Line No.	Column 1 Particulars	(2) Total	(3) Demand	(4) Commodity
1	Total cost of service	$24,504,427	$9,366,414	$15,138,013
2	Billing determinants—Mcf at 14.73 psia:			
3	SR-2		20,364	247,767
4	CR-2		51,058	750,470
5	CD-2		1,896,000	53,443,500
6	I-2			290,856
7	CRL-2		372,360	5,795,248
8	Total		2,339,782	60,527,841
9	Rates:			
10	SR-2			[1] 57.50¢
11	CR-2		3.96	25.01¢
12	CD-2		3.96	25.01¢
13	I-2			25.01¢
14	CRL-2		4.21	25.01¢

15 NOTE:
[1] Reflects a 40% load factor rate.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOUTHWESTERN PUBLIC SERVICE COMPANY, DOCKET NO. E-7038

ORDER GRANTING LEAVE TO FILE BRIEF

(Issued December 30, 1964)

The Secretary of Agriculture on behalf of the Rural Electrification Administration and its Administrator, by petition for leave to intervene filed December 2, 1964, seeks to participate in the above entitled proceeding. The Secretary's petition is tendered for the purpose of affording opportunity for presentation of arguments in opposition to an intermediate decision of a hearing examiner of this Commission, issued September 1, 1964. The views expressed in opposition to the intermediate decision are set forth in a "Supplemental Statement of Position" of the Administrator submitted to the Commission's Secretary on October 29, 1964. This order accepts the Administrator's Supplemental Statement as a brief *amicus curiae*.

Prior to the submission of the Administrator's Supplemental Statement, representatives of the Secretary and the Administrator attended various sessions of the hearing in this proceeding. In the course of the oral hearings before the examiner, representatives of the Secretary and Administrator proffered an earlier "Statement of Position", which was acknowledged by the Examiner as a statement of argument and position.[1] That statement was submitted December 3, 1963. The hearing record in this proceeding was closed December 18, 1963.

[1] At the time this was submitted, the Presiding Examiner stated to the Administrator's representative: "You understand that in the absence of a formal intervention it would appear to me that any statement you would make would be considered in the nature of a brief, and would not of course be evidence." (Tr. pp. 7–8.)

Intervention status was not sought until December 2, 1964, approximately twelve months subsequent to the closing of the record in this proceeding and three months subsequent to rendition of the examiner's decision. Oral argument was held before the presiding examiner on May 5, 1964. The Secretary did not seek to participate in the oral argument.

The Commission considers the Administrator's Supplemental Statement as being in the nature of a brief *amicus curiae*. Its acceptance will serve the purposes of the Secretary and will not prejudice the rights of any party to this proceeding. The Commission's Rules of Practice and Procedure, Section 1.31(a) (18 C.F.R. 1.31(a)) authorize the filing of exceptions to intermediate decisions by *parties* to a proceeding or Staff Counsel.

Community Public Service Company, an intervenor in this proceeding, objects to the Secretary's petition insofar as it may suggest that the Secretary is now seeking status as a party to this proceeding. Our examination of the Secretary's petition for leave to intervene indicates that he accepts the record as perfected and seeks to direct the Commission's attention to alleged factual and legal errors of the presiding examiner. The alleged errors are set forth in the Supplemental Statement of Position. Therefore, the interests of the Secretary will be adequately protected by acceptance of the Administrator's "Supplemental Statement of Position" as a brief *amicus curiae*. Good cause has not been shown pursuant to Section 1.8(d) of the Commission's Rules of Practice and Procedure (18 C.F.R. 1.8(d)) for granting intervention to the Secretary out of time.

The Commission finds:

It is necessary and appropriate for purposes of the Federal Power Act and the Commission's Regulations thereunder (Section 1.29 Rules of Practice and Procedure) (18 C.F.R. 1.29), to accept for filing as a brief *amicus curiae* the Supplemental Statement of Position tendered by the Administrator, Rural Electrification Administration on October 29, 1964.

The Commission orders:

The Supplemental Statement of Position referred to above is hereby accepted for filing and its receipt shall be noted in the docket in the above-entitled proceeding through this order. Insofar as the Secretary's petition for leave to intervene seeks other relief, it is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross and David S. Black.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP65-65

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 30, 1964)

On September 4, 1964, Tennessee Gas Transmission Company (Applicant) filed in the above-styled proceeding an application, supplemented by a filing made on December 8, 1964, for a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act authorizing the transportation and sale of natural gas on an interruptible basis to certain of Applicant's customers in its New England Zone who purchase their entire requirements of natural gas from Applicant under Applicant's General Service (G) Rate Schedule, all as more fully set forth in the application as supplemented.

Applicant, by its application, as supplemented, seeks authority to render a new service, Economy Replacement (ERS) Service, to those customers in the New England Zone who purchase natural gas under Applicant's (G) Rate Schedule and who own and operate facilities for producing gas, other than natural gas, for distribution and sale in the same area for which natural gas is purchased under the (G) Rate Schedule. The ERS Service would be rendered in accordance with the terms of the form of ERS Rate Schedule which Applicant submitted as a part of the supplement to its application filed on December 8, 1964.

By the terms of its application, as supplemented, Applicant has agreed that (1) it will make the proposed service available to any general service customer located in Pennsylvania, New York and New Jersey east of its storage fields, as well as to those customers located in the New England States, (2) it will not install main line capacity in the future in order to render the service or dedicate to such service any unallocated firm capacity which it may have from time to time and (3) it will prorate among its customers on an equitable basis the natural gas available to render the proposed service. Applicant has agreed that any certificate issued be conditioned accordingly.

Applicant estimates approximately 571,300 Mcf annually will be available for sale under the ERS Rate Schedule and that it will be able to deliver an average volume of approximately 5,000 Mcf daily during periods of peak responsibility on its system. This seasonal and interruptible service is to be rendered during a period beginning with November 1 of any year and ending with the next succeeding April 30th of the following year.

The form of the proposed ERS Rate Schedule under which Applicant proposes to render the service was served upon each of Applicant's customers and the state commissions in those states in which Applicant operates. No objection to the form of the Rate Schedule has been interposed by any customer or state commission.

The unit cost per Mcf of natural gas under the ERS Rate Schedule would be 85 cents which includes a nomination charge of 15 cents per Mcf and a commodity charge of 70 cents per Mcf.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 30, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application submitted in support of the authorization, as supplemented, and upon consideration of the record finds and orders as hereinafter stated.

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 15, 1947, in Docket No. G–910 (6 FPC 777).

(2) The proposed sale and delivery of natural gas, as hereinbefore described and as more fully described in the application, as supplemented in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale and delivery of natural gas to be effective as of the date of issuance of this order are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that certain conditions relating to the proposed Economy Replacement Service be attached to the Commission's order authorizing the proposed service, and as related hereinbefore.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to Tennessee Gas Transmission Company, authorizing as of the date of issuance of this order the sale and delivery of natural gas as more fully described in the application as supplemented in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) The Applicant shall file within 7 days from the date of issuance of this order the Economy Replacement (ERS) Rate Schedule in the form submitted in the supplement to its application filed December 8, 1964, and served on its customers. Good cause exists for permitting such rate schedule to be effective as of the date of issuance of this order.

(D) The Applicant will (1) make the proposed service available to any general service customer located in Pennsylvania, New York and New Jersey east of its storage fields as well as to those customers located in the New England States, (2) not install main line capacity in the future in order to render the service or dedicate to such service any unallocated firm capacity which it may have from time to time, and (3) prorate among its customers on an equitable basis the natural gas available to render the proposed service.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross and David S. Black.

THE ATLANTIC REFINING COMPANY, DOCKET NO. G–17741

ORDER ACCEPTING OFFER OF SETTLEMENT, SEVERING AND TERMINATING PROCEEDING, AND PRESCRIBING REFUNDS

(Issued December 31, 1964)*

By order issued October 8, 1964, in Docket Nos. G–9283 and G–9284, *et al.*, 32 FPC 933, we approved a general rate settlement proposal of The Atlantic Refining Company (Atlantic) for most of its jurisdictional sales of natural gas, including a partial settlement of the issues in Docket No. G–17741 relating to Atlantic's FPC Gas Rate Schedule Nos. 118, 147 and 150 for its sales to Transcon-

*Amended 33 FPC 326.

tinental Gas Pipe Line Corporation (Transco) from various fields in South Louisiana. In the settlement order, we accepted a settlement rate of 17.50¢ per Mcf for these three rate schedules effective as of August 1, 1964, in lieu of 23.55¢ per Mcf rate collected subject to refund in Docket No. G–17741, and provided for a moratorium on the filing for increased rates under said rate schedules; however, we noted that the matters relating to refund obligations and to the termination of the proceeding in Docket No. G–17741 were excluded from the settlement proposal.

On November 24, 1964, Atlantic submitted a settlement proposal seeking to resolve the remaining issues in Docket No. G–17741. Under the instant offer, Atlantic proposes to refund approximately $2,780,000, exclusive of interest, to Transco. This refund is the amount collected above the 17.50¢ per Mcf settlement rate from April 10, 1961 to August 1, 1964, the effective date of the settlement rate. In addition, Atlantic proposed to file a letter agreement with Transco providing that deficiency gas for the contract year of 1965 will be paid for at 17.50¢ per Mcf and that its rates for deficiency gas for the years 1960 through 1963 will be adjusted to reflect the difference between the rate which the deficiency gas was paid for and the rate in effect when the gas is taken.

The Philadelphia Gas Works Division of the United Gas Improvement Company (UGI), on December 14, 1964, filed a concurrence to the proposed instant settlement and urges approval thereof because it would free Atlantic from possible liability in this docket arising out of a decision in *United Gas Improvement Company* v. *F.P.C.*, CADC, No. 18339. No protest to the proposed settlement was received.

In accepting this settlement proposal we desire to make it clear that our action herein should not be construed as constituting approval of any future rate increases that may be filed under the subject rate schedules, and is without prejudice to any findings or orders of the Commission in any future proceedings, including area rate or other similar proceedings, involving Atlantic's rates and rate schedules.

The Commission finds:

The proposed settlement of the above-captioned proceeding on the basis described herein, as more fully set forth in the settlement proposal filed with the Commission by Atlantic on November 24, 1964, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The settlement of the proceeding in Docket No. G–17741 on the basis of the settlement proposal, filed by Atlantic on November 24, 1964, is hereby approved.

(B) Atlantic shall compute the difference between the rate collected subject to refund and the related settlement rate for the period from April 10, 1961 to August 1, 1964, together with interest as specified in Docket No. G–17741 to November 1, 1964. Atlantic shall within 45 days from the date of this order submit a report to the Commission, and serve a copy on Transco, setting out the amount of refunds related to each rate schedule (showing separately the principal and applicable interest), the basis used for such determination and the period covered.

(C) Atlantic shall retain the amounts shown in the report required under paragraph (B) above, subject to further order of the Commission directing the disposition of those amounts.

(D) If Atlantic elects to commingle these retained refunds with its general assets and use them for its corporate purposes, it shall pay interest thereon at the rate of 6 percent per annum on all funds thus available from February 15, 1965, to the date on which they are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission.

(E) If Atlantic elects to deposit the retained refunds in a special escrow account, Atlantic shall tender for filing on or before February 15, 1965, an executed Escrow Agreement, conditioned as set out below accompanied by certificate showing service of a copy thereof upon Transco. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Atlantic and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(1) Atlantic, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such Agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may elect.

(3) Such bank or trust company shall be liable only for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account which reimbursement shall be made out of the escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the trust account for the quarterly period.

(F) Within 90 days from the date of this order, Atlantic shall file under its rate schedules involved herein, a letter agreement with Transco relating to its deficiency gas proposal.

(G) Upon full compliance by Atlantic with the terms and conditions of this order, Docket No. G–17741 is severed from the consolidated proceedings in Docket No. AR61–2, *et al.*, and the proceeding in Docket No. G–17741 is terminated.

(H) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice to claims or contentions which may be made by Atlantic, the Commission staff, or any affected party hereto, in any proceedings now pending, including area rate or similar proceedings, or hereafter instituted by or against Atlantic or any other companies, persons or parties affected by this order.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross and David S. Black.

RATON NATURAL GAS COMPANY, DOCKET NO. CP65-101

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 31, 1964)

On October 13, 1964, Raton Natural Gas Company (Applicant), filed an application in Docket No. CP65-101, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a meter station on the outskirts of the City of Raton, New Mexico, and the sale and delivery of natural gas to the San Morcol Pipeline, Inc. (San Morcol) for resale, all as more fully set forth in the application.

Applicant proposes to sell and deliver natural gas to San Morcol for resale to the communities of Maxwell, Springer, Wagon Mound and Las Vegas, New Mexico. San Morcol proposes to construct and operate 50 miles of 8-inch pipeline from the point of connection with Applicant's proposed meter station to a point near Colmor, New Mexico, midway between the cities of Raton and Las Vegas, New Mexico.[1] The community of Las Vegas will construct, own and operate the remaining 50 miles of 8-inch pipeline extending from Colmor to Las Vegas. San Morcol, however, will make the sales for resale to all of the above-mentioned communities. Annual and peak day requirements for three initial years are stated to be:

	1965	*1966*	*1967*
Annual	667, 073	721, 508	765, 234
	1964-65	*1965-66*	*1966-67*
Peak Day	4, 200	6, 000	6, 490

Applicant proposes to make the sale to San Morcol under its proposed CD-1 Rate Schedule to be filed with the Commission upon the granting of certificate authorization. The rate schedule provides for a demand charge of $1.10 per Mcf and a commodity charge of 22.5 cents per Mcf, and for an interruptible service under a proposed Rate Schedule I-1 at a rate of 26 cents per Mcf.

Applicant was authorized in Docket No. CP62-131 to construct and operate approximately 20.5 miles of 8-inch line extending from a point of connection with Colorado Interstate Gas Company's (CIG) facilities at Trinidad, Colorado, to Raton, New Mexico.

The cost of the proposed meter station at Raton is estimated at $7,490, and will be paid for from cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 30, 1964, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record finds and orders as hereinafter stated.

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[1] The application filed by San Morcol Pipeline, Inc., on October 13, 1964, in Docket No. CP65-100 pursuant to Section 1(c) of the Natural Gas Act for an exemption from the provisions of the Act over its 8-inch line from Raton to Colmor, New Mexico, is being granted contemporaneously herewith, *infra*, p. 1558.

The Commission finds:

(1) Applicant, Raton Natural Gas Company, a New Mexico corporation having its principal place of business in Raton, New Mexico, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 19, 1963 in Docket No. CP62–131 (30 FPC 356).

(2) The proposed construction and operation of facilities and sale and delivery of natural gas by Applicant to San Morcol Pipeline, Inc., as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity be and the same is hereby issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the sale and delivery of natural gas to San Morcol Pipeline, Inc., as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations within sixty days of the date on which this order issues.

(D) Raton Natural Gas Company shall file within 30 days after the issuance of this order its tariff and service agreement executed in accordance with the Commission's Regulations reflecting the terms and conditions of the sale and delivery of natural gas to the San Morcol Pipeline, Inc.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross and David S. Black.

SAN MORCOL PIPELINE, INC., DOCKET NO. CP65–100

DECLARATION OF EXEMPTION

(Issued December 31, 1964)

San Morcol Pipeline, Inc. (Applicant), filed an application on October 13, 1964, for exemption of its facilities described in paragraph (2) below from the provisions of the Natural Gas Act, pursuant to Section 1(c) thereof.

Upon the basis of the application filed, the exhibits appended thereto, and the files of the Commission, it appears that:

(1) Applicant is a New Mexico corporation operating as a public utility in the State of New Mexico where it will be engaged in the distribution of natural gas subject to the jurisdiction of the public service commission of New Mexico. The gas to be so distributed is produced in part in Texas and other states and is transported in interstate commerce pursuant to certificate authorization from the Federal Power Commission.

(2) Applicant's New Mexico market will be served by an 8-inch intrastate line extending from a point near the City of Raton, New Mexico, to a point near Las Vegas, New Mexico.

(3) Applicant proposes to purchase gas from the Raton Natural Gas Company (Raton)[1] under the terms of an agreement which provides that Raton will deliver such gas to Applicant at a point near Raton, New Mexico, inside the State of New Mexico where the same will be delivered into Applicant's intrastate line.

(4) All natural gas received by Applicant for transportation through said line is to be consumed ultimately within the State of New Mexico and all of the subject facilities are located within said state; and

(5) The New Mexico Public Service Commission has certified to the Federal Power Commission that it has and will be exercising regulatory jurisdiction over the rates, service and facilities of Applicant.

Wherefore, the Commission declares, by reason of the foregoing:

San Morcol Pipeline, Inc., with respect to the operation of its 8-inch line is exempt from the provisions of the Natural Gas Act, and the orders, rules and regulations of this Commission issued thereunder.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross and David S. Black.

UNITED GAS PIPE LINE COMPANY, DOCKET NOS. RP61–18, RP63–1, AND RP65–1

ORDER DENYING REQUEST FOR RECONSIDERATION OF SEVERABLE PROVISION REQUIRING RETENTION OF CERTAIN REFUNDS

(Issued December 31, 1964)*

On December 23, 1964, *supra*, p. 1515, we issued an order in the above dockets approving a proposed rate settlement which had been submitted by the parties, and providing in paragraph (C) thereof that, pending further order directing the ultimate disposition thereof, United should retain the amounts of refunds shown in Appendix A of the settlement stipulation as stemming from previous payments in excess of the agreed rates by United's pipeline customers. Ordering paragraph (K) of this order provided for the filing of objections thereto by the parties to the proceeding within seven days.

On December 28, 1964, the Commission received a telegram from Texas Eastern Transmission Corporation, a party in the several proceedings and a pipeline

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[1] The application filed by Raton Natural Gas Company on December 13, 1964, in Docket No. CP65–101, for a certificate authorization covering proposed facilities providing natural gas to San Morcol Pipeline, Inc., is being granted contemporaneously herewith, *supra*, p. 1557.

*Order issued February 19, 1965, rejecting application for rehearing, etc., 33 FPC 304.

customer of United, objecting to the provisions of the order of December 23, 1964, insofar as it requires retention of refunds by United pending further determination by the Commission as to Texas Eastern or its customers are legally and equitably entitled thereto. Texas Eastern had previously objected to a similar provision in our opinion and order in Docket No. RP63–1 and had filed a petition for review in the United States Court of Appeals for the Fifth Circuit (Case No. 22041), challenging, *inter alia*, the legality of such provision. It renews its objections here. Considering Texas Eastern's renewed objections as a petition for reconsideration of our action in our December 23rd order requiring such retention of refunds by United, we shall deny the request.[1] In our opinion, the procedure which we have established for determining whether United's immediate pipeline customers, or the customers of such customers, are legally and equitably entitled to retain refunds, and requiring United to retain such refunds pending such determination, is both appropriate and necessary if we are to fully discharge our obligations of insuring that our rate regulation affords a full degree of protection to the ultimate consumers of natural gas.

Texas Eastern states its understanding that, in the light of Article VIII reserving its right to retain its pending appeal on this issue (and on the consolidated tax question), it is not required to agree to the severable provisions of the Commission's December 23rd order requiring United to retain refunds, as a prerequisite to the settlement becoming effective, and that the Commission's order contemplates that the settlement will be made effective without prejudice to any rights the parties might otherwise have to appeal this reserved issue. Texas Eastern makes clear that, subject to this reservation, it is accepting the United settlement in its totality and that it agrees that the settlement shall remain effective irrespective of the outcome of any petitions for review it might bring, challenging the provision of the order requiring retention of refunds by United. We think that Texas Eastern is correct in these assertions and that its retention of the right to litigate the validity of the Commission's order directing United to withhold refunds from it pending their ultimate disposition does not affect the validity of our order of December 23, 1964.

The Commission orders:

Texas Eastern's objection to the provisions of our order issued December 23, 1964, directing United to retain certain refunds pending their ultimate disposition hereby is denied.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross and David S. Black.

UNITED STATES DEPARTMENT OF THE INTERIOR, SOUTHWESTERN POWER ADMINISTRATION, DOCKET NO. E–7172

ORDER TEMPORARILY EXTENDING CONFIRMATION AND APPROVAL OF RATES AND CHARGES

(Issued December 31, 1964)

The Secretary of the Interior, acting on behalf of the Southwestern Power Administration (SWPA) and pursuant to the Flood Control Act of 1944 (58 Stat. 887) has filed with the Federal Power Commission a request for the extension

[1] Since our action ordering United to retain the refunds pending further order as to their disposition is merely interlocutory, we do not believe any petition for rehearing would lie. (See § 1.34 of our Rules of Practice and Procedure.)

of confirmation and approval of rate schedules and contractual rates and charges applicable to the integrated system of SWPA.

By order issued August 7, 1964, 32 FPC 562, the Commission, pending review and final action of the Commission temporarily extended the confirmation and approval of the existing rate schedules and contractual rates and charges to December 31, 1964, or to such earlier date as the Commission's final action is taken. The Commission has not completed its review.

The Commission orders:

The confirmation and approval of Rate Schedules F–1, P–1, IC and EE, and the Contractual Rates and Charges set forth in contracts between SWPA and Texas Power and Light Company (Contract Ispa 177), Southwestern Electric Power Company (Contract 14–02–001–782), and Oklahoma Gas and Electric Company and Public Service Company of Oklahoma (Contract Ispa 356) are hereby temporarily extended to February 15, 1965, or to such earlier date as the Commission's final action is taken.

Before Commissioners: Joseph C. Swidler, Chairman; Harold C. Woodward; and David S. Black.

GULF OIL CORPORATION, DOCKET NO. CI64–1122; RATE SCHEDULE NO. 274; SUPPLEMENT NO. 1

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, ACCEPTING FOR FILING RATE SCHEDULE NO. 274 AND APPROVING SUPPLEMENTAL RATE SCHEDULE NO. 1 THERETO

(Issued July 6, 1964)

Gulf Oil Corporation (Applicant) on March 24, 1964, filed an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to make short-term sales of natural gas from unspecified producing properties to Texas Eastern Transmission Corporation (Texas Eastern) for periods of limited duration as may be agreed upon by Applicant and Texas Eastern from time to time during a period of 20 years. The gas which Applicant proposes to sell to Texas Eastern would be produced from leaseholds owned by Applicant.

The sale would be made in accordance with the terms of a 20-year basic sales agreement between Applicant and Texas Eastern entered into February 28, 1964. This basic sales agreement would be filed with the Commission as Applicant's filed rate schedule. As sales are contemplated, Applicant and Texas Eastern would enter into supplemental agreements specifying (1) point or points of delivery, (2) quantity of gas to be sold and purchased, (3) price and (4) duration of the supplemental agreement.

The deliveries of gas would be made at points on or near Texas Eastern's pipeline system mutually agreed upon by the parties. The quantity would be that specified in the supplemental agreement. The price would not exceed the then effective area price fixed by the Commission for permanent sales in the area in which deliveries are proposed to be made and would normally be substantially below such price. The sale would be made for the short-term period agreed upon by the parties.

Each of the supplemental agreements between the parties would be filed with the Commission as a proposed supplement to Applicant's rate schedule (basic

agreement of February 28, 1964) subject to the approval of the Commission. Simultaneously therewith and as a part of such filing Applicant would file a certificate of service showing service of the filing upon Texas Eastern's customers and interested state commissions. If the Commission does not accept such supplemental agreement and permit the same to become effective within 30 days from the filing date, the supplemental agreement will automatically terminate and be of no further force and effect. Such filing would then be withdrawn if it has not theretofore been rejected by the Commission.

Illustrative of how the certificate would operate, Applicant has submitted a supplemental agreement setting forth the details of the first sale proposed to be made under the basic agreement. Applicant proposes to sell an average of 6,000 Mcf of gas per day for a period of 5 years from the Veltin Field, St. Landry Parish, Louisiana, at 15.0 cents at 15.025 psia. This price is substantially lower that the established ceiling price for this area.

Applicant states that the authorization requested will enable it to negotiate short-term agreements and more promptly begin sales of natural gas to avoid payment of shut-in gas well royalties, to avoid flaring casinghead gas, to prevent drainage, to test new discoveries and to hold leases.

This is a matter of first impression being the first such proposal to be considered by the Commission. It is however, a form of "budget type" application covering proposed independent producer sales somewhat similar to "budget type" pipeline purchase facilities application for which provision is made by Section 157.7 of the Commission's Regulations under the Natural Gas Act, as amended by Order No. 280 issued March 31, 1964, 31 FPC 754. One distinct difference exists between the instant application and those covering "budget type" purchase facility applications. That is, our Regulations permit the filing of pipeline "budget type" applications covering facilities which are to be constructed within a one-year period, whereas here the application requests an overall certificate for a period of 20 years to be made operable through the issuance from time to time of other authorizations of more limited duration. However, we are not committing the Commission to the effectuation of this plan for such a lengthy period since if it develops in practice to be detrimental to the public interest we can refuse to approve the necessary supplemental authorization. We are of the opinion that to be of practicable benefit to the "independent producer", a certificate giving it reasonable assurance that it will have a market for sales of limited duration at an appropriate price during a reasonable future period would not be contrary to the public interest.

We recognize that we are dealing with what may be termed an "experimental application". While we have established procedures which have greatly expedited the handling of noncontested independent producer applications, we are of the opinion that it would further the public interest to grant the certificate requested by Applicant to test the feasibility of operations thereunder. In granting the basic certificate at this time we believe we should advise the parties that, in the absence of a showing of extraordinary circumstances, we will not approve supplemental filings for short-term sales, due to the spot nature thereof, at prices which are either above the purchaser's average cost of purchased gas or are not made at a realistic discount from the area ceiling for permanent certificates dedicating gas to the interstate market. Nor will we permit the procedure being instituted here to be abused by the establishment of any pattern of building up gas fields through short-term jurisdictional sales followed at termination by long-term non-jurisdictional sales. We recognize that at the termination of the short-term authorization Gulf will be free to renegotiate a permanent sale at any price at or below the appropriate area ceiling with Texas Eastern or any

other purchaser, but we will expect that such sales will normally fall into jurisdictional channels. Finally we reserve the right to hold a formal hearing on any supplemental agreement in the event a protest thereto is filed. Gulf, of course, will be free under such circumstances to withdraw the supplemental filing.

In view of the foregoing, we feel that it would be inappropriate to grant a 20-year term certificate as sought by Gulf. It would be more appropriate to limit the initial term of the certificate to a term of 5 years subject to extension or renewal at the expiration of such initial term. During the initial period of the certificate we will have an opportunity to examine the manner in which Gulf is conducting its operations thereunder and determine whether they are in accordance with the views expressed herein and whether the form of arrangement has led to discrimination among sellers or purchasers of gas in the areas where Gulf is selling gas to Texas Eastern. We shall, of course, permit Gulf to continue for the full term of any supplemental agreement any sale of natural gas which had been approved during the period the certificate remains in effect.

We will, therefore, grant to Gulf a certificate limited to a term of 5 years and accept for filing as Gulf's FPC Gas Rate Schedule No. 274 the basic purchase agreement between Gulf and Texas Eastern dated February 28, 1964, and as Supplement No. 1 thereto the supplemental agreement between the same parties dated February 28, 1964.

After due notice of the application no protest to the granting thereof has been received. Petitions to intervene were filed by Texas Eastern Transmission Corporation, Philadelphia Electric Company and Public Service Electric and Gas Company. A notice of intervention was filed by the Pennsylvania Public Utility Commission. Petitioners and the State Commission desire to participate only in the event a formal hearing is held on the application.

At a hearing held on July 2, 1964, the Commission on its own motion received and made part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Gulf Oil Corporation, is engaged in the sale and delivery of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The prospective sales of natural gas hereinbefore described, as more fully described in the application in this proceeding, will be made in interstate commerce subject to the jurisdiction of the Commission, and such sales by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The public convenience and necessity require that the initial term of the certificate issued hereby be limited to a term of 5 years subject to renewal or extension upon the expiration of the initial term upon a showing that the public convenience and necessity so require. Sales of natural gas being made pursuant to a supplemental agreement filed and approved during the effective period of the certificate issued hereby should continue for the unexpired portion of the term of such supplemental agreement.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed in the supplemental agreement of Februray 28, 1964, relating to the sale of gas from Veltin Field, St. Landry Parish, Louisiana, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The sales of natural gas by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as proposed in the supplemental agreement described above are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

The Commission orders:

(A) A certificate of public convenience and necessity limited to an initial term of 5 years from the date of issuance of this order be and the same is hereby issued, upon the terms and conditions of this order, authorizing such sales by Applicant of natural gas in interstate commerce for resale on a short-term or spot-sale basis for the period of limited duration specified in each supplemental agreement, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as Applicant and Texas Eastern may subsequently agree upon provided that such supplemental agreement (after being servd on Texas Eastern's customers and the state commissions having jurisdiction over such customers) is filed and approved by the Commission, all as hereinbefore described and as more fully described in the application and exhibits in this proceeding.

(B) The certificate issued in paragraph (A) above is not transferable and shall be effective only so long as Applicant continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(C) The basic agreement of February 28, 1964, between Applicant and Texas Eastern be accepted for filing as Gulf's FPC Gas Rate Schedule No. 274 and the supplemental agreement between the parties dated February 28, 1964, as Supplement No. 1 thereto effective as of the date of this order.

(D) At the time of the filing of each supplemental agreement Applicant shall submit a statement showing (1) the total contract volumes of gas deliverable under earlier filed supplemental agreements and (2) the total volumes of gas delivered under such earlier filed supplemental agreements.

(E) The certificate issued in paragraph (A) above is subject to renewal or extension at the expiration of the initial term upon a showing that the public convenience and necessity so require. Sales of natural gas being made pursuant to a supplemental agreement filed and approved during the effective period of the certificate issued in paragraph (A) above shall continue for the unexpired portion of the term of such supplemental agreement.

APPLICATIONS OF PRODUCERS OF NATURAL GAS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY DISPOSED OF DURING THE PERIOD OF JULY 1, 1964 THROUGH DECEMBER 31, 1964; SERVICE BEGINNING SUBSEQUENT TO JUNE 7, 1954.

PRODUCER,[2] DOCKET NO. AND PURCHASER[2]	FIELD	STATE	COUNTY	DATE	DISPOSITION [1]
Robert E. Aikman, et al.:					
CI65-332 Northern Natural Gas Co.	Hansford Upper Morrow.	Okla.	Hansford	11 23 64	Iss.
Aladdin Oil Co., Inc.:					
CI65-224 Transcontinental Gas Pipe Line Corp.	Bayou Couba	La.	St. Charles	12 15 64	Iss.
Alco Oil and Gas Corp.:					
CI65-275 Panhandle Eastern Pipe Line Co.	Wil	Kans.	Edwards	11 13 64	Iss.
Allied Producing Co.:					
CI65-303 Hope Natural Gas Co.	Sherman District	W. Va.	Boone	11 13 64	Iss.
Amax Petroleum Corp., Operator, et al.:					
CI65-357 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Beaver	12 8 64	Iss.
Ambassador Oil Corp., Operator, et al.:					
CI65-265 Panhandle Eastern Pipe Line Co.	Light	Okla.	Beaver	11 10 64	Iss.
Amerada Petroleum Corp.:					
CI65-111 Northwest Production Corp.	Barnhart	Tex.	Reagan	11 9 64	Iss.
CI65-235 El Paso Natural Gas Co.	Spraberry	Tex.	Reagan	11 13 64	Iss.
Anadarko Production Co.:					
CI65-267 Panhandle Eastern Pipe Line Co.	Arkalon	Kans.	Seward	11 10 64	Iss.
A G Anderson, et al., d.b.a. Dependable Pipe & Supply Co.:					
CI65-243 Equitable Gas Co.	Court House District.	W. Va.	Lewis	11 9 64	Iss.
Associated Oil & Gas Co.:					
CI65-207 Texas Eastern Transmission Corp.	Englehart	Tex.	Colorado	12 15 64	Iss.
The Atlantic Refining Co., Operator, et al.:					
CI65-241 Northern Natural Gas Co.	West Perryton	Tex.	Ochiltree	11 10 64	Iss.
Thomas D. Bailey:					
CI63-798 Cities Service Gas Co.	Guymon-Hugoton.	Okla.	Tex.	12 22 64	Iss.
Allen Beard, et al.:					
CI65-308 Hope Natural Gas Co.	Geary District [3]	W. Va.	Roane [3]	11 13 64	Iss.
Bel Oil Corp.:					
CI63-1030 Transcontinental Gas Pipe Line Corp.	Crowley	La.	Acadia	12 8 64	Iss.
CI65-333 Arkansas Louisiana Gas Co.	Arpelar Area	Okla.	Pittsburg	11 23 64	Iss.
Gus Berry, et al.:					
CI65-311 Hope Natural Gas Co.	McClellan District.	W. Va.	Doddridge	11 10 64	Iss.
Edwin Foster Blair & Associates, Agent:					
CI65-253 Carnegie Natural Gas Co.	Battelle	W. Va.	Monogalia	11 10 64	Iss.

See footnotes at end of table, p. 1574.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO. AND PURCHASER[2]	FIELD	STATE	COUNTY	DATE	DISPOSITION[1]
Blake Gas Co.:					
CI65-291 Hope Natural Gas Co.	Sherman District	W. Va.	Calhoun	11 13 64	Iss.
Harry C. Boggs:					
CI65-270 United Fuel Gas Co.	Birch	W. Va.	Braxton	11 10 64	Iss.
George L. Buckles, et al.:					
CI65-247 El Paso Natural Gas Co.	Langlie-Mattix	N. Mex.	Lea	11 9 64	Iss.
Francis E. Cain, et al.:					
CI65-392 Hope Natural Gas Co.	Sheridan	W. Va.	Calhoun	12 15 64	Iss.
Charley Cain:					
CI65-245 United Fuel Gas Co.	Undesignated	Ky.	Martin	11 9 64	Iss.
The California Co.:					
CI65-234 Tennessee Gas Transmission Co.	Bay La Fleur	La.	Terrebonne	11 13 64	Iss.
Cities Service Oil Co.:					
CI65-239 El Paso Natural Gas Co.	Undesignated	Tex.	Pecos	12 22 64	Iss.
CI65-274 Natural Gas Pipeline Co. of America.	Camrick	Okla.	Beaver	11 10 64	Iss.
F. A. Clark:					
CI65-397 United Gas Pipe Line Co.	Cotton Valley	La.	Webster	12 22 64	Iss.
Coastal States Gas Producing Co.:					
CI65-268 Trunkline Gas Co.	North Delhi	Tex.	Harris	11 10 64	Iss.
Dalton H. Cobb, Operator, et al.:					
CI65-373 Northern Natural Gas Co.	Ozona Southwest Canyon.	Tex.	Crockett	12 15 64	Iss.
George Fulton Collins, Jr.:					
CI65-408 Arkansas Louisiana Gas Co.	West Milton	Okla.	Le Flore	12 22 64	Iss.
Compass Exploration Inc.:					
CI65-289 El Paso Natural Gas Co.	Ignacio Blanco	Colo.	La Plata	11 13 64	Iss.
Continental Oil Co.:					
CI64-1309 Transcontinental Gas Pipe Line Corp.	North Thibodaux	La.	Lafourche	12 8 64	Iss.
Creslenn Oil Co. Inc.:					
CI65-290 Hope Natural Gas Co.	Washington District.	W. Va.	Calhoun	11 13 64	Iss.
CI65-314 Hope Natural Gas Co.	Salt Lick District.	W. Va.	Braxton	11 13 64	Iss.
Cuttychamp Oil & Gas Corp.:					
CI65-298 Arkansas Louisiana Gas Co.	Arkoma	Okla.	Le Flore	12 8 64	Iss.
E. A. Deem, et al.:					
CI65-326 Hope Natural Gas Co.	Union District	W. Va.	Ritchie	11 23 64	Iss.
J. F. Deem:					
CI65-370 Equitable Gas Co.	Union	W. Va.	Ritchie	12 8 64	Iss.
Delhi-Taylor Oil Corp., et al.:					
CI63-869 Transcontinental Gas Pipe Line Corp.	North Thibodaux	La.	Lafourche	12 8 64	Iss.
Delta Petroleum Co.:					
CI65-287 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	11 13 64	Iss.
George J. Despot:					
CI65-230 Texas Gas Transmission Corp.	Sugar Creek	La.	Claiborne	11 9 64	Iss.
Eastern Pipe Line Co.:					
CI64-1415 Texas Eastern Transmission Corp.	East Bernard	Tex.	Wharton	12 15 64	Iss.
El Paso Natural Gas Products Co.:					
CI65-414 Arkansas Louisiana Gas Co.	North Enid Area	Okla.	Garfield	12 28 64	Iss.

See footnotes at end of table, p. 1574.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO. AND PURCHASER[2]	FIELD	STATE	COUNTY	DATE	DISPOSITION[1]
Exchange Oil & Gas Co.:					
CI65-323 Hope Natural Gas Co.	Chalkley	La.	Cameron	11 23 64	Iss.
D. W. Falls, Inc.:					
CI62-1269 El Paso Natural Gas Co.	Basin Dakota	N. Mex.	San Juan	12 22 64	Iss.
Gibson-Bunting Drilling Co., Inc.:					
CI65-296 Carnegie Natural Gas Co.	Union District	W. Va.	Ritchie	11 13 64	Iss.
Roy A. Godfrey:					
CI65-400 Lone Star Gas Co.	Southeast Aylesworth.	Okla.	Bryan	12 22 64	Iss.
R. R. Greenbaum, d.b.a. Time Petroleum Co.:					
CI65-238 Panhandle Eastern Pipe Line Co.	Undesignated	Kans.	Kingman	11 10 64	Iss.
Jack W. Grigsby, Operator, et al.:					
CI65-317 United Gas Pipe Line Co.	Southwest Bourg	La.	Terrebonne	11 13 64	Iss.
William Gruenerwald & Associates, Inc., et al.:					
CI65-379 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Texas	12 15 64	Iss.
Gulf Oil Corp., Operator, et al.:					
CI65-406 Cities Service Gas Co.	Northwest Lovedale.	Okla.	Harper	12 22 64	Iss.
Hanley Co., et al.:					
CI62-750 El Paso Natural Gas Co.	Spraberry	Tex.	Glasscock	11 9 64	Iss.
Don W. Hardman:					
CI65-325 Hope Natural Gas Co.	New Milton District.	W. Va.	Doddridge	11 23 64	Iss.
Glenn L. Haught, Agent:					
CI65-306 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	11 13 64	Iss.
L. E. Haught Wright, Agent:					
CI65-313 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	11 13 64	Iss.
Hays & Co., Agent:					
CI65-391 Hope Natural Gas Co.	Buckhannon	W. Va.	Upshur	12 15 64	Iss.
CI65-393 Hope Natural Gas Co.	Lee	W. Va.	Calhoun	12 15 64	Iss.
Hays & Co., Agent, et al.:					
CI65-310 Hope Natural Gas Co.	Glenville District	W. Va.	Gilmer	11 13 64	Iss.
Morgan Henderson, et al.:					
CI65-312 Hope Natural Gas Co.	McClellan District.	W. Va.	Doddridge	11 13 64	Iss.
Peter Henderson Oil Co.:					
CI65-345 Kansas-Nebraska Natural Gas Co., Inc.	Wind River Basin.	Wyo.	Fremont*	11 13 64	Wtd.
Charles L. Hickman, et al.:					
CI65-401 Equitable Gas Co.	Central	W. Va.	Doddridge	12 22 64	Iss.
VA Roy Hildreth, Hildreth & Reed, et al.:					
CI65-305 Hope Natural Gas Co.	Spencer District	W. Va.	Roane	11 13 64	Iss.
John H. Hill:					
CI65-426 Cities Service Gas Co.	South Bishop	Okla.	Ellis	12 28 64	Iss.
W. R. Hughey Operating Co., et al.:					
CI65-375 Arkansas Louisiana Gas Co.	Clinton Lake	Tex.	Marion	12 15 64	Iss.
Humble Oil & Refining Co.:					
CI65-210 Colorado Interstate Gas Co.	Patrick Draw	Wyo.	Sweetwater	11 13 64	Iss.
CI65-389 Panhandle Eastern Pipe Line Co.	Northeast Trail	Okla.	Dewey	12 28 64	Iss.

See footnotes at end of table, p. 1574.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO. AND PURCHASER[2]	FIELD	STATE	COUNTY	DATE	DISPOSITION [1]
Humble Oil & Refining Co., Operator, et al.:					
G-5145 El Paso Natural Gas Co.	Undesignated	Tex.	Midland	7 24 64	Rej.
Henry S. Inger:					
CI65-301 Panhandle Eastern Pipe Line Co.	Lerado	Kans.	Reno	11 13 64	Iss.
Howard C. Johnson, et al.:					
CI65-231 Lone Star Gas Co.	North Dibble Area.	Okla.	McClain	11 9 64	Iss.
Jeanne E. Kerbs:					
CI62-1163 El Paso Natural Gas Co.	Spraberry	Tex.	Upton	12 22 64	Iss.
Kerbs Oil Co.:					
CI65-387 United Fuel Gas Co.	Elk	W. Va.	Kanawha	12 15 64	Iss.
F. R. Kincaid:					
CI62-1284 Equitable Gas Co.	Undesignated	W. Va.	Ritchie	12 22 64	Iss.
Robert E. King:					
CI65-244 United Gas Pipe Line Co.	Ada	La.	Bienville	11 10 64	Iss.
Robert E. King, et al.:					
CI65-246 United Gas Pipe Line Co.	South Mermentau	La.	Acadia	11 10 64	Iss.
King-Stevenson Gas & Oil Co., Operator, et al.:					
CI65-361 Arkansas Louisiana Gas Co.	Starr	Okla.	Kingfisher	12 8 64	Iss.
Kirby Petroleum Co., Operator, et al.:					
CI65-184 Panhandle Eastern Pipe Line Co.	Hugoton	Kans.	Grant	11 23 64	Iss.
Joseph G. Kluthe, Operator, et al.:					
CI62-1117 El Paso Natural Gas Co.	South Andrews	Tex.	Andrews	12 22 64	Iss.
Little Five Oil & Gas Co.:					
CI65-249 Pennzoil Co.	McClelland District.	W. Va.	Doddridge	11 10 64	Iss.
CI65-250 Pennzoil Co.	McClelland District.	W. Va.	Doddridge	11 10 64	Iss.
CI65-251 Pennzoil Co.	McClelland District.	W. Va.	Doddridge	11 10 64	Iss.
McCall Drilling Co., Inc.:					
CI65-322 Hope Natural Gas Co.	Skin Creek District.	W. Va.	Lewis	11 23 64	Iss.
C. T. McLaughlin, Operator, et al.:					
CI65-376 Kansas-Nebraska Natural Gas Co., Inc.	Undesignated	Colo.	Weld	12 15 64	Iss.
Midwest Oil Corp.:					
CI65-115 Texas Eastern Transmission Corp.	Bethany Longstreet.	La.	De Soto	11 30 64	Wtd.
Irwin Miller:					
CI65-256 Hope Natural Gas Co.	South Bosco	La.	Lafayette	11 10 64	Iss.
George Mitchell & Associates, Inc., Agent:					
CI65-352 Texas Eastern Transmission Corp.	Sheridan	Tex.	Colorado	12 8 64	Iss.
Mokeen Oil Co., Operator:					
CI65-316 Texas Eastern Transmission Corp.	West May	Tex.	Kleberg	11 13 64	Iss.
M. J. Moran, Operator:					
CI65-324 Hope Natural Gas Co.	Skin Creek District.	W. Va.	Lewis	11 23 64	Iss.

See footnotes at end of table, p. 1574.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO. AND PURCHASER[2]	FIELD	STATE	COUNTY	DATE	DISPOSITION [1]
George W. Moses:					
CI65-284 Hope Natural Gas Co.	Freemans Creek District.	W. Va.	Lewis	11 13 64	Iss.
Murphy Oil Corp.:					
CI65-380 Arkansas Louisiana Gas Co.	Sligo	La.	Bossier	12 15 64	Iss.
L. B. Nichols, Jr., et al.:					
CI65-266 Northern Natural Gas Co.	Patti-Cake	Tex.	Lipscomb	11 10 64	Iss.
Norton Oil Co. Inc., et al.:					
CI65-213 United Gas Pipe Line Co.	Marie Pistol Ridge.	Miss.	Forrest	11 10 64	Iss.
Oil & Gas Futures Inc.:					
CI65-255 Northern Natural Gas Co.	Undesignated	Okla.	Beaver	11 10 64	Iss.
Oklahoma Natural Gas Co.:					
CI65-261 Northern Natural Gas Co.	North Linscott	Okla.	Ellis	11 10 64	Iss.
CI65-320 Arkansas Louisiana Gas Co.	Cartersville	Okla.	Haskell*	11 13 64	Iss.
P & J Development Co., Inc.:					
CI62-1311 Hope Natural Gas Co.	Coal District	W. Va.	Harrison	11 23 64	Iss.
Pace Bower Construction Co.:					
CI62-1312 Hope Natural Gas Co.	Washington	W. Va.	Calhoun	12 22 64	Iss.
Pan American Petroleum Corp.:					
CI61-419 El Paso Natural Gas Co.	Undesignated	Wyo.	Sublette	11 6 64	Iss.
CI65-101 El Paso Natural Gas Co.	Tocito Dome	N. Mex.	San Juan	12 8 64	Iss.
CI65-321 Texas Eastern Transmission Corp.	Cottonwood Creek.	Tex.	De Witt	12 8 64	Iss.
CI65-374 El Paso Natural Gas Co.	Tocito Dome Pennsylvania D.	N. Mex.	San Juan	12 15 64	Iss.
CI65-378 Northern Natural Gas Co.	West Lips	Tex.	Roberts	12 15 64	Iss.
Penrose Production Co., Operator, et al.:					
CI65-297 El Paso Natural Gas Co.	Howse-San Andres.	N. Mex.	Lea	12 28 64	Iss.
Penrose Production Co., et al.:					
CI65-218 El Paso NaturalGas Co.	Eumont	N. Mex.	Lea	11 13 64	Iss.
Petroleum Resources Inc., et al.:					
CI65-285 Hope Natural Gas Co.	Glenville District.	W. Va.	Gilmer	11 13 64	Iss.
Phillips Petroleum Co.:					
CI65-398 Texas Gas Gathering Corp.	Locust Ridge	La.	Tensas	12 22 64	Iss.
Phillips Petroleum Co., Operator:					
CI65-273 El Paso Natural Gas Co.	Eunice	N. Mex.	Lea	11 13 64	Iss.
Pioneer Petroleum Inc., et al.:					
CI65-286 Hope Natural Gas Co.	Freemans Creek District.	W. Va.	Lewis	11 13 64	Iss.
Placid Oil Co.:					
CI65-346 Transcontinental Gas Pipe Line Corp.	Bayou Couba	La.	St. Charles	12 8 64	Iss.
Ferrell L. Prior:					
CI65-281 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	11 13 64	Iss.
The Pure Oil Co:					
CI65-365 Kansas-Nebraska Natural Gas Co., Inc.	Walton area	Wyo.	Natrona	12 8 64	Iss.
CI65-338 Kansas-Nebraska Natural Gas Co., Inc.	Badwater area	Wyo.	Fremont	11 23 64	Iss.
James E. Ratliff:					
CI65-327 Hope Natural Gas Co.	Grant District	W. Va.	Richie	11 23 64	Iss.

See footnotes at end of table, p. 1574.

NEW SERVICE CERTIFICATES—Continued

PRODUCER, DOCKET NO., AND PURCHASER	FIELD	STATE	COUNTY	DATE	DISPOSITION [1]
C. F. Raymond:					
CI65-423 El Paso Natural Gas Co.	Undesignated	Colo.	La Plata	12 28 64	Iss.
A. S. Ritchie, et al.:					
CI65-344 Panhandle Eastern Pipe Line Co.	Hugoton Gas	Kans.	Stevens	12 15 64	Iss.
Rodman Oil Co.:					
CI65-205 West Lake Natural Gasoline Co.	Nena Lucia area	Tex.	Nolan	11 9 64	Iss.
CI65-396 Northern Natural Gas Co.	East Ozona	Tex.	Crockett	12 28 64	Iss.
W. Leslie Rogers:					
CI65-236 Equitable Gas Co.	Central District	W. Va.	Doddridge	11 9 64	Iss.
Neal Rudder, et al.:					
CI65-292 Hope Natural Gas Co.	Central District	W. Va.	Doddridge	11 13 64	Iss.
CI65-299 Hope Natural Gas Co.	Sheridan District	W. Va.	Calhoun	11 13 64	Iss.
CI65-307 Hope Natural Gas Co.	Union District	W. Va.	Ritchie	11 13 64	Iss.
John Russ, Operator, et al.:					
CI65-302 Arkansas Louisiana Gas Co.	Bethany	Tex.	Panola	11 13 64	Iss.
W. G. Sampson, et al.:					
CI65-328 Hope Natural Gas Co.	Washington District.	W. Va.	Calhoun	11 23 64	Iss.
Tom Schneider:					
CI65-190 El Paso Natural Gas Co.	Pecos Valley	Tex.	Pecos	11 23 64	Iss.
Joseph E. Seagram & Sons, Inc.:					
CI65-50 Kansas-Nebraska Natural Gas Co., Inc.	Frenchie Draw Unit.	Wyo.	Fremont*	12 8 64	Iss.
CI65-223 El Paso Natural Gas Co.	Basin Dakota	N. Mex.	San Juan	11 9 64	Iss.
Sentry Royalty Co.:					
CI65-377 Texas Gas Transmission Corp.	Midland Gas area	Ky.	Muhlenberg	12 15 64	Iss.
Sierra Petroleum Co., Inc.:					
CI65-425 Cities Service Gas Co.	Northeast Rhodes	Kans.	Barber	12 28 64	Iss.
Sierra Petroleum Co., Inc., Operator, et al.:					
CI65-348 Cities Service Gas Co.	Palmer	Kans.	Barber	12 8 64	Iss.
Sinclair Oil & Gas Co.:					
CI65-335 Hope Natural Gas Co.	Chalkley	La.	Cameron	11 23 64	Iss.
CI65-371 Lone Star Gas Co.	Northeast Walnut Bend.	Tex.	Cooke	12 8 64	Iss.
CI65-421 Kansas-Nebraska Natural Gas Co., Inc.	Bradshaw area	Kans.	Hamilton	12 28 64	Iss.
Floyd W. Smith & Co., Inc.:					
CI65-67 El Paso Natural Gas Co.	Spraberry Trend	Tex.	Upton	12 28 64	Iss.
Jas. F. Smith:					
CI65-1173 Northern Natural Gas Co.	Walkemeyer	Kans.	Stevens	12 8 64	Iss.
CI65-369 Northern Natural Gas Co.	Walkemeyer	Kans.	Stevens	12 8 64	Iss.
William E. Snee, et al.:					
CI65-402 Arkansas Louisiana Gas Co.	Wilburton*	Okla.	Latimer*	12 22 64	Iss.
Socony Mobil Oil Co., Inc.:					
CI65-242 Lone Star Gas Co.	Penn Griffith	Tex.	Rusk	11 9 64	Iss.
CI65-334 Trunkline Gas Co.	Ragley	La.	Beauregard	12 15 64	Iss.
CI65-403 El Paso Natural Gas Co.	Pegasus Gasoline Plant.	Tex.	Midland	12 28 64	Iss.
Sohio Petroleum Co.:					
CI64-1226 J. A. Heard, Trustee	Fort Lipan	Tex.	Jim Wells	10 28 64	Wtd.
CI65-175 Northern Natural Gas Co.	Drinkard	N. Mex.	Lee	12 15 64	Iss.

See footnotes at end of table, p. 1574.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO. AND PURCHASER[3]	FIELD	STATE	COUNTY	DATE	DISPOSITION[1]
Sohio Petroleum Co.—Continued					
CI65-260 Mississippi River Fuel Corp.	Woodlawn	Tex.	Harrison	11 10 64	Iss.
CI65-319 Northern Natural Gas Co.	Laverne Area	Okla.	Harper	12 8 64	Iss.
Southern Union Production Co.:					
CI65-263 Northern Natural Gas Co.	Undesignated	Okla.	Beaver	11 10 64	Iss.
Southwest Oil Industries, Inc.:					
CI65-259 Northern Natural Gas Co.	Mocane-Laverne	Okla.	Harper	11 10 64	Iss.
Sydney Spofforth:					
CI65-315 Hope Natural Gas Co.	Grant District	W. Va.	Ritchie	11 13 64	Iss.
Paul F. Starr, Agent:					
CI65-288 Hope Natural Gas Co.	Spring Creek District.	W. Va.	Wirt	11 13 64	Iss.
D. J. Stone:					
CI65-330 Panhandle Eastern Pipe Line Co.	Undesignated	Kans.	Meade	12 8 64	Iss.
Superior Oil & Gas, Inc.:					
CI62-1285 Cumberland & Allegheny Gas Co.	Union	W. Va.	Barbour	12 22 64	Iss.
Sweetland Land & Mineral Co.:					
CI65-368 United Fuel Gas Co.	Jefferson District	W. Va.	Lincoln	12 8 64	Iss.
Tenneco Oil Co.:					
CI65-329 Northern Natural Gas Co.	North Linscott	Okla.	Ellis	11 23 64	Iss.
Tex-Star Oil & Gas Corp.:					
CI65-404 El Paso Natural Gas Co.	Basin Dakota	N. Mex.	San Juan	12 22 64	Iss.
Texaco Inc., Operator, et al.:					
CI65-185 El Paso Natural Gas Co.	Undesignated	N. Mex.	San Juan	12 22 64	Iss.
CI65-257 Northern Natural Gas Co.	Various	Okla.	Beaver	11 10 64	Iss.
CI65-359 Panhandle Eastern Pipe Line Co.	Northeast Carthage.	Okla.	Texas	12 8 64	Iss.
CI65-394 El Paso Natural Gas Co.	Gallegos Canyon Unit.	N. Mex.	San Juan	12 22 64	Iss.
CI65-407 El Paso Natural Gas Co.	Tocito Dome	N. Mex.	San Juan	12 22 64	Iss.
Texas American Oil Corp., Operator, et al.:					
CI65-354 Northern Natural Gas Co.	Ozona*	Tex.	Crockett	12 8 64	Iss.
Evan A. Thomas:					
CI65-395 United Gas Pipe Line Co.	Cotton Valley	La.	Webster	12 22 64	Iss.
Tidewater Oil Co.:					
CI65-258 Lone Star Gas Co.	East Cruce	Okla.	Stephens	11 10 64	Iss.
CI65-382 Tennessee Gas Transmission Co.	Grand Island Block 43 Offshore.	La.	Jefferson*	11 4 64	Rej.
J. C. Trahan, Drilling Contractor, Inc.:					
CI65-383 Arkansas Louisiana Gas Co.	Arkana	La.	Bossier	12 15 64	Iss.
Union Tex Petro., a division of Allied Chemical Corp.:					
CI65-361 Northern Natural Gas Co.	Rosston Area	Okla.	Harper	12 15 64	Iss.
Victor A. Vincent & Bert C. Modderman:					
CI65-295 United Fuel Gas Co.	Horn Unit	Ky.	Martin	11 13 64	Iss.

See footnotes at end of table, p. 1574.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO. AND PURCHASER[3]	FIELD	STATE	COUNTY	DATE	DISPOSITION [1]
Dan R. Wager, et al.:					
CI65-419 Arkansas Louisiana Gas Co.	Arkoma Area	Okla.	Latimer *	12 25 64	Iss.
Warren American Oil Co.:					
CI65-262 Arkansas Louisiana Gas Co.	Northwest Milton.	Okla.	Haskell	11 10 64	Iss.
Westheimer Neustadt Corp.:					
CI65-227 Lone Star Gas Co	Sholem Alechem	Okla.	Carter	11 9 64	Iss.
Westhoma Oil Co.:					
CI65-254 Northern Natural Gas Co.	Hugoton	Okla.	Texas	11 10 64	Iss.
Mary L. Windom:					
CI64-1165 Penova Interests, Inc.	Grant District	W. Va.	Ritchie	11 13 64	Iss.
Woods Exploration & Producing Co., Operator, et al.:					
CI65-53 Eastern Pipe Line Co.	East Bernard	Tex.	Wharton	12 15 64	Iss.
Worth Exploration Co., Operator, et al.:					
CI65-260 Southern Natural Gas Co.	Lafitte	La.	Jefferson	11 10 64	Iss.

See footnotes at end of table, p. 1574.

PRODUCER APPLICATIONS FOR ABANDONMENT OF SERVICE DISPOSED OF DURING THE PERIOD JULY 1, 1964 THROUGH DECEMBER 31, 1964

PRODUCER,[2] DOCKET NO. AND PURCHASER[2]	FIELD	STATE	COUNTY	DATE	DISPOSITION [1]
Allegheny Land & Mineral Co.:					
CI65-356 Hope Natural Gas Co.	Lee	W. Va.	Calhoun	12 8 64	Iss.
Amerada Petroleum Corp.:					
CI65-390 Kansas-Nebraska Natural Gas Co., Inc.	Jackpot	Colo.	Morgan*	12 15 64	Iss.
Barber Gas Operations Inc.:					
CI65-237 Cities Service Gas Co.	Whelan	Kans.	Barber	11 9 64	Iss.
E. W. Bowers & Associates, et al.:					
CI65-220 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	11 9 64	Iss.
Richard H. Brumbaugh, d.b.a. Conrad 26:					
CI65-221 Hope Natural Gas Co.	Murphy District	W. Va.	Ritchie	11 9 64	Iss.
Central Gas Co., et al.:					
CI65-428 Hope Natural Gas Co.	Freemans Creek District.	W. Va.	Lewis	12 28 64	Iss.
Edwin L. Cox, et al.:					
CI65-410 Texas Eastern Transmission Corp.	Rhode Ranch	Tex.	McMullen	12 28 64	Iss.
Davidor & Davidor, Inc.:					
CI65-271 Cities Service Gas Co.	North Whiterock.	Okla.	Noble	11 10 64	Iss.
Earl Goodwin, et al.:					
CI65-193 Equitable Gas Co.	Freemans Creek	W. Va.	Lewis	12 15 64	Iss.
Kilroy Properties Inc., et al.:					
CI65-478 Trunkline Gas Co.	Alta Loma-Arcadia.	Tex.	Galveston	12 22 64	Iss.
Philip Lemon, et al.:					
CI65-222 Hope Natural Gas Co.	Union District	W. Va.	Ritchie	11 9 64	Iss.
Cecil Meadows, et al.:					
CI65-355 Hope Natural Gas Co.	Troy	W. Va.	Gilmer	12 8 64	Iss.
George W. Miller, et al.:					
CI65-282 Hope Natural Gas Co.	Troy District	W. Va.	Gilmer	11 13 64	Iss.
CI65-367 Hope Natural Gas Co.	Dekalb	W. Va.	Gilmer	12 8 64	Iss.
W. H. Mosser, et al.:					
CI65-280 Hope Natural Gas Co.	Freemans Creek District.	W. Va.	Lewis	11 13 64	Iss.
Pan American Petroleum Corp., Operator, et al.:					
CI65-364 Phillips Petroleum Co.	Fuhrman-Mascho	Tex.	Andrews	12 15 64	Iss.
Peake Petroleum Co.:					
CI65-1235 Amere Gas Utilities Co.	Undesignated	W. Va.	Wyoming	12 22 64	Iss.
Petroleum Promotions Inc.:					
CI65-278 Hope Natural Gas Co.	New Milton District.	W. Va.	Doddridge	11 13 64	Iss.
Ferrell L. Prior, et al.:					
CI65-304 Hope Natural Gas Co.	Court House District.	W. Va.	Lewis	11 13 64	Iss.
Skelly Oil Co.:					
CI65-294 Panhandle Eastern Pipe Line Co.	Wil	Kans.	Edwards	11 13 64	Iss.
Socony Mobil Oil Co., Inc.:					
CI65-347 United Fuel Gas Co.	Gum Cove	La.	Cameron	12 8 64	Iss.
Stafford Oil Co.:					
CI65-372 Hope Natural Gas Co.	McClellan	W. Va.	Doddridge	12 8 64	Iss.

See footnotes at end of table, p. 1574.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,# DOCKET NO. AND PURCHASER#	FIELD	STATE	COUNTY	DATE	DISPOSITION [1]
Subsurface Reserve Corp., Operator, et al.:					
CI65-233 Texas Eastern Transmission Corp.	Kittie West*	Tex	Live Oak	12 15 64	Iss.
Tenneco Oil Co.:					
CI64-1474 Texas Gas Gathering Corp.	Lake St. John*	La	Tensas	12 22 64	Iss.
Texaco Inc.:					
CI65-405 Tennessee Gas Transmission Co.	West Claboose*	Tex	San Patricio	12 22 64	Iss.
Tidewater Oil Co.:					
CI65-363 United Gas Pipe Line Co.	Southwest Kinder*	La	Allen	12 8 64	Iss.
French Trimble, et al.:					
CI65-283 Hope Natural Gas Co.	Freemans Creek District.	W. Va.	Lewis	11 13 64	Iss.
Vesta Fuel Oil Co., Well #10:					
CI65-420 Hope Natural Gas Co.	Union District*	W. Va.	Ritchie	12 28 64	Iss.
W. W. F. Oil Corporation, Operator, et al.:					
CI65-439 United Fuel Gas Co.	St. Paul Bayou*	La	Terrebonne	12 30 64	Iss.
Watson Oil & Gas Co., Inc.:					
CI65-151 Carnegie Natural Gas Co.	Murphy District*	W. Va.	Ritchie	11 9 64	Iss.
CI65-192 Equitable Gas Co.	Union*	W. Va.	Marion	12 15 64	Iss.
Olin B. Wetzel, Agent, et al.:					
CI65-279 Hope Natural Gas Co.	Freemans Creek District.	W. Va.	Lewis	11 13 64	Iss.

*Indicates that other fields, counties or States are also included.
Producers' and Purchasers' names may include et al., trustee, agent, or additional names on certain docket.
[1] Iss., issued; Wtd., withdrawn; Rej., rejected.